IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No.: WMN 05 CV 1297**
	)	
JOHN BAPTIST KOTMAIR, et al.,	)	
	)	
Defendants.	)	

UNITED STATES MOTION FOR SANCTIONS FOR DISCOVERY VIOLATIONS

The United States of America, pursuant to Rule 37(b)(2)(C) and (c) of the Federal Rules of Civil Procedure, moves the Court to enter an order sanctioning defendants by: (1) finding certain facts for the purposes of trial and as part of its summary judgment motion with a warning that defendants continued misconduct can result in default judgment, (2) find defendants in contempt if they refuse to obey the Court's Order by June 16, 2006, and (3) enter default judgment if these less severe sanctions do not induce compliance by June 30, 2006.

I. INTRODUCTION

The United States filed suit against Defendants John B. Kotmair, Jr. (Kotmair), and Save-a-Patriot Fellowship (SAPF) on May 13, 2005, seeking a permanent injunction under Internal Revenue Code (I.R.C., 26 U.S.C.) §§ 7402(a) and 7408 prohibiting them from interfering with the administration of the internal revenue laws, from organizing and selling tax-fraud schemes, and from assisting in the preparation of false documents relating to federal tax matters. On October 25 and 27, 2005, the United States served interrogatories and requests for production of

documents upon Kotmair and SAPF, respectively.[1]

Kotmair served untimely responses for both the requests served on him and SAPF on November 28, and December 1, 2005.[2] By letter dated December 20, 2005, the United States informed defendants that their responses were deficient because, among other things, they failed to certify their responses.[3] In response to the numerous requests for documents, SAPF only produced three copies of their newsletter, *Reasonable Action*, and some audio and video tapes.[4]

Defendants have refused to answer the United States' requests for *over seven months* and on April 25, 2006, the United States filed a motion to compel discovery responses which the Court granted in part on May 16, 2006.[5] The United States informed defendants that the instant motion would be sought if they did not comply with the Court's Order by May 24, 2006. In response, defendants filed an objection and a motion for stay. Because a stay is not automatic, their noncompliance with the Court's Order continues.[6]

A. SAPF's Failure to Cooperate in Discovery.

A comparison of the documents and responses provided by SAPF to those it refuses to provide demonstrates the lack of cooperation in discovery. As stated, SAPF has provided *only*

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[1] Docket no. 16 (United States' L.R. 104.7 Certificate of Conference, Ex. A.)

[2] *Id.*, Exs. C & D.

[3] *Id.*, Exs. E.

[4] *Id.*, Exs. C & D; Declaration of Thomas M. Newman ¶¶ 2-5.

[5] Docket no. 33.

[6] Docket nos. 34 & 35; *See* L.R. 301.5.a ("the filing of objections to the Magistrate Judge's order shall not operate as a stay of any obligation or deadline imposed by the order.")

newsletters, videos, and audiotapes. However, SAPF's handbook states that they offer "court litigation" services, including: (1) challenging a wrongful levy action in court, (2) judicial review of a wrongful levy action and involvement of the IRS employee who assigned them, (3) enforcement of a the hardship petition for release of levy, (4) suits for refunds of taxes, and (5) petitioning bankruptcy court to stop IRS collection.[7] Moreover, defendants offer to sell to customers "Affidavits of Revocation," purporting to revoke the customers' Social Security number, and "Statements of Citizenship" alleging to declare that the individual is exempt from income tax withholding. SAPF's discovery responses do not describe these services, nor has it provided a single document, related to these services.

SAPF is deceptively attempting to portray itself as producing only newsletters, pamphlets, and videos. However, SAPF's handbook, services, billing statements, and other products establish these are not the limits of its business. Defendants' sales of these products and services is well documented, however.[8]

Moreover, SAPF's misconduct has not been limited to its failure to disclose documents or supply answers to interrogatories. On April 25, 2006, SAPF served the United States with a

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[7] Declaration of Thomas M. Newman ¶18-31. Declaration of Thomas M. Newman ¶¶20-31. It should be noted that in response to the United States' interrogatory number 13 & 14—requesting the "nature of the position held, the nature of the services performed, the dates of performance, and the amounts (if any) paid for such services" for SAPF employees—SAPF neglected to explain any of the services, only labeling the employees as "caseworker," "paralegal," or "office clerk."

[8] *U.S. v. Crosson*, 1995 WL 756599 (E.D. Pa. Dec. 20, 1995)(noting that the taxpayer purchased the frivolous documents from defendants); *Sherwood v. Commissioner*, T.C. Memo. 2005-268 (same); *Tolotti v. Commissioner*, T.C. Memo. 2002-86 (same), *aff'd* 70 Fed. Appx. 971 (9th Cir. 2003); *Wadsworth v. Commissioner*, T.C. Memo. 1997-238 (same); *Narramore*, T.C. Memo. 1996-11 (same); *Atkinson v. Iowa Department of Revenue*, 2004 WL 3159262 *2 (Dept. of Appeals May 7, 2004)(same).

Notice of Service of Motion to Compel Discovery which erroneously asserted that the United States' responses were untimely.[9] The attached declaration to the United States' response reveals that SAPF's counsel was asked, at least four times, to correct this misstatement.[10] However, he failed to do so, causing further delay because the United States was required to respond to this frivolous motion.

B. Kotmair's Failure to Cooperate in Discovery.

Kotmair has also failed to cooperate in several respects. Kotmair falsely stated in his deposition that he did not sell "Affidavits of Revocation" or "Statement of Citizenship" and "never" represented customers who have used these documents in disputes with their employer. Contrary to Kotmair's statements, SAPF does offer to sue employers, he has represented customers in suits against their employers, and defendants' newsletters confirm they sell the "Affidavits of Revocation" or "Statement of Citizenship."[11]

Moreover, Kotmair stated to this Court he was assigned representative number "2605-47815R by the IRS for his representation ... and does so under the provisions of Treasury Circular 230, at 10.7(c)(1)(iv)."[12] Kotmair makes this false statement knowing that on June 3, 1994, he was sent a letter stating he was found to be "ineligible to practice before the Internal Revenue Service."[13]

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[9] Docket no. 30.

[10] Docket no. 32, Declaration.

[11] Declaration of Thomas M. Newman ¶¶20-31.

[12] Docket no. 17, at 6-7.

[13] Declaration of Thomas M. Newman ¶¶14-15.

C. Defendants' Past Misconduct.

As part of their scheme, defendants have advised members to employ the same type of dilatory tactics exhibited in this litigation. In 1996, this Court discussed SAPF's Member Assistance Program/Victory Express in *Save-A-Patriot Fellowship v. United States*, 962 F. Supp. 695 (D. Md. 1996), a wrongful levy suit. The Court's decision describes how SAPF rewards members who obstruct the enforcement of the internal revenue laws with "delaying tactics:"

> Essentially, when a member suffers a "qualified" loss of property or freedom, he/she submits a claim to the SAP Fellowship which, after validation, supposedly results in reimbursement for civil losses (to a $150,000 maximum) and a stipend of $25,000 per year of incarceration. The payments are to be made by the membership directly to the validated claimant or the claimant's family.
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> A civil claim is validated: ". . . only after S.A.P. has determined that a judgment does exist and that the claimant, *to the best of his ability, dragged the plunderers through every agency and court proceedings feasibly possible, using delaying tactics in each and everyone.*"
>
> A criminal claim is validated: ". . . only after S.A.P. has determined that the claimant member is actually incarcerated and is given physical proof that said member, to the best of his/her ability, *resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings feasibly possible.*"

Id. at 698 (emphasis added). In addition, defendants' handbook states that a "Member must prove they used every Court and Agency proceeding[] and delay tactic[] as possible" in order to be reimbursed for their loss or incarceration.[14]

Moreover, SAPF's dilatory conduct, under Kotmair's supervision, is not limited to that case. In *Weatherley*,[15] SAPF's conduct was described by the United States District Court as

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[14] Declaration of Thomas M. Newman ¶7.

[15] *In re Weatherley*, 1993 WL 268546 (E.D. Pa., July 15, 1993) It is noteworthy that defendants continue to offer to file bankruptcy petitions in their membership handbook.

follows:

> This court faces the very narrow issue of whether . . . Save-a-Patriot (Patriot) [is] in contempt of court even though it is not party to a bankruptcy proceeding. Patriot appears to be a private entity that assists individuals in the preparation of pro se bankruptcy proceedings.
>
> [T]he Bankruptcy Court . . . requested specific information from Patriot concerning the nature of its services and its involvement with *In re Weatherley* ... The court sought to discover the amount for the "membership fee" and the benefits in conjunction with that fee, the nature of the organization, the services performed for the debtor . . . and the names and bankruptcy numbers of any other cases in which Patriot was instrumental.
>
> Patriot filed a timely response which Judge Scholl found to be *vague and evasive. By second order dated January 6, 1993, Judge Scholl gave notice of impending sanctions if Patriot did not amend its answers in a more complete and clear manner. Patriot apparently refused.* Judge Scholl . . . held Patriot in contempt and imposed the following sanctions: 1) declared Patriot in civil contempt of orders dated December 4, 1992 and January 6, 1993; 2) directed Patriot to refund the $135 allegedly paid by the debtor to Patriot for services rendered in conjunction with the chapter 13 proceeding; 3) and enjoined Patriot from receiving compensation from any parties in connection with the preparation of bankruptcy cases unless it complied with provision 2 above, responded in good faith to the original inquiries, and filed a motion to dissolve the injunction. . .
>
> Patriot smugly concludes that since it was a non-party to *In re Weatherley* and the District Court did not issue the order, the sanctions, therefore, do not exist. We find, however, that Patriot's smugness is ill-conceived. *Id.* (Emphasis added.)[16]

In 1997, Kotmair represented an individual before the Executive Office for Immigration Review, and the Administrative Law Judge noted the following:[17]

> Because [Kotmair] continued to violate my orders, I decided to schedule a telephone prehearing conference. . . The April 8 Order informed the parties that the conference would address [Kotmair's] compliance with past orders, [Kotmair's] submission of unauthorized pleadings, as well as Mr. Kotmair's

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[16] Defendants have never complied with this order. *In re Weatherley*, 169 B.R. 555 (E.D. Pa., July 22, 1994).

[17] *Lee v. AT&T*, 7 OCAHO 924 (April 11, 1997).

> competence to practice before this tribunal, his compliance with the standards of conduct, and his continued participation in this case. Further, the parties were warned that if a party's representative failed to attend the conference, sanctions might be imposed . . .
>
> [The court] received by FAX a pleading from [Kotmair] . . . in which Kotmair stated that he was unavailable for the prehearing conference . . . This pleading is more significant for what it did not say than what it did say. First, it is not a motion or even a request for a postponement. Moreover, Mr. Kotmair did not state that he had a previous engagement . . . Rather, he asserted that because of prior commitments and an already pressing schedule, he needed more notice....
>
> Therefore, after receiving the "Response," at my direction, my secretary contacted Mr. Kotmair's office . . . and informed [him] that the conference would proceed as scheduled . . . Mr. Kotmair then came to the telephone . . . he . . . simply angrily informed my secretary that he would not attend the conference and hung up the telephone. . . .
>
> *I ruled that Mr. Kotmair had shown by his past actions, including his failure to attend the conference, that he was incompetent to represent Complainant in this action. I also ruled that he had violated the standards of conduct. . . by failing to comply with directions, by engaging in dilatory tactics, by refusing to adhere to reasonable standards of orderly and ethical conduct, and by failing to act in good faith. Id.* (Emphasis added.)

On August 15, 1997, an Administrative Law Judge for the Executive Office for Immigration Review advised the National Worker's Rights Committee:

> The filing of this Complaint is patently frivolous, and, on the part of Kotmair . . . disingenuous and irresponsible . . . By reiterating identical, stereotypical charges without discussing or otherwise acknowledging those precedents, he abuses the process of this forum. Were Kotmair an attorney, his actions would be sanctionable.[18]

Kotmair continue to file identical pleadings in other cases despite clear warning from the court.[19]

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[18] *Manning v. City of Jacksonville*, 7 OCAHO 956, at 8 (August 15, 1997).

[19] *Damron v. Yellow Freight Sys.*, 18 F. Supp. 2d 812 (E.D. Tenn. 1998)(SAPF customer, who used an Affidavit of Revocation, "adopted this misguided philosophy and misinterpretation of the law from a tax protest organization known as the Save-A-Patriot Fellowship" in addressing the Affidavit of Revocation); *Shepherd v. Sturm, Ruger & Co., INC.*, 1998 OCAHO LEXIS 27

II. ARGUMENT

Courts generally have broad discretion in imposing sanctions under Rule 37 of the Federal Rules of Civil Procedure.[20] Rule 37(b)(2) provides that a court may issue sanctions for failure to obey an order to provide or permit discovery, including an order compelling discovery issued under Rule 37(a). Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure provides that where a party fails to obey an order to provide or permit discovery, the court may make such orders as are just, including striking pleadings, dismissing the action, precluding or opposing certain claims, or holding the disobedient party in contempt.

The purpose of the rule is to impose sanctions against parties or persons who are unjustifiably resisting discovery.[21] Rule 37 sanctions must be applied diligently both "to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those who might be tempted to such conduct in the absence of such a deterrent."[22] The choice among the various sanctions rests with the district court.[23]

In order to avoid sanctions, the non-moving party must prove that it was impossible to

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(February 18, 1998) (Noting that Kotmair received copies of all adverse OCAHO decisions as the complainant's representative); *Lee v. Airtouch Communications*, 6 OCAHO 901 (November 21, 1996), *appeal filed*, No. 97-70124 (9th Cir. 1997).

[20] *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976).

[21] *See* Fed. R. Civ. P. 37 advisory committee's notes.

[22] *National Hockey League*, at 643.

[23] *Mutual Federal Sav. & Loan Ass'n v. Richards & Assoc., Inc.*, 872 F.2d 88, 92 (4th Cir. 1989); *Trigon Ins. Co. v. United States*, 204 F.R.D. 277, 288 (E.D. Va. 2001).

comply in order to avoid sanctions.[24] To show that it was impossible to comply with a court's order, the non-moving party must show that all reasonable efforts were made to comply with the court's order.[25] The court need only find that a party failed to comply with an order for sanctions to apply. Defendants' motions for reconsideration and stay indicate they are making no effort to comply, nor do they argue it is impossible to comply. Rather, defendants have acknowledged that they refuse to comply.

Moreover, sanctions are appropriate where the violation is "due to willfulness, bad faith, or fault of the party."[26] Disobedient conduct within the control of the litigant demonstrates bad faith or willfulness. Defendants have met this standard because Kotmair and SAPF have refused to disclose documents in their possession. Thus, the Court need only determine the severity of the sanction.

Rule 37(b)(2) in subsections (A)-(E) recites permissible sanctions in pending cases, including default judgment. The Fourth Circuit has recognized lesser sanctions may include any court orders that clearly contemplate punishment for noncompliance and that pursue subsequent conformity.[27] Since sanctions are warranted, but default is not appropriate at this time, the United States requests that this Court issue an Order finding the following facts, and warn defendants that further non-compliance can result in default judgment:

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[24] *In re Chase & Sanborn Corp.*, 872 F.2d 397, 400 (11th Cir. 1989).

[25] *United States v. Rizzo*, 539 F.2d 458, 465 (5th Cir. 1976).

[26] *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002).

[27] *See Anderson v. Foundation for Adv., Educ. & Emp't of Amer. Indians*, 155 F.3d 500, 505 (4th Cir. 1998); *Wilson v. Volkswagen of America, Inc.*, 561 F.2d 494, 503-04 (4th Cir. 1977), *cert. denied*, 434 U.S. 1020 (1978).

(1) Defendants prepare and sell to customers "Affidavits of Revocation," which falsely claim that the individual using the document is no longer required to pay employment taxes;

(2) Defendants prepare and sell to customers "Statements of Citizenship," which falsely claim that the individual is exempt from income tax withholding because U.S. citizens are not required pay taxes or report domestic income;

(3) Defendants advise customers purchasing the "Affidavits of Revocation" and "Statement of Citizenship" that they "cannot file state or federal income tax forms" after executing these documents;

(4) Defendants offer to file complaints against employers who refuse to accept the "Affidavits of Revocation" and "Statement of Citizenship" or continue to withhold income and employment taxes after these documents are offered;

(5) Defendants file complaints against employers who refuse to accept the "Affidavits of Revocation" and "Statement of Citizenship" or continue to withhold income and employment taxes after these documents are proffered;

(6) "Affidavits of Revocation" and "Statement of Citizenship," if used, would result in an understatement of the customers' income and employment tax payment requirements;

(7) Defendants offer to file for customers: bankruptcy petitions, complaints in wrongful levy actions against IRS employees, motions to quash IRS summonses, and frivolous suits for refund of taxes falsely asserting that U.S.-source income is not subject to taxation;

(8) Defendants charge customers a fee for preparing these court filings and for appearing before any court or agency;

(9) Defendants sell to customers frivolous letters which they send to the IRS falsely

claiming that U.S.-source income is not subject to taxation, and frivolous FOIA requests, both of which falsely claim that John B. Kotmair, Jr., is authorized to represent the customers;

(10) John B. Kotmair, Jr., signs each letter sent to the IRS under the jurat swearing "he is not currently under suspension or disbarment from practice before the Internal Revenue Service" knowing he is not authorized to represent individuals before the IRS;

(11) Defendants offer to compensate customers whose assets are levied or who are incarcerated because of violations of the federal income tax laws;

(12) Defendants charge customers $48 per letter sent to the IRS and ten times as much for court documents;

(13) Defendants are aware that their arguments are considered to be frivolous by both the IRS and courts;

(14) Defendants encourage members not to file income tax returns; and

(15) Defendants know that their customers have been incarcerated for relying on their products.

The information sought by the United States is essential to its case. Thus, the United States also requests that, the Court issue and Order: (1) finding defendants in contempt if they refuse to obey the Court's Order compelling discovery by June 16, 2006, and (2) finding defendants in default if these less severe sanctions do not induce compliance by June 30, 2006.[28]

A. Defendants Continued Non-Compliance Should Result in Default Judgment.

In *Mutual Federal Savings & Loan Association,* the Fourth Circuit set forth a four-part test

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[28] These dates are suggested so the United States can incorporate the documents in any future substantive motion, without any further prejudice or need for a change in the Court's Scheduling Order.

that a court must consider before imposing default judgment as a sanction. The factors are:

> (1) whether the noncomplying party acted in bad faith; (2) the amount of prejudice his noncompliance caused his adversary, which necessarily includes an inquiry into the materiality of the evidence [the parties] failed to produce; (3) the need for deterrence of the particular sort of noncompliance; and (4) the effectiveness of less drastic sanctions.[29]

Each of these factors will be addressed in turn.

1. Defendants' Bad Faith.

A party's bad faith is exhibited by, *inter alia*, failing to timely provide responses and documents during discovery, failing to cooperate during depositions, promising but failing to provide documents and responses, filing numerous requests for extensions, and a refusal to comply with court orders.[30] All of these factors are present in this case. The United States' requests remained unanswered for seven months, defendants requested last minute stays rather than complying, they practice the same dilatory tactics they espouse to their customers, and they have flagrantly disobeyed court orders.

2. Prejudice to Plaintiff.

Defendants' abuse of the discovery process have caused unnecessary expense, prejudice, and delay. The United States has been unable to file a substantive motion because of defendants' refusal to comply with the discovery process. Most significantly, defendants refused to disclose documents related to every service it offers. The United States is prejudiced because this is

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[29] *Mutual Federal Sav. & Loan Ass'n v. Richards & Assoc., Inc.*, 872 F.2d 88, 92; *See also Doyle v. Murray*, 938 F.2d 33, 35 (4th Cir. 1991)(the Fourth Circuit stated the third factor as "existence of a drawn out history of deliberately proceeding in a dilatory fashion.")

[30] *Snead v. Automation Industries, Inc.*, 102 F.R.D. 823 (D. Md. 1984); *Gardendance, Inc. v. Woodstock Copperworks, Ltd.*, 230 F.R.D. 438 (M.D.N.C. 2005).

conduct central to this case and the requested information would provide potential witnesses, evidence that defendants prepare frivolous court documents, and that defendants are compensated for these services.

3. There is a Need for Deterrence in this Case.

The need for deterrence in this case is substantial. Defendants have demonstrated an unwillingness to conform to the federal rules and to abide by the orders of the court. If parties were permitted to routinely ignore discovery, make false statements during depositions, routinely ask for stays, fail to certify responses, and file frivolous motions to compel, the court would be required to intervene in the discovery process of every case.[31] Moreover, there is a substantial need to deter the conduct of these defendants. Defendants advocate and employ the use of dilatory tactics and have flagrantly ignored at least five court orders. Thus, a severe sanction would have the effect of deterring both defendants and their disciples.

4. The Effectiveness of Less Drastic Sanctions.

Here, the relief requested by the United States allows defendants to conform to the Court's Order. The sanction requested is not severe as the factual statements are supported by the exhibits attached to the accompanying declaration. Moreover, this initial sanction warns defendants of the result of future misconduct, allows them the opportunity to comply with the Court's Order, and imposes a schedule that will not further delay the preparation of this case for trial.

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[31] *Miller v. Sprint Communications*, 1997 U.S. Dist. LEXIS 21881 (W.D.N.C., December 31, 1997).

III. CONCLUSION

For the foregoing reasons the United States requests that this Court enter an Order establishing the above-stated facts, preclude defendants from introducing or arguing a contrary position, and warn defendants that default judgment may be entered . Further, the United States requests the Court rule that defendants comply with the Court's Order by June 16, 2006, or be found in contempt, and that if defendants disobedience continues until June 30, 2006, default judgment should be entered.

Respectfully submitted,

/s/Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 616-9926
Fax: (202) 514-6770
Thomas.m.newman@usdoj.gov

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing MOTION FOR DISCOVERY SANCTIONS has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 8th day of June, 2006.

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158

George Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101

/s/Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. WMN 05 CV 1297
	)	
JOHN BAPTIST KOTMAIR, JR., et al.,	)	
	)	
Defendants.	)	

DECLARATION OF THOMAS M. NEWMAN IN SUPPORT OF THE UNITED STATES' MOTION FOR SANCTIONS FOR DISCOVERY VIOLATIONS

1. This declaration and attached exhibits are submitted under 28 U.S.C. § 1746 in connection with the United States' Response to Defendant SAPF's Motion to Compel Discovery Responses. I am a trial attorney with the Department of Justice's Tax Division in Washington, D.C. to whom this case is assigned.

2. On January 4, 2006, I received Save-a-Patriot's (SAPF) total document production in this case which is described in the letter attached as Exhibit 1.

3. Other than the materials stated in Exhibit 1, I have only received three copies of defendants' newsletter, *Reasonable Action*.

4. I have received only six copies defendants' newsletter from John B. Kotmair, Jr.

5. On several occasions, SAPF's counsel, George Harp stated he would send more copies of defendants' newsletter *Reasonable Action* because the United States' request has not been fully satisfied. Mr. Harp last stated he would supplement his responses on April 17, 2006. SAPF

has not supplemented any response since December 2005.

6. Defendants' Membership Handbook is attached as Exhibit 2A (pages 1-17), and 2B (pages 18-31). In Exhibit 2A, defendants describe their insurance-like coverage which covers a members' losses to the IRS, called the "Membership Assistance Program."

7. Defendants' Membership Handbook , Exhibit 2B (page 28), states that a member qualifies for a reimbursable loss but the "Member must prove they used every Court and Agency proceedings and delay tactics as possible."

8. Defendants' Membership Handbook , Exhibit 2A (page 16), states that "videos" and "publications" are available to the "general public" but that "letters to the IRS or affidavits (revocation and rescission, constructive notice, indemnity, etc.) are exclusive to the membership."

9. Defendants' Membership Handbook, Exhibit 2B (page 20-21), discusses defendants' "Power of attorney work," which includes offering to send letters to the IRS.

10. Defendants' Membership Handbook, Exhibit 2B (page 20-21), states that defendants charge $45 for each letter for "Power of attorney work."

11. A copy of one of defendants' letters is attached as Exhibit 3, which is dated September 16, 2005.

12. I have counted the correspondence the IRS received from defendants during the period from May 2004 through March 2006, which totals 864 letters sent purporting to represent SAPF customers.

13. Each of the 864 letters are signed by Kotmair under the declaration that he is "not currently under suspension or disbarment from practice before the Internal Revenue Service or

other practice of my profession by any other authority." Exhibit 3.

14. Attached as Exhibit 4 is a copy of a letter dated June 3, 1994, from the Baltimore District Office of the IRS informing John B. Kotmair, Jr., that he is "ineligible to practice before the Internal Revenue Service."

15. Attached as Exhibit 5 is a copy of the cover page and page 139 of Kotmair's book, *Piercing the Illusion*, in which he acknowledges that his IRS representative number was "revoked."

16. In response to the SAPF letters, the IRS mails to defendants' customers letters informing them that the arguments raised by defendants are frivolous. A copy of one such letter is attached as Exhibit 6.

17. Attached as Exhibit 7 is a copy of a letter from Kotmair responding to the IRS letter informing the SAPF customer that the arguments raised in the correspondence are frivolous.

18. Defendants' Membership Handbook, Exhibit 2B (page 20-23), discusses other services defendants provide to members, including: "CHALLENGING A WRONGFUL NOTICE OF LEVY/LIEN IN COURT," "JUDICIAL REVIEW OF WRONGFUL NOTICE OF LEVY/LIEN AND INVOLVEMENT OF IRS EMPLOYEE WHO SIGNED THEM," "ENFORCEMENT OF THE HARDSHIP PETITION FOR RELEASE OF LEVY," "SUIT FOR REFUND OF TAXES AFTER DENIAL OF PETITION FOR REFUND," and "PETITIONING BANKRUPTCY COURT TO STOP COLLECTIONS AND CHALLENGE IRS CLAIM."

19. Attached as Exhibit 8 is a copy of defendants' 1990 March/April *Reasonable Action* newsletter. Exhibit 3 (page 3, 5), states that defendants sell to members "Affidavits of Revocation and Rescission," "FOIA/Privacy Act Requests," and letters to "employers and

fiduciaries concerning the income tax withholding laws. For a small fee."

20. Attached as Exhibit 9 is a copy of defendants' 1994 *Reasonable Action* newsletter. Defendants' newsletter describes the documents as a "legal instrument for every U.S. citizen and resident alien who has determined that the law has never required them to file an income tax return and wants to revoke that and all other Internal Revenue Service documents ever filed (W-4, etc.), and rescind their signature therefrom."

21. Attached as Exhibit 10 is a copy of defendants' 1999 *Reasonable Action* newsletter.

22. Attached as Exhibit 11 is a copy of a page from defendants' website downloaded on June 6, 2006, detailing a members' use of the "Revocation/Rescission Affidavit" and "Statement of Citizenship" in order to discontinue withholding income and employment taxes.

23. Attached as Exhibit 12 is a copy of a "Revocation/Rescission Affidavit" and "Statement of Citizenship" sold to defendants' customers along with a bill for the documents.

24. The "Revocation/Rescission Affidavit" and "Statement of Citizenship" sold to customers, (Exhibit 12), contains detailed instructions, including the statement that the member can "no longer file an IRS Form W-4 with an employer, or any other IRS or state income tax form."

25. Defendants, in Exhibits 10 and 11, also offer to write letters to employers addressing the "Revocation/Rescission Affidavit" and "Statement of Citizenship," for a fee.

26. Attached as Exhibit 13 is a copy of a letter sent by defendants requesting that an employer, who received a "Revocation/Rescission Affidavit" and "Statement of Citizenship," sold to defendants' customer to discontinue withholding income and employment taxes.

27. Attached as Exhibit 14 is a copy of a letter in which defendants offer to file lawsuits

against the employers of their customers who continue to withhold income and employment taxes after the "Revocation/Rescission Affidavit" and "Statement of Citizenship" is submitted.

28. Attached as Exhibit 15 is an excerpt of defendant Kotmair's deposition transcript discussing the "Revocation/Rescission Affidavit," "Statement of Citizenship," and defendants offer to sue their customers' employers who withhold income and employment taxes. (Pages 183-189).

29. Attached as Exhibit 16 is a copy of an order in the case *Lee v. AT&T*, OCAHO Case No. 97B0003.

30. Attached as Exhibit 17 is a copy of the final decision in *Aguilar v. U.P.S.*, OCAHO Case No. 97B00079.

31. Defendants have not produced any of the aforementioned documents or explained any of the services discussed in paragraphs 6-28.

I declare under penalty of perjury the foregoing is true and correct. Executed this 8th day of June, 2006.

/s/ Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 616-9926
Fax: (202) 514-6770
thomas.m.newman@usdoj.gov

GEORGE E. HARP
Attorney at Law
610 Marshall Street, Suite 619
Shreveport, Louisiana 71101

Telephone (318) 424-2003

December 15, 2005

Anne Norris Graham
Trial Attorney, Tax Division
U. S. Department of Justice
P. O. Box 7238
Washington, D. C. 20044

Re: United States of America v. John Kotmair, Jr. and Save-A-Patriot Fellowship
#WMN 05 CV 1297
U. S. District Court for the Dist.of Maryland

Dear Ms. Graham:

Please find enclosed the documents referenced in the attached listing to accompany Save-A-Patriot's response to your interrogatories and request for production of documents in the above captioned. A few additional items will still be forthcoming and when I receive from my client, I will forward these to you.

Yours truly,

George E. Harp

Encs.

Exhibit 1

Printed Material:

The Law of Sheriffs, Vol. 1
The Law of Sheriffs, Vol. 2
How to Conduct Yourself on a Witness Stand (11/21/96)
Elementary Catechism on the Constitution of the United States
By Arthur J. Stansbury-1828; Ed. William H. Huff, 1993
How to Conduct Yourself on a Hearing (11/21/96)
Just The Facts (SAP 1995)
Piercing the Illusion, John Baptist Kotmair, Jr.
The Social Security Swindle: How Anyone Can Drop Out, Irwin Schiff
The Kindom of Moltz: About Inflation and Where It Comes From,
Irwin Schiff
How an Economy Grows and Why it Doesn't, Irwin Schiff
Howard Zaritsky Congressional Research Report (5/25/79)
IRS Code of Federal Regulations, 26, Part 600 to End (4/1/99)
Save-A-Patriot Fellowship: Member Handbook
Impeachment!: Restraining an Overactive Judiciary, David Barton
"Do Courts Have Law Making Powers?", John Baptist Kotmair, Jr.
"The Federal Reserve System: A Fatal Parasite on the American Body
Politic", Edwin Vieira, Jr.
"Citizens Rule Book: A Palladium of Liberty: Bill of Rights Jury Handbook"
"The Myth of the Innocent Civilian" by Harold Thomas (2002)
"Freedom Calendar 2006: Reviving America's Heritage", 17th Ed.

DOCUMENTS FROM SAVE-A-PATRIOT FELLOWSHIP:

VCR Tapes:

Waco: The Rules of Engagement
The Real George W. Bush: Mr. Gestapo!!
The Truth Behind The Income Tax
Light in the Darkness: The Franklin Sanders Story
The Problem and the Solution - Vol. I: A lecture on the Federal Reserve System sponsored by S.A.P.
The Problems and the Solution - Vol. II: A lecture on the Federal Reserve System sponsored by S.A.P.

CDs:

John Turner Lecture; January 22, 2005

Becraft's Historic Research Disk

Audio Tapes:

"Good Old Boys' Round Up": Zoh Hieronimus' Radio Talk Show; 9/21/95
Zoh with Jim Johnson: Zoh Hieronimus' Radio Talk Show; 9/12/95
The Creature From Maxwell
Gulf War Syndrome; Zoh Hieronimus' Radio Talk Show; 10/10/95 (2 tapes)
The Social Security System II: Zoh With John Kotmair; Zoh Hieronimus' Radio Talk Show; 1/8/97
Zoh Hieronimus - WCBM Radio: Phone Call From Dominic La Ponzina (Director of P.R. for I.R.S.)
February 1, 1995 Hearing; Tape 1, December 1993 Raid on S.A.P.
February 1, 1995 Hearing; Tape 3, December 1993 Raid on S.A.P.
IRS Meeting; July 23, 2003
The Social Security System: Zoh with John Kotmair; Zoh Hieronimus' Radio Talk Show; 9/7/95
Oklahoma City Bombing: Interview w/Genl. Benton Parton; Zoh Hieronimus' Radio Talk Show; 9/28/95

Save-A-Patriot Fellowship

Post Office Box 91, Westminster, Maryland 21158
Headquarters: (410)857-4441 Fax: (410)857-5249
World Wide Web: ***http://www.save-a-patriot.org***
E-mail: *info@save-a-patriot.org*

Member Handbook

(revised November 1, 20003 in the 19th year of the Fellowship's founding)

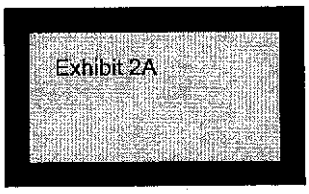
"Together We Must Stand – Or – Separately <u>You</u> Will be Stood On!!!"

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!!!

WELCOME to the *Save-A-Patriot Fellowship!*

Table of Contents

WHAT IS THE SAVE-A-PATRIOT FELLOWSHIP?

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

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

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

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

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

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

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

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

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

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

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

FIRST TYPE OF SUPPORT

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

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

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

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

THE HEART OF THE FELLOWSHIP

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

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

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

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

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

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

HOW HAS THE MEMBER ASSISTANCE PROGRAM WORKED?

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

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

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

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

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

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

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

AN EXAMPLE OF THE MEMBER ASSISTANCE PROGRAM IN ACTION:

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

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

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

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

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

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

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

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

SECOND TYPE OF SUPPORT

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

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

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

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

THIRD TYPE OF SUPPORT

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

WHAT THE FELLOWSHIP IS NOT

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

DO YOU KNOW YOUR RIGHTS UNDER LAW?

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

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

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

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

TWO TYPES OF MEMBERSHIP:

Associate Membership

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

Full Membership

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

RESTORING TRUE LIBERTY IN AMERICA

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

PRACTICALLY SPEAKING, THERE ARE NO MORE MISSING PUZZLE PIECES!

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

VIDEOS AVAILABLE

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

CONCLUSION:

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

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

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

A FROM PRESIDENTIAL MESSAGE:

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

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

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

FINANCING YOUR OWN DEMISE

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

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

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

FELLOWSHIP METHODOLOGY

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

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

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

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

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

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

PAYMENTS FOR THE MEMBER ASSISTANCE PROGRAM (MAP)

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

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

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

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

TAX BASICS 101

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POLICIES

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

1) Un-taxing? De-taxing?

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

2) The Fellowship does not remove liens or levies - nor does it abate assessments.

Since the Fellowship does not execute liens or levies or make assessments it is impossible for the Fellowship to remove them. In other words, the Fellowship did not file the notice of tax liens, therefore, the Fellowship cannot remove them. Outside of a court, only an employee of the agency that filed the lien or a levy can remove it. Caseworkers and paralegals assist members in developing cases and can provide the facts and the evidence that will allow a member to seek administrative and judicial remedy. However, the Fellowship (or anyone for that matter) cannot guarantee that any given court or agency of government will adhere to or enforce the law, or, that appeals will be unnecessary. The Fellowship assists members in administrative and legal actions to remove liens and levies or to prepare a proper request for abatement. However, under no circumstances does the Fellowship, and neither should you, suggest or imply that the Fellowship can or will remove liens or levies.

3) The Fellowship cannot stop IRS collection activity.

Only a Court can stay such action, and even then only under the bankruptcy laws. The Fellowship paralegal department is intimately familiar with the available remedies for accomplishing a stay of collection until such time as quiet title may be affected. The Fellowship assists members in seeking such remedy, but under no circumstances do we, or should you, suggest or imply that the Fellowship will stop the collection.

4) The Fellowship does not determine whether any given person has a requirement to file a return or a liability to pay a tax.

The individual in question is the only one who can make that decision. You and/or the Fellowship can show someone the law and explain the limited application of the law but legal decisions must be left to the individual.

5) Submitting a W-4 "exempt" is NOT the proper way for a U.S. citizen or resident alien to claim they are "not subject to withholding."

Under no circumstances will the Fellowship, or should you, tell a prospective member or any other member to file a W-4 "exempt." For a brief explanation, refer to #7 in this section.

6) The Fellowship does not propagate rumors or untested theories about the law.

Such theories are damaging to effective legal action. All successful action centers around due process arguments and asserting correct facts. Even more important, a successful action depends upon relevant facts. A list of the more prominent incorrect theories and/or irrelevant arguments follows:

6.1 Income tax is voluntary

Under no circumstance does the SAPF Fellowship suggest or imply that the income tax is voluntary. The Income Tax of Subtitle A is mandatory with limited applications. In other words, if you were involved in an income taxable activity, you WOULD owe the tax and MUST pay it or pay the consequences under the law. There is no provision for you to lawfully choose not to pay it. Please note: the term "lawfully" was used in this example. The practices of government agencies allow some people to get away without paying the lawful moneys owed. However, the practices are not necessarily the law. Another part to the confusion about the so-called "voluntary nature" of income tax is that people confuse the income tax with employment taxes. Participation in Social Security is voluntary, however, there is no connection whatsoever between the Income Tax of Subtitle A and Employment Taxes of Subtitle C.

6.2 Uniform Commercial Code (UCC) argument

For the purpose of the administration of the income tax laws this argument is irrelevant. The U.C.C. deals with contract law regarding commercial paper, (securities, etc.):

> **Uniform Commercial Code. One of the Uniform Laws drafted by the National Conference of Commissioners on Uniform State Laws governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). The UCC has been adopted by all states, except Louisiana. Black's Law Dictionary, Fifth edition.**

This argument has been proclaimed by some who believe that the use of the Federal Reserve Bank's notes causes an un-proclaimed liability for a federal tax and the filing a Form 1040 that can be addressed only through the U.C.C.. Under no circumstance does SAPF suggest or imply that the U.C.C. in any way imposes or forbids jurisdiction for the purpose of administering the internal revenue laws.

6.3 The 16th Amendment was never ratified

The evidence is indeed overwhelming that the 16th amendment was never ratified by the States of the union. However, the Supreme Court ruled in Brushaber v. Union Pacific Railroad and Stanton v. Baltic Mining that the 16th amendment conferred NO NEW POWER OF TAXATION and that the income tax remained an indirect tax in the form of an excise. Since the individual income tax is limited in application to foreign entities and/or U.S. citizens living and working abroad, any "revelation" concerning its non-ratification is irrelevant except for revealing to the uninformed person the extent to which the bureaucracy will go to force its agenda down the throats of an unsuspecting public. The Fellowship does not discount the value of propagating such information.

6.4 The IRS is a Delaware or Nevada corporation

This argument is incorrect. It is improperly advanced by individuals who came into possession of the charter of a corporation known as the "Internal Revenue Tax and Audit Service." At the time, the IRS was known as the "Bureau of Internal Revenue." The former was merely a business (similar to H & R Block) started by several certified public accountants for the purpose of selling assistance to taxpayers. There is no connection between the two. Under no circumstances does SAPF suggest or imply that the IRS is a Delaware corporation.

On December 16, 1994, Peter Tolotti, A.R. Salman and Patrick DeVore, incorporated in the State of Nevada under the name Department of the Treasury - Internal Revenue Service, and it was circulated on the Internet that the IRS was a Nevada corporation. John Kotmair inquired of Mr. Dean Heller, Secretary of State for Nevada, and on January 20, 1998 that Office replied that the federal taxing agency was not and has no connection with the corporation of that name.

6.5 Non-resident Alien Status

If everyone understood the scheme of Federal taxation, this argument would have NEVER been raised. Someone claiming to be a non-resident alien is actually stating they are a non-resident to the territories, possessions, and Washington, D.C.. To put it another way, a Citizen of Maryland can claim he is non-resident to Pennsylvania, Virginia, West Virginia, Delaware, and the list goes on. Also, since the Income Tax of Subtitle A in Title 26 applies to non-resident aliens, those considering this argument need to think twice before using it. The Fellowship can seldom help a member who has made this claim. Under no circumstance does SAPF suggest or imply that someone should claim to be a non-resident alien to assert their rights under the law.

6.6 Zip Codes and Postal Zones

Using a zip code does NOT, as many contend, create an adhesion contract between the user and the federal government. An adhesion contract is a consumer agreement on a "take-it-or-leave-it" basis usually without room to bargain. Knowing this, keep in mind what happens when someone refuses to use a zip code. The only thing that happens is their mail will take longer to reach the proper destination, however, it still gets delivered!! No one lost in the agreement with the postal service. So, just the opposite of an adhesion contract is true when using a zip code - use it and you will receive better service!! Under no circumstance does SAPF suggest or imply that using a zip code creates federal jurisdiction, through an adhesion contract, over the user.

6.7 Fourteenth Amendment Citizens

Every person for whom the Fourteenth Amendment was originally written is long since dead. These individuals were slaves that were not born within the States of the union, but were brought here from Africa. The only way someone other than those born within the States of the union can become a citizen is to take a citizenship test. Those freed slaves were unable to pass the test and right or wrong the ratification of the 14th Amendment made them citizens, and so that they could not be discriminated by any of the States, guaranteed all citizens equal protection under the law. Which means that the citizens of Washington, D.C. have the same Constitutionally protected rights as every other Citizen or Resident-alien in this country. Under no circumstance does SAPF suggest or imply that the Fourteenth Amendment created any Federal jurisdiction above and beyond that enumerated in the Constitution itself.

6.8 The Emergency War Powers Act

This Act did NOT, through executive orders, grant the President powers above and beyond the enumerated, limited authority given him under the Constitution. It, in fact, confirmed that the President does not have the power to declare war, but the manner in which he is to conduct a legitimate war. Under no circumstance does SAPF suggest or imply that the Emergency War Powers Act gave the President any powers above and beyond that enumerated in the Constitution.

6.9 The Buck Act

This Act did NOT create a "shadow government" and expand jurisdiction over the citizens and resident aliens of the United States of America. Under no circumstance does SAPF suggest or imply that The Buck Act created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution.

6.10 Treaties

Larry Becraft, attorney, has done exhaustive research in the field of treaties written under the authority of the Constitution of the United States of America. It is true that the U.S. government has the power to write treaties with foreign countries, however, the jurisdiction pertaining to those treaties applies only to the personal and/or business affairs of the foreigners in the U.S. and/or the U.S. Citizens in the country with which the treaty was written. Under no circumstance does SAPF suggest or imply that treaties written between the United States of America and any foreign country create any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself.

6.11 Returns and Forms

Form 1040X's, "Zero" Returns, W-8's, W-4's with large deductions, etc. are NOT the proper forms to be used when claiming to be someone not subject to filing requirements. Filing these forms have led many into situations where no one, not even the Fellowship, can help them. Under no circumstance does SAPF suggest filing any government-issued form in an improper manner.

6.12 Common Law and Common Law Courts

There is no FEDERAL COMMON LAW! Common law is property law which is applied within the STATE in which a particular property issue arises. Once again, it is STATE law, NOT FEDERAL law. The "Common Law Courts" that are being conducted around the country are not authorized and proper under the U.S. Constitution or any State Constitution. These Constitutions establish the judicial system of the United States and the particular State of the union. The proponents of these "courts" are routinely going against the judicial structure that is one of the cornerstones of our country. Not having any authority under LAW, the establishment and any exerted jurisdictions of these so-called "Common Law Courts," is an act of rebellion against the constituted authority of the United States of America. The Fellowship understands the frustrations that the American public feels about the conduct in our Federal and State courts today, however, the so-called "Common Law Court" is NOT the proper arena to make the legal changes needed. Under no circumstance does SAPF suggest or imply that "Common Law" or a "Common Law Court" has any bearing in Federal taxing issues whatsoever.

6.13 Non-Statutory Abatements

This "silver-bullet" came about based on decisions in "Common Law Courts." The name of the process itself raises suspicions. Under no circumstance does SAPF suggest or imply that the Non-Statutory Abatement is a proper method to abate an alleged tax liability

6.14 Missing Thirteenth Amendment

There are those claiming to be investigators that have encountered a thirteenth amendment in several published Constitutions, Maine and Virginia being some of them. The fact is, these discoveries are actually drafts of proposed amendments that were not adopted. The excitement over this bogus find is that those "interpreting" this supposed amendment claim that it would bar lawyers from holding public office, as this version of the thirteenth amendment states that no titles of nobility may be placed on an American without losing their citizenship. A major factor overlooked in this contention, is that titles of nobility are passed from one generation to the next. While lawyers seem to continue in a family line of business, this occupation has never been inherited.

6.15 Executive Orders

Executive Orders apply to the executive branch of government only and DO NOT apply to citizens and/or resident-aliens! Under no circumstance does SAPF suggest or imply that Executive Orders incur any Federal jurisdiction above and beyond that enumerated in the Constitution.

6.16 Gold Fringe around the Flag

The notion that because an American flag has a gold fringe around it indicates that one is under admiralty-law jurisdiction in a courtroom is ridiculous. The fringe is decoration only. Under no circumstance does SAPF suggest or imply that the gold fringe around an American flag in a courtroom created any federal jurisdiction above and beyond that enumerated in the Constitution itself.

6.17 "Common Law" Certified Money Orders & Treasury Warrants, Commonly referred to as CMO'S and TW's.

This method of discharging debt is another example of the frustrations people are feeling about being deceived by our government pertaining to money issues. Once again, the only way this method "appears" to work is through a "Common Law Court" decision. Under no circumstance does SAPF suggest or imply that "Common Law" Certified Money Orders and/or Treasury Warrants are proper methods for discharging debt.

6.18 IMF "Silver Bullet"

Although the decoding of the Individual Master File can produce some significant information in a court case, it is not the "silver bullet" or "end-all" method for building a solid defense. Besides the common misconceptions outlined above, members can familiarize themselves with the facts advanced by the Fellowship through its various publications (Including the *Reasonable Action* Newsletter) and audio and video productions.

AN OUNCE OF PREVENTION

The foregoing policies have been designed to protect the Fellowship from recrimination by preventing its members, Independent Representatives, and staff from misrepresenting the function and services of the Fellowship and to prevent prospective members from participating in the Fellowship with false expectations.

HISTORY OF SAVE-A-PATRIOT FELLOWSHIP

(90 min. **"Creature From Maxwell"** audio cassette available through the Bookstore)

In the early '60s, John Kotmair, founder and fiduciary of Save-A-Patriot Fellowship, noticed that something was terribly wrong with actions being taken by the current government headed by John F. Kennedy. A primary example he points to was the invasion of the "Bay of Pigs" in Cuba, where the Cuban freedom fighters were put ashore with ammunition that did not fit their weapons and promised air support did not come. These brave men were rounded up by Castro's forces and taken to prison camps without the need of firing a shot.

His suspicions were confirmed when he was given a tract distributed by the "John Birch Society." He was a police officer with the city of Baltimore, Maryland at the time. This little tract impressed him enough to start passing it around to anyone who would listen. He was shortly contacted and asked to attend a meeting of the "John Birch Society." As with most things John does, he got involved and quickly became a chapter leader and then a section leader.

John then ran into another organization called the "Minutemen." Because of its more radical beliefs, he was asked to resign from the "JBS," which he did. He was a victim of the joint IRS—FBI "Cointelpro" intelligence operation. The exposure of this government clandestine operation resulted in the passage by Congress of the Freedom of Information Act and later the Privacy Act. Later, during his criminal trial, in 1981, the FBI admitted their spying operation to the court, but request that the court prevent the disclosure of the file for fear that it would disclose their informants they had watching John. The court granted their request.

He became involved in the political campaigns of U.S. Senator Barry Goldwater's bid for the Presidency in 1964 as a campaign manager in Baltimore, and that of Gov. George C. Wallace in 1968 and 1972 as the campaign manager for Carroll County Maryland. Subsequently becoming the American Party Chairman for Carroll County. The American Party was started by Gov. Wallace in 1972. Soon thereafter, the American Party was infiltrated and split up like just about every other national third party effort.

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

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

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

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

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

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

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

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

ACCESS TO VEHICLES / PUBLICATIONS / VIDEOS

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

PRICING...

CASEWORK / NWRC

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

PARALEGAL WORK

Paralegal work (court complaints/briefs, motions etc.) is considerably more cost intensive than power-of-attorney work (case development including correspondence to the IRS). For example, a letter of response to the IRS is currently only 45 FRN's, but a complaint, motion or brief for a court proceeding can be 10 times as much. Due to the fact that each document is different and the time to prepare them varies, the prices for paralegal work are not listed. The nature of the document involves a different kind of research and must be customized in a different fashion. While an experienced caseworker can analyze a case file and generate a response to the IRS in a few hours or so, documents to be submitted to a court may take several days to research and prepare. Moreover, in both instances, the size of the document has nothing to do with the time or the expertise that it took to prepare it. A typical motion can run as high as 300 or 400 FRN's. Estimates are available directly from the paralegal department.

NOTICE OF POWER OF JURY NULLIFICATION

Not all people who are exposed to the information the Fellowship provides become members. However, sooner or later almost everyone ends up on a jury. If the jury is asked to decide guilt or innocence with regard to willful failure or evasion allegations it is helpful to have an understanding of the law. You may develop numerous contacts during your daily activities and often spend much of your time explaining details about the tax law to the average person. Therefore, it is good practice, and Fellowship policy, to make a point of explaining the power of the jury to any contact and/or potential member. Should that person ever find themselves on a jury which is asked to decide the fate of an individual who has not filed a return, the conversation that person had with you could make all the difference in the world. Your contacts should also be forewarned that the government attempts to weed-out individuals, like themselves, who have this knowledge in order to facilitate a conviction in the teeth of justice. They should understand that if they were to admit that he or she had a substantive understanding of the tax laws and the propensity of the IRS to misapply and illegally enforce them, they would not have the opportunity to "make a difference."

For the finest and most concise information available regarding the historic power of jury nullification, contact the **Fully Informed Jury Association** at **1-(800) TEL-JURY** for a free information package - and tell them the Fellowship referred you.

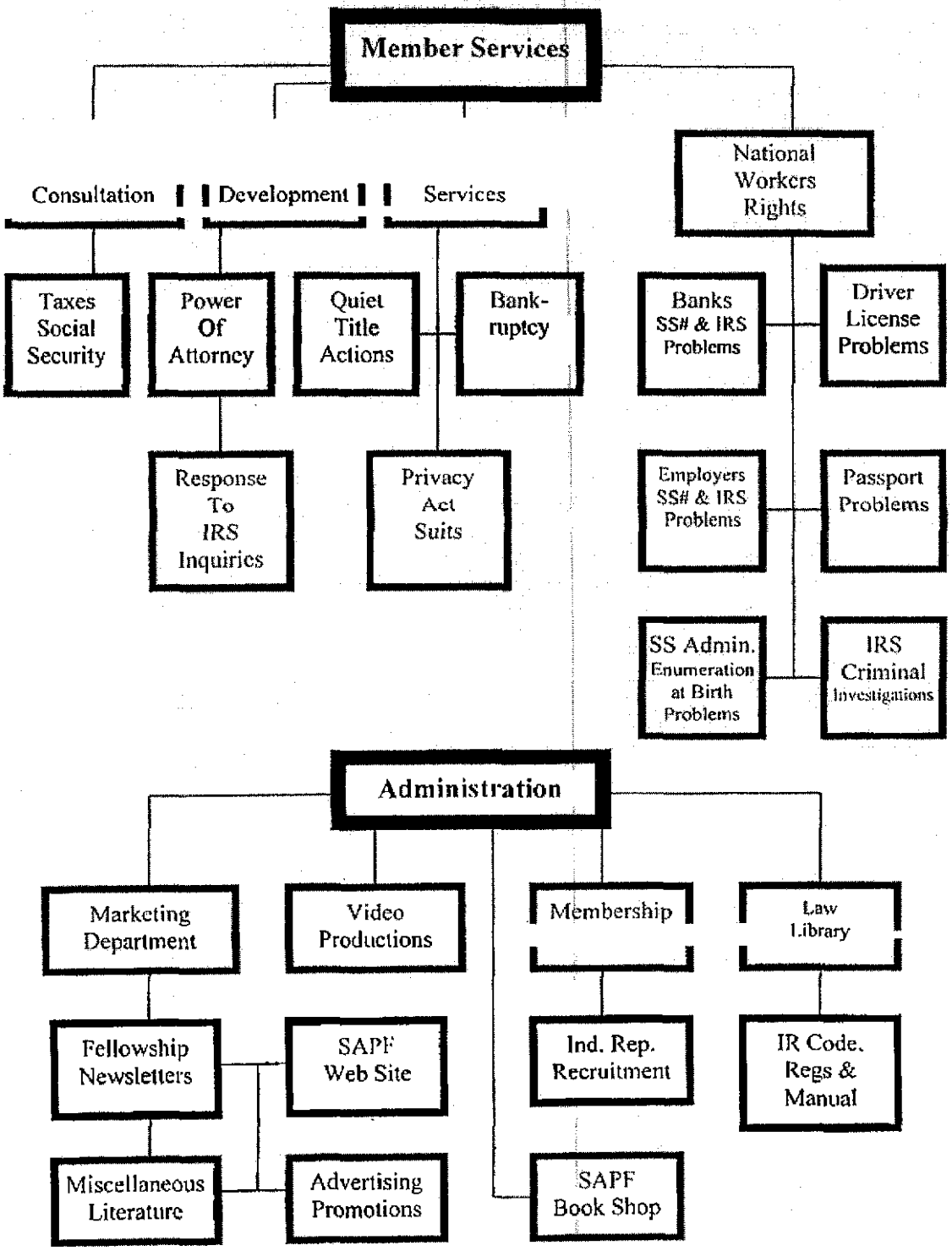
THE CITIZENS RULE BOOK

To facilitate this educational process it is suggested that members purchase a supply of the "Citizens Rule book" to be used as "calling cards" or giveaways to people who choose not to join at the present time. This serves a double purpose in that, not only are people exposed to this information, but your name and place of contact may be put on the rule book for future reference should that person change his/her mind about membership. With your help, they may also wish to refer others to the Independent Representative who assisted you in joining. These rule books will be supplied in quantity to active members at cost plus handling to encourage using this enrollment/educational technique.

ORGANIZATION AND STAFFING

The Fellowship and staff is divided into two main categories, administrative affairs and member services. The administrative section oversees research and development and maintains the library of information currently available to the staff which includes among other things the IR Code, IR Regulations, IR Manual, listings of orders of delegations of authority for the various service centers, Am Jur, Corpus Juris Secundum etc. It also publishes the newsletter *Reasonable Action*, produces the video and audio tapes available to members, maintains a site on the World Wide Web at http://www.save-a-patriot.org, and manages membership in general. The member service division involves itself almost exclusively with generating correspondence to the IRS on behalf of members. Such correspondence is essential to preserving all of the due process arguments should a legal action against the IRS become necessary. The service division also includes the paralegal department which generates the paperwork for legal action should it become necessary. On the next page is a diagram of the Fellowship's organizational infrastructure to assist you in communicating with the proper department.

S.A.P. Fellowship Organization & Staffing



Input to Fil master

Concerning:
[redacted]

Person making response via attached Power-of-Attorney pursuant to 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a), 26 CFR § 601.502(b)(5)(ii) and Treasury Circular No. 230, at § 10.7(c)(1)(iv):
John B. Kotmair, Jr., Representative Number 2605-47815R
Post Office Box 91, Westminster, MD 21158

September 16, 2005 Certified Mail No. 7005 1160 0004 9956 8595

Richard E. Byrd, Director
Internal Revenue Service Center
2385 Chamblee Tucker Road
Chamblee, GA 30341

RECEIVED
OCT 0 5 2005
FRP 303

Re: Letter 2566, dated August 22, 2005.

Dear Mr. Byrd:

This letter is a written protest to the Letter 2566, dated August 22, 2005. It is submitted pursuant to instructions in Internal Revenue Service Publication 5, "*Your Appeal Rights and How to Prepare a Protest If You Don't Agree.*" I want to appeal the examination to the appeals office and I hereby request a conference on behalf of [redacted] for the year you have proposed an adjustment: 2003. Since this appeal confines its subject matter to challenging the proposed assessment within the scope of the Internal Revenue Laws, as described in Publication 5, an appeals conference is an authorized and available appeal right to [redacted] This letter is to serve as the statement of facts and statement of law relied on by the appellant, and the attachment is to serve as the schedule of disputed issues.

First, [redacted] had no requirement to file any tax returns pursuant to Subtitle A of the Internal Revenue Code (IRC) for the year at issue. According to the regulations published with respect to Subchapter N of that Subtitle, particularly 26 CFR § 1.861-8(f), income must be derived from one of the "specific sources" listed therein (for citizens, such sources are primarily limited to foreign-earned income) before it is considered "gross income" for purposes of the tax laws. None of the amounts shown in the "Tax Calculation Summary" accompanying your letter has been derived from any of those sources. Therefore, no filing requirement was triggered for [redacted]

Exhibit 3

If you have determined otherwise, then IRC § 6020(b) provides the procedure by which any such returns are to be made. That section requires all returns made under its authority to be subscribed (that is, signed) by the person making such returns. Therefore, if you are proceeding pursuant to the authority of § 6020(b), please provide a copy of the signed return which was made with respect to [redacted] for the year at issue. If you are acting pursuant to some other lawful authority, then please cite such authority in your response.

In the absence of a return—either one signed b[redacted] one signed by a lawful delegate of the Secretary—there is no authority to assess a tax as you threaten in your letter. If you claim to have the authority to assess this proposed tax against[redacted], outside the limitations specifically established by IRC § 6201(a)(1), then please cite that authority also.

Mr. Byrd, it appears that you are unlawfully attempting to use deficiency procedures to bypass the requirement of signed returns established by §§ 6020(b)(2) and 6201(a)(1). Such violations are punishable under § 1203 of Public Law 105-206, enacted in 1998.

Further, since "wages" are limited to the application of Subtitle C, deficiency procedures cannot even apply to them, since IRC § 6212(a) limits such procedures to "subtitle A or B or chapter 41, 42, 43 or 44 [subtitle D]" of the Code. Finally, your letter is not verified in accordance with §§ 6061 and 6065.

Mr. Byrd, for the above reasons you can consider this letter as a challenge to your authority. I believe the circumstantial facts involving this matter are reason enough to put you on notice that this is a wrongful assessment procedure. Therefore, we insist that this proposed assessment be abated pursuant to 26 U.S.C. §§ 6213(b)(2) and 6404(a)(3), or otherwise reversed or deleted. In the alternative, forward [redacted]ase to the Appeals Office, as required by paragraph 5 of § 4.12.1.18 of the Internal Revenue Manual, so that an appeal conference can be scheduled.

I declare that I have examined the statement of facts presented in this protest and in any accompanying schedules and, to the best of my knowledge and belief, it is true, correct, and complete.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and

5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.

John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of Letter 2566, dated August 22, 2005; Schedule of Disputed Issues.

[redacted]

Schedule of Disputed Issues

(1) [redacted] has no requirement to file any tax return for the year at issue because he received no income from the sources listed in 26 CFR § 1.861-8(f).

(2) [redacted] has not filed a tax return that could be examined. Without this a "deficiency" in the "tax shown by the taxpayer on his return" under 26 USC 6211 cannot be justified, nor can a deficiency assessment be made under 26 USC 6212.

(3) Internal Revenue Code § 6020(b) provides the procedure to be used when a required return has not been filed, yet the IRS appears to be proceeding under deficiency provisions which cannot apply.

(4) In the absence of a signed return, the proposed assessment cannot lawfully be made.

(5) According to the notice, certain amounts alleged to support the assessment were wages, which are limited to the provisions of Subtitle C of the Internal Revenue Code. As such, they are outside of the "deficiency" assessment authority in 26 USC §§ 6211 and 6212.

(6) The notice received by [redacted] was not authenticated pursuant to 26 USC §§ 6061 and 6065.

PRIVACY ACT RELEASE FORM
AND POWER OF ATTORNEY

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

I, [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: 2002 through and including 2005.

On this 6 day of Sept, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the information within the documents sought.

[redacted]

Subscribed and sworn to before me, a Notary Public, of the State of New Jersey, County of Gloucester, on this 6 day of September, 2005.

James E. Woodson II
Notary Public

My Commission Expires On: _____

JAMES W. WOODSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 12, 2008

Rev. 12/30/96

Internal Revenue Service Department of the Treasury

District Director Balt District 31 Hopkins Pla. ltimore, Md. 21201

JUN 3 1994

Mr. John B. Kotmair, Jr.
P.O. Box 91
Westminster, Maryland 21158

Dear Mr. Kotmair:

This is to inform you of our final determination that you are ineligible to practice before the Internal Revenue Service Baltimore District Office or before any other office of the Internal Revenue Service. We provided to you notice of our proposed determination of your ineligibility to practice by letter dated May 11, 1993.

Under 26 CFR 601.502 and Treasury Department Circular No. 230, Section 10.3, the following categories of individuals are eligible to practice before the Internal Revenue Service: attorneys, certified public accountants, enrolled agents, enrolled actuaries, and other individuals described in Section 10.7 (including unenrolled return preparers or individuals with whom a special relationship with a taxpayer exists) and Subsection 10.5(c) (individuals who have applied for and received temporary recognition from the Director of Practice).

You have not shown you are an attorney, certified public accountant, enrolled agent, or enrolled actuary. Nor have you provided evidence you are eligible for limited practice as an unenrolled preparer or as one who has a special relationship with a taxpayer. Further, there is no indication you have applied for and received temporary recognition from the Director of Practice.

You have recently asserted that you qualify to represent taxpayers under Subsection 10.7(a)(2) of Circular 230, which states that, "Corporations (including parents, subsidiaries or affiliated corporations), trusts, estates, associations or organized groups may be represented by bona fide officers or regular full-time employees." However, the taxpayers you attempted to represent were not corporations, trusts, estates, associations, or organized groups of which you were a bona fide officer or a regular full-time employee. They, in fact, were individuals for whom representation would be subject to Subsection 10.7(a)(1) of Circular 230. This provision states, "An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or may represent without compensation a member of his immediate family." You did not provide

Exhibit 4

001

evidence that you met this requirement for any individual for whom you attempted to provide representation.

Finally, you indicated you were assigned a CAF (Centralized Authorization File) number by the Philadelphia Service Center. You stated this supported your contention that you are authorized to represent taxpayers before the Service. Although the CAF number is an identification number for representatives, it is not in itself an indication of authority to practice.

Accordingly, as we advised you in our notice of May 11, 1993, you are ineligible to practice before the Internal Revenue Service since you have not established you are within any of the categories of individuals authorized to practice.

If you have any questions concerning this letter, you may direct your inquiries to Mr. Pat McDonough, Supervisory Attorney, Office of Director of Practice, at (202) 376-1428.

Sincerely yours,

Paul M. Harrington

Paul M. Harrington
District Director

cc: All Regional Commissioners
All Chief Compliance Officers
All Service Center Directors
All Compliance Center Directors
All Computing Center Directors
Headquarters Office of Disclosure
MAR Regional Disclosure Officer

Piercing the Illusion

Setting straight the misrepresentations that have in one way or another deprived American citizens of their Individual Liberties for the past one hundred and forty-one years.

By:

John Baptist Kotmair, Jr.
Fiduciary of the
Save-A-Patriot Fellowship

First Edition, Registered Number 001216

Exhibit 5

function. Those benefiting by the unlawful expansion seem to always fall back on "I am only following orders."

Ten or so years ago, the Internal Revenue Service Centers in Philadelphia, Pennsylvania and Ogden, Utah both forwarded to me, unsolicited, representative numbers that would allow me to represent anyone before any Internal Revenue Service administrative hearing. The IRS regulations only allow a representative to have one number, so I returned the number forwarded by the Ogden Service Center and kept the one from Philadelphia.

With this number, I started to represent Fellowship members at IRS assessment appeals conferences. The process began when the IRS would send the member a notice of deficiency, which can only be issued in accordance with § 6212 of Subtitle F. The argument that I made on the member's behalf was very simple—the Internal Revenue Service had no statutory authority to issue a notice of a deficiency assessment to the member in the first place. Of course, when this was shown to the appeals officer, they were totally amazed, and the result in 99% of the appeals conferences was that the assessment process, for reasons known only to the appeals officer, was at a dead end.

It did not take long for this to be noticed by the hierarchy of the IRS. I received a letter from the District Director of the Baltimore IRS Office, notifying me that my representative number had been revoked. I responded by asking for the formal reason for this action, and until this day I have not received an answer to this inquiry. I made Privacy Act requests for all the documents involving the revocation of the representative number, but I have been totally stonewalled.

The argument used regarding § 6212 just bolsters the facts about the federal tax scheme that have been presented to you in this book. This code section is just one more link in the daisy chain of evidence proving my point. Section 6212 states in pertinent part:

IRS Department of the Treasury
Internal Revenue Service

OGDEN UT 84201-0030

In reply refer to: 0469530661
June 06, 2005 LTR 3175C
413-19-0414 000000 00 000
17664
BODC: WI

[redacted]

Exhibit 6

Dear Taxpayer:

This is in reply to your correspondence dated Oct. 21, 2004.

We have determined that the arguments you raised are frivolous and have no basis in law. Federal courts have consistently ruled against such arguments and imposed significant fines for taking such frivolous positions.

You can obtain IRS Publication 2105, Why do I Have to Pay Taxes?, from our internet website at www.irs.gov/pub/irs-pdf/p2105.pdf. We also refer you to a document entitled The Truth About Frivolous Tax Arguments. It is also on our website at www.irs.gov/pub/irs-utl/friv_tax.pdf. If you do not have internet access, you can obtain copies of these documents from your local IRS office.

There are some people who encourage others to violate our nation's tax laws by arguing that there is no legal requirement for them to file income tax returns or pay income taxes. These people base their arguments on legal statements taken out of context and on frivolous arguments that have been repeatedly rejected by federal courts. People who rely on this kind of information can ultimately pay more in taxes, interest and penalties than they would have paid simply by filing correct tax returns.

People who violate the tax laws also may be subject to federal criminal prosecution and imprisonment. Information about the IRS's criminal enforcement program is available on the internet at www.irs.gov. Once there, enter the IRS keyword: fraud.

The IRS is working with the United States Department of Justice and state taxing authorities to ensure that all taxpayers pay their lawful share of taxes and to seek criminal indictments or civil enforcement actions against people who promote [illegible] abusive and fraudulent tax schemes.

RECEIVED IN CURRES
IRS - OSC -593

The claims presented in your correspondence do not relieve you from your legal responsibilities to file federal tax returns and pay taxes. We urge you to honor those legal duties.

AUG 2 5 2005
OGDEN, UTAH

If you persist in sending frivolous correspondence, we will not continue to respond to it. Our lack of response to further

0469530661
June 06, 2005 LTR 3175C
413-19-0414 000000 00 000
17665

[redacted]

correspondence does not in any way convey agreement or acceptance of the arguments advanced. If you desire to comply with the law concerning your tax liability, you are encouraged to seek advice from a reputable tax practitioner or attorney.

This letter advises you of the legal requirements for filing and paying federal individual income tax returns and informs you of the potential consequences of the position you have taken. Please observe that the Internal Revenue Code sections listed below expressly authorize IRS employees that act on behalf of the Secretary of the Treasury to: 1.)examine taxpayer books, papers, records, or other data which may be relevant or material; 2.) issue summonses in order to gain possession of records so that determinations can be made of the tax liability or for ascertaining the correctness of any return filed by that person; and 3.) collect any such liability.

General Information on Filing Requirements and Authority to Collect Tax

Title 26, United States Code
Section 6001 Notice or regulations requiring records, statements, and special returns
Section 6011 General requirement of return, statement, or list
Section 6012 Persons required to make returns of income
Section 6109 Identifying numbers
Section 6151 Time and place for paying tax shown on returns
Section 6301 Collection Authority
Section 6321 Lien for taxes
Section 6331 Levy and distraint
Section 7602 Examination of books and witnesses

INTERNAL REVENUE CODE SECTION 6702 (FRIVOLOUS INCOME TAX RETURN) PROVIDES:

CIVIL PENALTY - If -
(1) any individual files what purports to be a return of the tax imposed by subtitle A but which -
  (A) does not contain information on which the substantial correctness of the self-assessment may be judged, or
  (B) contains information that on its face indicates that the self-assessment is substantially incorrect; and
(2) the conduct referred to in paragraph (1) is due to -
  (A) a position which is frivolous, or
  (B) a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws, then such individuals shall pay a penalty

0469530661
June 06, 2005 LTR 3175C
413-19-0414 000000 00 000
17666

[redacted]

of $500.00

PENALTY IN ADDITION TO OTHER PENALTIES - The penalty imposed by subsection (a) shall be in addition to any other penalty provided by law.

If you any have questions, please write to us at the address shown at the top of the first page of this letter. Or, you may call us toll free at 1-866-899-9083 between the hours of 8:00 AM and 6:00 PM MST. Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. You may also wish to keep a copy of this letter for your records.

Your Telephone Number (___)_____ Hours _____

Sincerely yours,

Scott Prentky

Scott Prentky
Field Director, Compliance Services

Enclosure(s):
Copy of this letter
Publication 1
Publication 2105

RECEIVED IN CORRES
IRS - OSC -593
AUG 2 5 2005
OGDEN, UTAH

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 19, 2005 Certified Mail No. 7005 1160 0004 9957 0734

Scott Prentky, Director
Internal Revenue Service Center
1973 Rulon White Blvd.
Ogden, UT 84404

Re: Your Letter 3175C, dated June 6, 2005.

Dear Mr. Prentky:

I am in receipt of your letter, dated June 6, 2005, which purports to be a reply to "correspondence dated Oct. 21, 2004." I can only presume that this references my letter, actually dated October 15, 2004, in response to a Letter 2566 from the Atlanta Service Center, dated September 13, 2004, regarding the year 2002. Mr. Prentky, although your letter purports to be a reply to my correspondence, it doesn't address any of the issues presented therein.

In your letter, you state: "We have determined that the arguments you raised are frivolous and have no basis in law. Federal courts have consistently ruled against such arguments and imposed significant fines for taking such frivolous positions." Mr. Prentky, I have already pointed out the basis in the law for the issues I raised in my earlier letters on behalf of [redacted]. If you are contending that any of them are wrong, then according to the IRS' Mission Statement, found in IRM § 1.1.1.1, it is your duty to help [redacted] understand the law. You can do this by pointing out exactly where you believe any mistakes have been made. It is [redacted] intention to comply with all laws as they are written, and I urge you to do the same.

You state further: "The claims presented in your correspondence do not relieve you from your legal responsibilities to file federal income tax returns and pay taxes. We urge you to honor those legal duties." Mr. Prentky, it seems you missed the point of my previous correspondence. The point is that the law does not impose any legal responsibilities or duties upon [redacted]. The only section found which establishes a liability for income taxes under Subtitle A is § 1461, and only withholding agents are made liable by that section for the income taxes they withhold from the entities listed in the rest of Chapter 3. That being the case, the various sections you cite in your letter, **which are all conditioned on being made liable for the tax**, do not apply to [redacted] since he is not a withholding agent as that term is defined at § 7701(a)(16).

Exhibit 7

Additionally you state, "There are people who encourage others to violate our nation's tax laws by arguing that there is no legal rquirement for them to file income tax returns or pay income taxes. These persons base their arguments on legal statements taken out of context and on frivolous arguments that have been repeatedly rejected by federal courts." However, it is not clear from these statements whether you are accusing [redacted] of encouraging others to violate tax laws, or whether you are accusing him of violating such laws himself. In either case, he takes such libelous accusations seriously and intends to vigorously pursue all available remedies.

You next state: "If you persist in sending frivolous correspondence, we will not continue to respond to it. Our lack of response to further correspondence does not in any way convey agreement or acceptance of the arguments advanced." Mr. Prentky, it appears that you are refusing to follow the mandates of the Internal Revenue Manual. According to §§ 21.3.3.2(1) and 3.30.123.2.9(2), the IRS is required to issue, within 30 days, a final response to all written communications from taxpayers or their representatives. Can you explain the reasons for your refusal to comply with those provisions?

Finally, you quote IRC § 6702, which penalizes the filing of frivolous income tax returns. However, I am unable to determine why you would cite that provision since it is my understanding that [redacted] has not filed any returns for the year 2002, nor anything which "purports to be a return."

Mr. Prentky, as explained herein and in my previous correspondence, [redacted] is not a person who is required to deduct and withhold any tax under Chapter 3, and therefore is not a member of that class of persons which Congress specifically made liable for the tax. If you are contending that [redacted] has been made liable for (or subject to) a tax by any law of Congress, then you should have no trouble identifying such law(s), so that he may verify its applicability to himself. If you can not identify the specific statute which makes him liable for the taxes at issue, then please state that fact in your reply.

If you fail or refuse to respond as requested within 14 days of your receipt of this letter, it must be presumed that you cannot identify any lawful authority for the actions you are taking, and therefore, such actions must be considered knowing and willful violations of [redacted] right to due process.

I hereby declare that:

1. I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;
2. I am aware of the regulations contained in Title 31 CFR part 10 concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries and others;
3. I am authorized to represent the individual identified in the power of attorney;
4. I am an individual described in Title 26 Code of Federal Regulation Part 600, at 26 CFR § 601.502(a)(1) and (2), §601.502(b)(5)(ii) and in Circular 230 at §10.7(c)(1)(iv); and
5. the original attached Power-of-Attorney is valid under the laws of the State of Maryland.

Under penalty of perjury, I declare that the foregoing is true to the best of my knowledge and belief.

John B. Kotmair, Jr.

Enclosures: Original Power-of-Attorney; copy of page one of my original letter, dated October 15, 2004; copy of your letter, dated June 6, 2005.

[redacted]

PRIVACY ACT RELEASE FORM

AND POWER OF ATTORNEY

Because of the Privacy Act of 1974, written authorization is required by the individual before any information can be given to another individual or organization.

Pursuant to the authority in 26 CFR § 301.6103(c)-1, 26 CFR § 601.502(a)(1) and (2), 26 CFR § 601.502(b)(5)(ii) and Treasury Department Circular No. 230, at § 10.7(c)(1)(iv), this form will give John B. Kotmair, Jr., (Representative Number: 2605-47815R), of Post Office Box 91, Westminster, Maryland 21158, permission to investigate this matter for me.

[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 12th day of August, 2005, I hereby certify that I am the individual making this Power of Attorney, to John B. Kotmair, Jr., and that I have a "material interest" in the

[redacted]

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Harford, on this 12th day of August, 2005.

Deborah L. Nilson

Notary Public

My Commission Expires On: 9/1/08

Rev. 12-30-96

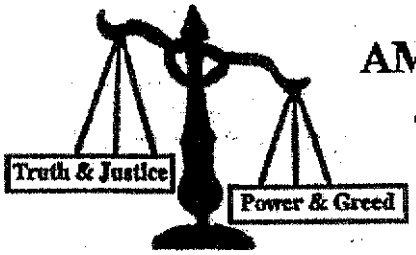
Membership Subscription

Reasonable Action

★ Liberty ★ Justice ★

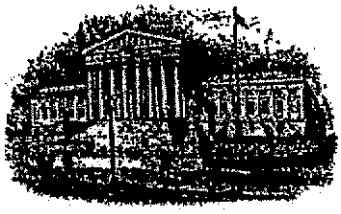
Volume VI, Number 2 The Membership Newsletter of the Save-A-Patriot Fellowship March/April, 1990

SAP CREATES AAJD TO GET BILL PASSED!!



AMERICANS AGAINST JUDICIAL DISTORTION

12 Carroll Street #129
Westminster, Maryland 21157
Tel. (301) 857-3868



Dear Friends of LIBERTY:

The *Save-A-Patriot Fellowship (SAP)* has founded "AMERICANS AGAINST JUDICIAL DISTORTION" (AAJD) to spearhead the passage of *SAP's* proposed state and federal law punishing judges for misrepresenting the law. The proposed law is titled: **An Act to Prevent Government by Men Rather Than Law; and, To Ensure That Public Policy Remains The Constitutional Prerogative Of the Legislature.**

SAP had the bill drafted because of what it believes are the blatant distortions of law occurring concerning the application of the federal income tax law. A sample of the complete text of the state version was printed on the cover of the January/February 1990 edition of *Reasonable Action*.

David Kramer

AAJD is headed by David Kramer, who can be reached by phone at (301) 857-3868, mailing address: Americans Against Judicial Distortion (AAJD), 12 Carroll Street #129, Westminster, MD 21157. AAJD has begun an urgent fund-raising effort to be used for a mass-mailing campaign to activist groups across the country.

URGENT ACTIVIST INVOLVEMENT NEEDED AT ONCE!

"This is a national, state and local effort," declares Kramer, "probably the most controversial and exciting piece of legislation to be proposed this century; imagine, instead of having a statute (law) take liberties as normally happens, justice will be guaranteed by statute! Just by forcing judges to apply the law and preventing them from interpreting it."

"This proposed law will have nation-wide impact and will benefit every segment of our society, top to bottom, conservative to liberal, virtually insuring the constitutional pledge of 'equal justice for all'" envisions Kramer.

"AAJD is the only activist group to focus its entire energy on this problem and it desperately needs your financial support to get the word out," says Kramer. "We are asking for donations from individuals and groups, in any amount." Copies of the complete bill and suggested activities needed to get it passed are available from AAJD for a $10.00 donation. IT IS IMPERATIVE THAT THIS LAW BE PASSED!!!

INTENT OF THE LAW

The intent of the proposed State law says: *Be It Enacted: that every judge, chancellor, ma... officer, employed and/or appointed and /or elected, in the sovereign State of ____, who has ... judgments and/or decrees is required to provide a memorandum with each and every decision ... case, the Law of the case, and the legal Conclusion there from in all actions to come befor... records of any court within the Judicial Branch, maintained at any place in government, show that such official,* See BILL Page 4.

Exhibit 8

STATEMENT OF PURPOSE

Save-A-Patriot Fellowship

The SAP Fellowship is a national organization of your fellow American Patriots. We have joined together to resist the illegal actions of the Internal Revenue Service (IRS) and other deceivers by SAP-ing them of their time and resources. We do not advocate or condone unlawful resistance, protest, or other like actions.

We have had our fill of their illegal threats, intimidations and acts of violence and we're not going to take it laying down anymore. The Fellowship has researched and developed legal defensive weapons to protect our Liberty and Property.

Face it: the ruling class keeps the multitudes in line by FEAR. They use the news media to plant stories suggesting that resistance is useless and reprisal is swift and financially painful. These "reminders" and a lifetime of conditioning makes it difficult for most people to take the first breakaway step. However, SAP Fellowship members know: the risk has been removed!

To our knowledge, there is not a single insurance company willing or so disposed to back the system and insure Patriots against criminal plundering acts. Creating and operating a conventional insurance company would have been impossible. The bureaucrats would have insisted on our submitting to the dictates of the Insurance Commission. In no time at all we would have been expending funds fighting legal actions just trying to survive. It is also necessary to conceal any sums of money from the searching eyes of the IRS and other government agencies.

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

HOW DOES IT WORK? Simply put, the Fellowship members pledge to reimburse other members for losses of cash or property incurred by illegal confiscations. This is done by spreading the reimbursement costs to all members. For example, suppose that after a valiant and stubborn struggle through the phases of the legal maze, a member were to lose his vehicle to an illegal seizure. Let's value the vehicle at 9,000 Federal Reserve Notes (commonly called "dollars".) If there are 10,000 members participating in the Fellowship, SAP would verify the loss and apportion the liability at a rate of .90 cents per member. PRESTO! Mr. or Ms. Member Patriot suffers NO loss and his friends' fear of IRS retaliations is gone! Real-life examples such as this have convinced "closet" Patriots to join the SAP Fellowship in droves! Welcome to the Constitutional Revivalist Movement!

The surest and safest protection of funds is to keep them in the hands of the members. The only monies to be sent to SAP Headquarters is the annual 35 FRNs membership participation fee. This is tendered in FRNs (cash) or a totally blank Postal Money Order (cash can be sent by certified mail.) SAP maintains no bank account, so checks or money orders made out to "SAP" can't be endorsed and cashed. The membership fee is used for the administrative needs of SAP -- staff, rent, phone, printing, postage, etc. After verification by Headquarters of losses to claimant member, an apportionment is sent out to the membership; you send payments DIRECTLY to the claimant (or their beneficiary)! SAP merely verifies that all members have met their assessment obligations by a simple procedure.

Payment For Incarceration. There are still occurrences when a Patriot is criminally tried, convicted and jailed. This is the most difficult financial burden to individually shoulder. Therefore, it is the stated policy of the Fellowship to assess for the beneficiary of each incarcerated Patriot 25,000 FRNs per calendar year, during the period of actual incarceration. To the best of our knowledge, there have never been more than 30 Patriots in jail after conviction at any one time. At this rate, and assuming that all were covered SAP Fellowship members, this protection would cost 10,000 members 75 FRNs for all those jailed. If there are 80,000 members participating, it would only be 9.38 FRNs each for all 30 beneficiaries!

The figure of "80,000" is in line with a 1984 federal estimate of the number of participants within the so-called Tax Patriot segment of the Constitutional Revivalist Movement. Using this figure as our goal for total Fellowship participation, we could increase the incarceration payoff amount to 100,000 FRNs each per calendar year! It would only cost each member 37.50 FRNs to support the "30" jailed members! With this kind of hard-cash protection, Americans will not only lose their fear of the IRS, but will almost be standing in line to go to jail!!! Even IRS agents could not resist such an offer!

In other words, remove the financial threat to the average American individual citizen, and the IRS's house of cards will collapse! -- AND LIBERTY WILL ABOUND!!

Reasonable Action Newsletter

RA is the Fellowship's tool of Education. It is available only to Fellowship members by paid subscription, at 35FRNs per year for six (6) issues. (See page 23 of this issue for a subscription coupon.) You are holding in your hands one of the most highly respected Patriot publications in the country. It is the culmination of over twenty years of blood, sweat and tears of thousands of named and unnamed Americans. The articles appearing on these pages represent the state-of-the-art in legal understanding of the United States system of income taxation. You will not find any groundless "far-out" theories. You will find thoughtful, provocative articles, discussions and opinions that are grounded in fact and logic. The editors strive to ensure the accuracy of all the presented writings, insisting that the authors give attributions so the reader may verify the accuracy himself. As a matter of principle, we recommend that as each article is read, a copy of the Internal Revenue Code be close at hand. Education is the key to throwing off the (imaginary) chains of IRS bondage!

AN IGNORANT PUBLIC IS THE IRS'S BEST FRIEND.... AN EDUCATED CITIZEN IS THE IRS's WORST NIGHTMARE!!!

ATTENTION!!! SPECIAL NOTE TO READERS

The information presented in the various authored tax-related articles and editorials is based on what the writers believe to be true. The editors of this publication strive to ensure that all information appearing on these pages is based on fact and represents the state-of-the-art in understanding the income tax laws as administered and enforced by the Internal Revenue Service. However, we strongly advise that the reader personally verify the accuracy of the information himself. A general disclaimer is now presented: The authors, editors and publisher of this newsletter make no guarantees, nor will be responsible, about the uses for which anyone may put this material.

ADVICE ABOUT OUT-OF-DATE BOOKS, ETC.

Our understanding of the true nature of the U.S. income tax laws, as they relate to the public, advanced considerably in 1988. It advanced at a gallop in 1989. And 1990 is proving to be even more amazing... Because of this, we offer the following warning: All popularly published books, magazines, newsletters, news articles, pamphlets, flyers, etc., of Patriot "tax information/advice," that are more than two years old, are of very limited value. Books, etc., three or more years old, whose contents is used for other than primarily historical information, are very risky. Protect your freedom and property by seeking out and using only the most up-to-the-minute information available.

Fellowship News

SPREAD THE WORD -- ON TO VICTORY!!!

COVER STORY: *SAP's* proposed state and federal laws are now going to get a major boost, thanks to David Kramer's leadership of AMERICANS AGAINST JUDICIAL DISTORTION (AAJD), as detailed in this issue's cover story. We at *SAP Headquarters* believe that every *Fellowship* member is a highly motivated citizen or resident alien. Many of you have told us you are in the fight for Liberty because you believe the U.S. Government and the Judiciary has turned against the people, the very citizens it was set up to serve. Now is the time and our proposed laws are your weapons to take back what has been stolen from us. Our country is supposed to be a Republic, governed by Law; through abuse of authority it has become a democracy, a country ruled by men, motivated by power and greed. The evidence of this is the increasing number of obviously wrong court rulings; these can only happen if there is "social engineering" or payoffs involved, or both. Either way, this is an example of the "golden rule": he who has the most gold, rules... Our proposed laws will end this outrage! Please contact David Kramer and put your time and effort to good use for yourself, your children and their children..

NWRC TACKLES WITHHOLDING PROBLEMS: On page 6 of this issue, is the introduction article about *SAP's* new organization, the NATIONAL WORKER'S RIGHTS COMMITTEE (NWRC), dedicated to assisting Patriots who are having problems with employers and/or payers of interest, dividends, and other payments. There is no other group like this in the entire country. Responses that NWRC has already received from letters it has sent out at the request of *SAP* members shows that most lawyers are ignorant of the law! Not one response has seriously challenged the many EXHIBITS of law that accompany each letter. The propaganda begins to dissolve when the written word of the law cannot be refuted.

VEHICLES TO CONVEY PATRIOTS TO YORKTOWN: We have totally revised many of our VEHICLES... (starting at page 19) as needed and have dropped the "non-personalized" versions, now offering only personalized versions. There are certain of the VEHICLES... which are informational and these have been separated out and are identified by alphabet letters rather than numbers. Our exclusive VEHICLES... are now only available to *Fellowship* members. Please have your *SAP* identification number handy when you call. We are also offering a service for FOIA/Privacy Act requests: for 25FRNs per letter, we will handle the mailing, receipt, and follow-up letters. We will need a "power of attorney" from you to accomplish this. Please call *SAP Headquarters* for details. A reminder to those who have not yet filed an AFFIDAVIT OF REVOCATION AND RESCISSION: this is the first step in removing yourself from the presumed jurisdiction of the IRS and state taxing authorities. If you do not break this presumption with the AFFIDAVIT's challenge, their presumption stands. Patriots who have executed affidavits, should press IRS for an answer!! Call *SAP Headquarters* today!

TDI ALERT: The IRS is increasingly sending out "first notice" Taxpayer Delinquency Investigation (TDI) inquiries. This is typically a Form 8176 saying they have no record of a return from you for the year(s) listed, and needing your response within 10 days of the date on the form. (The IRS, in its cleverness, waits several days after this notice is dated and printed out, before mailing it.) Our VEHICLE #2 TDI RESPONSE, takes care of this response. However, many of you receiving these letters from the IRS wait until the last moment to call us! It is impossible to get a personalized letter response to you in time to beat the "10-day" limit. Therefore, we are urging all *Fellowship* members to order this VEHICLE... from us at once to have it on hand for immediate use! We'll personalize it, leaving blank your mailing date. (Note: do not use this for a "second notice" TDI letter response; call *SAP HQ* for info.) Be prepared: call *SAP Headquarters* today and place your order.

WORD PROCESSING PROGRAM FOR SALE: A local Fellowship member is offering for sale one (never used, in box with all documents, warranty card, sales receipt) WORDPERFECT v5.0 for the IBM- compatible computer user. Both sizes (5 1/4 and 3 1/2) disks are included. Asking price is 150FRN, UPS shipping included. Call *SAP HQ* for details.

TABLE OF CONTENTS ... FEATURES:

DEPARTMENTS:

on an order, judgment, ruling and/or decree submitted for recordation has knowingly or otherwise misrepresented the law and the fact, or both, said judicial officer will be guilty of a felony. Upon conviction, such punishment shall be not less than five (5) years imprisonment, $50,000.00 fine, and forfeiture of all retirement benefits.

AAJD's INTENDED ACTIONS

AAJD intends to organize initiative drives, in the states that have such procedure, to get the bill placed on the ballot. In states requiring that a bill be introduced by a legislator, AAJD will seek one or more members to introduce the bill and others to endorse it. Following that up with an intense lobby of the Judiciary Committee, pressuring the committee by organizing activities to publicize the need for this law. Duplicating these efforts at the national level, "AAJD plans to have a strong lobbying effort to pressure Congress to sponsor and support this bill," vows Kramer. "AAJD's purpose is not in competition with any other activist group's interests," explains Kramer. "In fact, the passage of the federal and state laws will guarantee fair treatment of all groups in court. Think about it; judges will no longer be de facto 'social engineers' meddling with the lives of millions of people!" Kramer predicts. He continued, "that's why we need donations to get this effort off the ground."

RECENT OUTRAGEOUS COURT RULINGS

"One recent outrage is a usurpation of power by the United States Supreme Court itself," cites Kramer. "The Justices, in a slim 5-4 decision in the case of Missouri v. Jenkins [SPOTLIGHT 5/7/90 cover story] ruled that a federal court has the power to order local officials to increase taxes to enforce judicial decrees."

In the Missouri v. Jenkins ruling, the Supreme court upheld a lower court's order to local Missouri officials to raise taxes to pay for a court-ordered school desegregation plan. This order clearly bypasses the authority of the legislative branch of county and/or state government.

"Another example of governmental misconduct our proposed law would tend to curtail," said Kramer, "concerns a Little Rock, Arkansas woman who tried to give charity to the homeless and ended up being jailed and having her personal property confiscated without benefit of due process of law." Kramer identifies the woman as Nancy Hallum, who in 1988 took in a homeless family and helped them get on their feet financially and find jobs. She received much press attention but some local official decided that she was running a rooming or boarding house in violation of the zoning laws [First Plank of Marx's Communist Manifesto"]. This led to her arrest and a warrantless search of her home and a court order describing the living arrangements in the home and barring non-relatives from staying there," explained Kramer. In February of 1990, the charges were dropped against her. On March 13, 1990, the city hired two trash men to remove all personal property that was not physically attached to the real property of her home, according to Ms. Hallum and witnesses, this action being taken because her yard had been declared a "nuisance." Ms. Hallum had not been informed of such a charge and had not had the benefit of a hearing. The property was not stored as "evidence", but was taken to the dump and put into a crusher and destroyed. "I'd be very interested in seeing a judge's brief concerning Ms. Hallum's denial of due process and the improper application of so-called zoning laws," said Kramer.

"I have been taught that the Constitution prohibits one branch of government, in this case the judicial, from exercising power given to another, such as the legislative. If AAJD's proposed federal or state law was in effect," declares Kramer, "the judges would have to justify their actions, citing their authority. In the Missouri example, I do not believe any state or federal judge could find authority in the Constitution which allows them to seize and use the powers of taxation given exclusively to the legislative branch; in the instant case, this is clearly judicial distortion of powers, which AAJD is dedicated to bringing to a halt."

PURPOSEFUL UNDERMINING OF JUSTICE BY INTERNATIONALISTS

AAJD believes that subtle distortion has been going on for many years, the purpose being to consolidate power on the federal level, the premise being that "the government knows what's best for the people." This is the socialist condition necessary to merge the United States into the Internationalist's scheme of a one-world government. The power structure finds the ruling class on top, the army/police protecting them and the rest of us living in socialist peace, harmony, shortages and poverty like eastern Europe and the USSR. [See BOOKSHOP, "Valley Of Decision".]

"What we are up against is a determined effort by the 'ruling class' to convince the public that certain conditions exist where judges can go outside their constitutional authority to right a supposed wrong," explains Kramer. The establishment press reports on these decisions all the time, says Kramer, adding, "however, the significance of these decisions is not explained to the public in terms the average citizen can grasp. It is reported in such a way that it actually justifies the wrongful acts of government." He continued, "A prime example is the recent reporting by the media that Sheriff's deputies in Florida are stopping cars on the interstate highway and seizing sizable amounts of cash money and not giving it back until the individual can prove that it was obtained legally." The term "sizable" was not defined in the reports he saw and such activity was reported as being sanctioned by the courts, recalled Kramer. "The media's reported reason, was that this type of stopping and seizure action is needed to stop drug trafficking," said Kramer.

KRAMER IS EXPERIENCED ACTIVIST

"I've been involved with issues such as abortion, sex education and drug abuse, from the Christian perspective, and have represented this viewpoint in magazine articles and on radio talk shows," said Kramer describing his activist background. "Over the past few years, I've become increasingly angered at the obvious judicial error occurring in civil and criminal cases involving these issues across the country," explained Kramer. "If laws were being applied correctly by judges, it would not be possible to find case law supporting both sides of any argument," he added, "as is the situation in America today; we can surely see what the Founding Fathers meant when they warned about the 'sophistry of the courts'."

RA's EXTRA EDITION! MOTIVATES KRAMER

The example that propelled Kramer to decide to act on his anger, was the November 1, 1989 EXTRA EDITION! of the SAP's newsletter, *Reasonable Action*. This issue carried the headline: "Mr. President, Governors, Legislators, Jurists: ARE LIARS FIT TO SIT AS JUDGES?" (See SPOTLIGHT 11/06/89 page 2.)

"I read this four-page issue which boldly named three federal Appeals Court judges and called them liars, based on the facts presented in the defendant's appeal, which the judges misrepresented in their decision upholding a criminal conviction," said Kramer. "I was amazed at the editors' audacity, putting it all on the line and challenging the judges to refute the assertion that they had lied. I called up the SAP Fellowship and asked if I could help to distribute copies of this issue," recalled Kramer. He met with SAP founder John Kotmair and Kramer saw an opportunity to be of more help than just distributing a few hundred scattered copies.

"John was looking for someone to work full time at promoting this gem of a bill. The more I talked with him the more I realized that I wanted to make my efforts count as much as possible; I volunteered," recalls Kramer. "Since that, time several months ago, the situation has worsened, witness the Missouri ruling and the difficulties the Operation Rescue people had in California; AAJD's proposed laws will eliminate this judicial tyranny," says Kramer.

PASSAGE OF BILL TAKES INVOLVEMENT BY PATRIOTS

The purpose of the SAP Fellowship has been to protect us from the outrages of the federal and state taxation bandits and educate us to counter their illegal actions. In our Republican form of government, the Courts are our final protection from abuses of our natural rights by the legislative and executive branches of government. When supposedly impartial judges allow themselves to be used as tools of tyranny, enforcing anti-Constitutional, Socialist policies of the "ruling class", the Republic is in grave danger.

It is no accident that the SAP Fellowship chose the first American Patriot, Samuel Adams, as its patriarch. Sam's picture and quotation are on every issue of *Reasonable Action*. Take a moment now to reread this, on the back cover of this issue. Sam spent over twenty years before the American Revolution agitating, educating, and organizing. He held true to his ideals, clearly reflected in the quote you just read, which were based on the eternal principles of individual Liberty and Justice, brilliantly presented by the English philosopher, John Locke. Sam's tireless efforts earned him the nickname "the Grand Incendiary" bestowed upon him by the British Governor. This was in "honor" of his ability to spread the truth about injustices and spark public outcry. By the time of the Revolution, the lines were drawn: those who demanded Liberty and Justice, and those who supported enslavement under total government.

YOUR CHOICE: LIBERTY & JUSTICE or DOMINATION

It is now a scant 200 years later. History repeats itself once again... The battle lines are drawn. You know on which side you stand...NOW IS THE TIME TO SPREAD THE TRUTH! By your action in helping to EDUCATE and AGITATE for a law to force all judges to obey their solemn oath and protect our guaranteed rights, you will publicly place yourself on the side of American Liberty and Justice!

This is what Lowell H. Becraft, Jr., Esq. has to say about this political action:

Agitation for this proposed law is probably the most significant action that the Patriot can engage in at this time, to help revive the Constitutionalist spirit in an embattled America. The passage of this law will tremendously help both lawyers and pro se's in the battle to regain our Liberty. I heartily endorse the Fellowship's goals and efforts and remind you: nothing gets done unless you go out and do it!

Echoing Becraft's feelings, "Passage of this proposed law isn't going to happen by wishful thinking," says Kramer, "we're asking for your financial support right now, no donation is too small, considering how important this is for all of us."

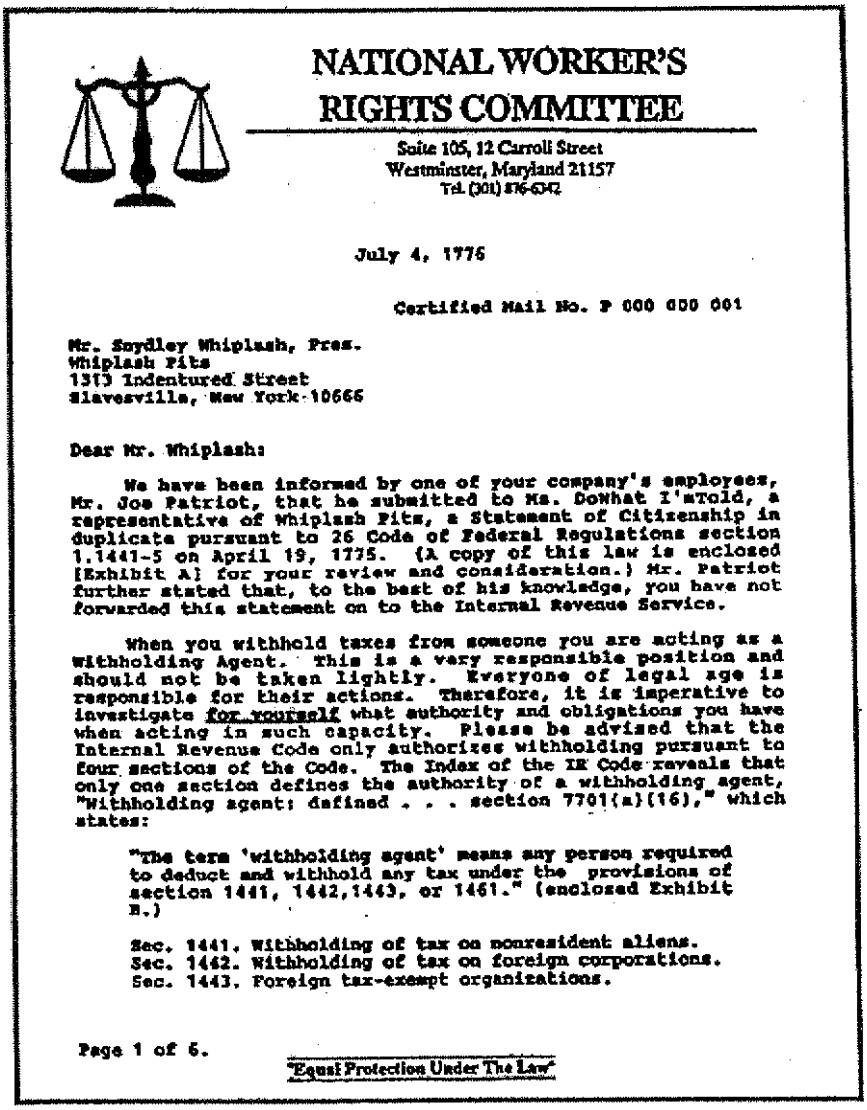
Contact David Kramer by phone or by mail if you want to get involved in helping to get the proposed bill passed in your state and at the national level. Comments and contributions should be addressed to: AAJD, #129, 12 Carroll Street, Westminster, MD 21157. Passage of this bill is like cutting off the hands of the thieves that are stealing our liberties. Let's each and every one of us do our part! We seek your time and money. Organizers and volunteers are needed in every state, and this type of activity cannot be accomplished without donations. Please do your part! Your children and their children will thank you!

"NATIONAL WORKER'S RIGHTS COMMITTEE" founded by SAP

The National Workers Rights Committee (NWRC) has been founded by SAP Headquarters, to actively assist the American worker in dealing with employers and fiduciaries concerning the income tax withholding laws. For a small fee, NWRC will write letters of response explaining the law and beginning the documentation needed if a civil suit becomes necessary. NWRC services are available only to Save-A-Patriot Fellowship Members.

"This is not a paralegal service," says founder John Kotmair, "the National Worker's Rights Committee's function is to assist the American worker in informing businesses about the income tax laws." Kotmair believes that the NWRC is the only organization of its type in the country. "We expect that the NWRC will have the same impact on the American social culture that the American Civil Liberties Union has had," he predicts, adding, "in a very short time, we'll have lawyers volunteering to be consultants and be available for filing actions as needed."

NWRC can assist in two types of withholding situations: the employer's refusal to accept or misunderstanding of the "Statement of Citizenship", and any "backup withholding" threats or actions initiated by any payor of interest or dividends.



NATIONAL WORKER'S RIGHTS COMMITTEE

Suite 105, 12 Carroll Street
Westminster, Maryland 21157
Tel. (301) 876-6342

July 4, 1776

Certified Mail No. P 000 000 001

Mr. Snydley Whiplash, Pres.
Whiplash Pits
1313 Indentured Street
Slavesville, New York 10666

Dear Mr. Whiplash:

We have been informed by one of your company's employees, Mr. Joe Patriot, that he submitted to Ms. DoWhat I'mTold, a representative of Whiplash Pits, a Statement of Citizenship in duplicate pursuant to 26 Code of Federal Regulations section 1.1441-5 on April 19, 1775. (A copy of this law is enclosed [Exhibit A] for your review and consideration.) Mr. Patriot further stated that, to the best of his knowledge, you have not forwarded this statement on to the Internal Revenue Service.

When you withhold taxes from someone you are acting as a Withholding Agent. This is a very responsible position and should not be taken lightly. Everyone of legal age is responsible for their actions. Therefore, it is imperative to investigate for yourself what authority and obligations you have when acting in such capacity. Please be advised that the Internal Revenue Code only authorizes withholding pursuant to four sections of the Code. The Index of the IR Code reveals that only one section defines the authority of a withholding agent, "Withholding agent: defined . . . section 7701(a)(16)," which states:

"The term 'withholding agent' means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461." (enclosed Exhibit B.)

Sec. 1441. Withholding of tax on nonresident aliens.
Sec. 1442. Withholding of tax on foreign corporations.
Sec. 1443. Foreign tax-exempt organizations.

Page 1 of 6.

"Equal Protection Under The Law"

BACKGROUND ON "CITIZENSHIP" STATEMENTS

The past two years (and especially the last six months) has seen our greatest growth of knowledge about the true application of the income tax law. This has allowed us to update and improve our "VEHICLES TO CONVEY PATRIOTS TO YORKTOWN" and create new ones. [See "Fellowship News" and Special Note in "VEHICLES..." THIS ISSUE.] "VEHICLE..." #5, "26 CFR Section 1.1441-5 Exemption Statement" has been developed as the appropriate and lawful replacement for the traditional IRS "Form W-4 Employee's Withholding Allowance Certificate." (SAP first offered this as "VEHICLE..." #5 in the Summer/Fall 1988 RA, page 23.) The "Exemption Statement" is actually a statement of citizenship which conforms with the named federal regulation, titled: "Claiming not to be subject to withholding." (26 CFR 1.1441-5 is reproduced on Page 7.)

This "VEHICLE..." has been updated numerous times since first offered, due to feedback from the Membership and from more information gathered by research of the IR Code, regulations, the IR Manual, and authoritative references. [Note: it is to your advantage to use the most current version of the "Statement of Citizenship" available; please call SAP Headquarters before you submit another one to any new or prospective employer!]

WHO TO GIVE CITIZENSHIP STATEMENTS TO

Our continuing research of the actual application of the federal income tax laws, especially the withholding provisions shows that the laws, regu-

lations, and instructions are written in such a way that creates the presumption that these laws apply to everyone, citizens and aliens alike. Considering that there are some two hundred and sixty-five odd million citizens within the U.S. of A, it is ridiculous that if each and every one of them does not give a "Statement of Citizenship" to a withholding agent or potential withholding agent that he/she is presumed to be a nonresident alien. But that seems to be the way "our" government operates today. Therefore, we advocate everyone, employed and self-employed alike, give a "Statement of Citizenship" to everyone who could remotely be a withholding agent!! The practical side of this policy is that it is awfully hard to prosecute or attack someone civilly -- who is obeying the law!!

DEMAND CREATES SOLUTION

Many of our SAP Fellowship members have read our articles recommending the use of a "Statement of Citizenship", requested such from Headquarters and have submitted one to their employer. This replacement for the IRS "Form W-4" has met with varying degrees of comprehension and acceptance.

Many employers given a "Statement of citizenship" by a newly- hired employee, have accepted it, complied with the requirement of mailing a copy with a letter of transmittal to the Internal Revenue Service Center (in Philadelphia, Pennsylvania only) and have not withheld any monies from the employees pay, no problem. This is as the law, 26 CFR 1.1441-5, directs and requires.

Others employers have refused to either accept the "Statement..." at all or have merely received it and not transmitted the copy to the IRS as the law requires. In either situation, the employer has on his own decided to deduct and withhold at the source on wages and Social Security (FICA) tax from the citizen-employee.

The problem has not been with the "Statement..." itself, but with employers who are not complying with the law! We have included instructions with this "VEHICLE..." telling the Patriot how to submit it to the employer and how to respond if the employer has questions. And we have counseled quite a few Patriots over the phone, suggesting the proper follow up letters in response to employer questions, misunderstandings, and inaction.

UNAUTHORIZED WITHHOLDING IS CONVERSION

Taking money owed (in whole or in part) to someone and giving it over to someone else, without permission, is conversion. Black's Law Dictionary (Fifth Edition, 1979) defines "conversion" as:

"Conversion. An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time... See also Embezzlement; Equitable conversion; Fraudulent conversion; Involuntary conversion. [Underlines added.]

"Direct conversion. The act of actually appropriating the property of another to his own beneficial use and enjoyment, or to that of a third person, or destroying it, or altering its nature, or wrongfully assuming title in himself." [Underlines added.]

Unless the citizen-employee has filled in and signed a "Form W-4" and given it to the employer, there is no authorization given to the employer to withhold any amount from the pay of that citizen- employee.

See NWRC Page 8.

§ 1.1441-5 26 CFR Ch. I (4-1-88 Edition)

upon income derived by such bank from obligations of the United States or of any agency or instrumentality thereof, or upon interest derived from deposits with persons carrying on the banking business, if the withholding agent receives from the bank a statement certifying that the bank—

(i) Is a foreign central bank of issue, or the Bank for International Settlements, as the case may be,

(ii) Is the owner of the obligations of the United States or of any agency or instrumentality thereof, or the owner of such bank deposits, as the case may be, and

(iii) Does not, and will not, hold such obligations or such bank deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) A copy of the statement filed pursuant to paragraph (j)(1) of this section shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (e) of § 1.1461-2 with respect to payments of income made on such obligations or bank deposits during the calendar year.

(Approved by the Office of Management and Budget under control number 1545-0795)

(Secs. 1441(c)(4) (80 Stat. 1355; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1354; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954; secs. 1441, 1442, and 7805, Internal Revenue Code (80 Stat. 1385, 26 U.S.C. 1441; 80 Stat. 1386, 26 U.S.C. 1442; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 6500, 25 FR 12075, Nov. 26, 1960, as amended by T.D. 6906, 31 FR 16772, Dec. 31, 1966; T.D. 6922, 32 FR 6711, June 17, 1967; T.D. 7178, 36 FR 18436, Oct. 2, 1970; T.D. 7582, 44 FR 871, Jan. 3, 1979; T.D. 7777, 46 FR 27836, May 21, 1981; 46 FR 31409, June 16, 1981; T.D. 7842, 47 FR 49842, Nov. 3, 1982; T.D. 7977, 49 FR 36853, Sept. 20, 1984; T.D. 8015, 50 FR 11256, Mar. 26, 1985]

§ 1.1441-5 Claiming to be a person not subject to withholding.

(a) *Individuals.* For purposes of chapter 3 of the Code, an individual's written statement that he or she is a citizen or resident of the United States may be relied upon by the payer of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate. An alien may claim residence in the United States by filing Form 1078 with the withholding agent in duplicate in lieu of the above statement.

(b) *Partnerships and corporations.* For purposes of chapter 3 of the Code a written statement from a partnership or corporation claiming that it is not a foreign partnership or foreign corporation may be relied upon by the withholding agent as proof that such partnership or corporation is domestic. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer shall also be given.

(c) *Disposition of statement and form.* The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to Internal Revenue Service Center, Philadelphia, PA 19255. The original statement shall be retained by the withholding agent.

(d) *Definitions.* For determining whether an alien individual is a resident of the United States see § 1.871-2. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with § 1.1441-1, a resident for purposes of this section. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a) (4) and (5) and § 301.7701-5 of this chapter. For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and § 1.638-1.

(Approved by the Office of Management and Budget under control number 1545-0795)

(Secs. 1441(c)(4) (80 Stat. 1355; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1354; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6500, 25 FR 12075, Nov. 26, 1960, as amended by T.D. 6906, 31 FR 16772, Dec. 31, 1966; T.D. 7277, 38 FR 12742, May 15, 1973;

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NWRC form Page 7.

BACKUP WITHHOLDING

IR Code section 3406 is titled "BACKUP WITHHOLDING." and is concerned with IRS-ordered withholding of 20% of interest or dividend payments to a payee because of certain alleged actions, inactions, and/or situations. This one section of the IR Code takes up just four and one half pages (in the 1990 Prentice-Hall printing of the 1986 Code.) According to one respondent to one of our NWRC letters, more regulations, rulings and instructions have been issued by the Treasury Department concerning "backup withholding", than for any other section of the IR Code. Our research on this section shows that it is indeed complex, however, there is still no authority to withhold shown in the law. As we've explained and shown in many previous articles, IR Code section 7701(a)(16) "Withholding agent" shows the authority to withhold concerns only section 1441, 1442, 1443, 1461.

SEC. 3406. BACKUP WITHHOLDING.

(a) Requirement To Deduct and Withhold.—

(1) In general.—In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee under-reporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to 20 percent of such payment.

The interesting situation concerning section 3406 is that it essentially replaced, on August 5, 1983, sections 3451 through 3456. Section 3451 was titled "Income Tax Collected At Source On Interest, Dividends, and Patronage Dividends." In the time period it was in effect, section 3451 was listed as being within the authority of the withholding agent to withhold upon. (See IR Code section 7701(a)(16) as it read in 1982, directly to the right.) Compare these two and note that 3406 has not replaced 3451 as being within the withholding agent's authority. The only conclusion to draw from this comparison is that there is no authority to withhold, pursuant to 3406.

The significance of this is that those of you who receive interest or dividend payments from stocks or other investment may find the IRS "ordering" the payor to backup withhold, if you have not filed prior 1040's, and/or not supplied a Social Security Number/Taxpayer Identification Number to the payor. From our reading of the intent of the law, Congress essentially replaced "withholding at the source" with "information at the source", punishing the offending non-reporter with the 20% "backup with holding." From the research we've done, the only "at source" withholding the federal income tax laws, embodied in the IR Code have ever authorized is from the income of nonresident aliens.

Another instance of backup withholding we've been informed about, concerns 20% withholding of payments due to a doctor for care provided, on a claim to an insurance company. The alleged reason was that the doctor (a citizen) had not supplied the company with a social security number on the claim form. This withholding on payments was and is totally inappropriate, because section 3406 "backup withholding" applies only to interest and dividend payments.

cers and personnel below the grade of commissioned officers in such forces.

(16) Withholding agent.—The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461.

Last amendment.—Sec. 7701(a)(16) appears above as | of Public Law 97-248, Sept. 3, 1982. This amendment

(16) WITHHOLDING AGENT.—The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, 1451, 1461 or 3451.
Source: Sec. 3797(a)(16), 1939 Code.

SAP STRONGLY RECOMMENDS...

...that you consider providing a "Statement of citizenship" with the appropriate wording, to any payor of interest and/or dividends and especially if you are an independent contractor. We have developed the appropriate "Statement..." to cover all of these situations.

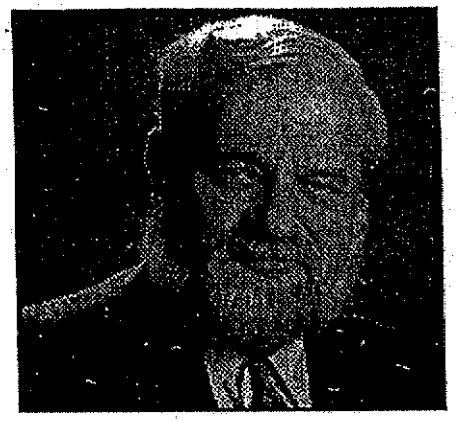
WHAT NWRC WILL DO FOR YOU

What has become evident to us at SAP Headquarters is that many Patriots do not have the time to write follow up letters which are needed to document the employer's and/or payor's non-compliance with the law. Also, those that do write, have their letters sent to the company attorney who typically says, *"The company will do what the IRS tells us to do, because if we don't, we could be audited, fined or charged criminally..."*

This above statement is illogical on its face, because it is the law itself, under the direction of the implementing regulation, telling the employer what to do. The IRS itself is under the direction of the very same law/regulation. It is the Secretary of the Treasury himself, who is responsible for the drafting of the regulation to implement the internal revenue laws passed by Congress. Is the IRS not bound by the regulations it writes to both implement the law and describe to the affected public how to interact with the IRS? It is well established legal fact, that if there are no regulations written to implement the law, it is presumed that the law is not in effect.

We have, at great time and expense, developed response letters for use in situations where the employer or payor is unlawfully withholding from a citizen or permanent resident alien. The letters are on computer and your specific circumstances are

NWRC Page 9.



INVESTIGATING FRAUDULENT IRS ASSESSMENT PROCEDURES

by: John B. Kotmair, Jr.

Judging from the tone of the requests we receive for help to investigate IRS assessment procedures it appears that 99% of those Patriots do not understand what they are investigating, where the investigation should be going, or how to efficiently proceed. We hope that the following article will shed some light to the end of the tunnel.

The experience and knowledge we've acquired in the last few years has made the past twenty seem prehistoric. It sure has brought to light all those simple little mistakes that have caused many Patriots a lot of grief, and if we do not learn form our mistakes -- well shame on us.

LEGAL TERMS and PROCEDURES

Patriots, with very few exceptions, tend to assume a "Notice of Deficiency" (commonly known as a 90-day letter) is an "ASSESSMENT." Nothing could be further from the truth. Whenever we hear a Patriot equate the two, we ask them if they can define the meaning of the legal terms "DEFICIENCY" and "ASSESSMENT" and describe their procedural applications. With very few exceptions, they can't. We cannot emphasize enough the importance of defining "legal terms," understanding the requirements involving them, and not reading meaning into text that is not there.

All the subject(s) of the statute (law) must be defined, and once defined it becomes a legal term limited to use within the particular statute and implementing regulations. In all codes of law, legal terms are defined for the specific purpose to prevent the law from becoming misunderstood and thus "void for vagueness." Some codes have entire chapters devoted to defining legal terms. The Internal Revenue Code not only lists many defined legal terms within the general provisions of Chapter 79, but also defines many more in the particular chapter(s) and/or subchapter(s) and even in a particular section. Some legal terms within the IR Code are given more than one definition, such as "United States" which is defined in several places. Therefore, it is understandable that it is totally impossible to understand how a particular code section containing this legal term is being applied until you determine which definition of "United States" is being used.

The legal term "DEFICIENCY" is defined in IR Code Chapter 63, Subchapter B, section 6211. Notice the elements within the definition needed for a deficiency to exist.

See FRAUDULENT Page 10.

SEC. 6211. DEFINITION OF A DEFICIENCY.

(a) In General.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44, the term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44, exceeds the excess of—

(1) the sum of

(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

NWRC from Page 8.

inserted. The withholding law in dispute is fully examined as to its application and a thick folder of "Exhibits" is included, showing every law, regulation, ruling and definition cited in the body of the letter. The letters and exhibits are not "interpretation" or "opinion", but are completely factual. All ask the recipient to carefully consider the legal position they are in, as a withholding agent, and understand their responsibility and liability.

These letters and exhibits are not available "non-personalized" due to the need to tailor each to the Fellowship member's specific situation, and to build the reputation of the NWRC. These letters will not be offered to non-members. We ask that you not distribute them to others and that you not modify (alter, change, reword) a previous letter to use in a later situation. We are continually updating our "VEHICLES..." and these NWRC letters to reflect the latest knowledge. Please support our efforts and protect yourself and others from unintended error.

CONSULT SAP FIRST

Please call SAP Headquarters if you are having "withholding problems." If appropriate, you will be advised that a NWRC letter would cover your situation. The cost per NWRC letter is 35 FRNs. We will ask for the appropriate information and merge it with the proper letter. NWRC will send the letter directly to the withholding agent, with the "Exhibits." You will receive a copy of the letter and exhibits. Unlike the "VEHICLES..." you do not send the letter!

FRAUDULENT from Page 9.

Note that section 6211 pertains to every type of tax within the IR Code; that the term Deficiency means, "...the amount [of] tax imposed [by the Code] exceeds the...sum of the amount shown as the tax by the taxpayer upon his return..." Therefore, the elements are:

1. computation of the tax by IRS personnel (based on the information supplied by a taxpayer on a tax return) using the related tax tables, exemption, allowances, etc. within the

2. a tax return prepared by the taxpayer (or someone contracted by the taxpayer), signed and submitted to the IRS by the taxpayer (who is solely responsible after signing it whether he prepared the return or not);

3. an amount of tax posted as due on the tax return by the taxpayer, which IRS alleges is short of the actual amount of tax due, which was computed by the IRS from the same information supplied.

There also could be added to this deficiency amounts, arising in the same manner, still due from prior years.

If you did not file any Internal Revenue Service tax form, can there be a deficiency? Of course not.

Is it logical then, that the IRS can complete a return for an individual, cause an error in the amount of the tax due, and then give that taxpayer a notice of that error as being the taxpayer's? Of course not, that is ludicrous.

The next logical step is understanding the procedural elements of an "ASSESSMENT." Most of the Patriots that we come in contact with do not fully understand this procedure. With the knowledge that we now have there is no reason for any Patriot to be losing any property to an IRS claim of assessment.

It is natural to relate to a given situation according to your past experiences. Everyone has been told for years that the Internal Revenue Code is so complex that no one can understand it, so very few try. Therefore, when dealing with it, in ignorance of it, they naturally apply the knowledge they have gained through other experiences in life. This is a potentially very dangerous and costly practice. For instance, observe the actual application of an assessment within the IR Code:

> **SEC. 6203. METHOD OF ASSESSMENT.**
>
> The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment.

IRS ASSESSMENT vs. REAL PROPERTY TAX ASSESSMENT

Now let's compare an IRS Assessment with the elements in applying a real property tax assessment. There is a enormous difference in procedure.

The property tax assessment is recorded in the proper Book(s) and the assessment notice is sent to the owner of record. The owner may either pay such amount due or protest such amount. This protest usually involves hearings and judicial appeal. By contrast, all the various types of taxes within the IR Code are assessed by the taxpayer himself and the IRS records the liability. (There is a partial exception to this scheme, which will be covered later in this article.) So actually, the IRS merely certifies the correctness of the arithmetic used to determine the amount of tax due.

When calculating property taxes, the tax assessor adds the appraised value of the real property to any improvements thereon and multiplies such total by a tax rate established by the local state government.

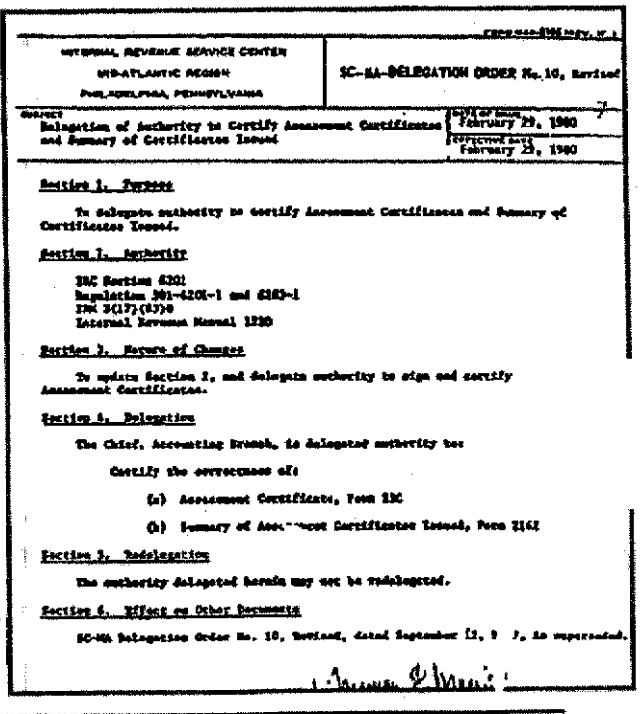
The second part of Section 6203, which is the actual starting point of our investigation, will be dealt with later.

INTERNAL REVENUE SERVICE TAX FIGURING

Now we will look at the various ways that all tax liabilities can be recorded and computations of amounts of taxes due are certified as correct by the assessment officer.

Situation #1:

First let's trace a tax return that is voluntarily completed by a taxpayer and mailed to the Internal Revenue Service Center. After arriving in the mail room the tax return (for all categories of taxation) is routed to the Service Center Examination Branch for "on-line review of selected returns," (IR Manual 1100, "Organization and Staffing," section 11(11)5.4). Tax returns on which the amount of tax owing and due is challenged by examiners are sent to the Collection Branch for the issuance of Notices of Deficiency. The other returns are forwarded to the Accounting Branch for the self-assessment, made by the taxpayer, to be certified by the Chief of the Accounting Branch. This certification authority was delegated by the Secretary of the Treasury down to the Chief of the Accounting branch by written delegation order, that states that it is not to be redelegated.



INTERNAL REVENUE SERVICE CENTER
MID-ATLANTIC REGION
PHILADELPHIA, PENNSYLVANIA

SC-AA-DELEGATION ORDER No. 10, Revised

Subject: Delegation of Authority to Certify Assessment Certificates and Summary of Certificates Issued

Effective Date: February 29, 1980

Expiration Date: February 28, 1980

Section 1. Purpose

To delegate authority to certify Assessment Certificates and Summary of Certificates Issued.

Section 2. Authority

IRC Section 6203
Regulation 301-6203-1 and 6303-1
IRM 3(17)(83)0
Internal Revenue Manual 1220

Section 3. Nature of Changes

To update Section 2, and delegate authority to sign and certify Assessment Certificates.

Section 4. Delegation

The Chief, Accounting Branch, is delegated authority to:

Certify the correctness of:

(a) Assessment Certificate, Form 23C

(b) Summary of Assessment Certificates Issued, Form 2162

Section 5. Redelegation

The authority delegated herein may not be redelegated.

Section 6. Effect on Other Documents

SC-AA Delegation Order No. 10, Revised, dated September 12, 19 [illegible], is superseded.

The Accounting Branch personnel separate all the returns as to the different categories of taxation (excise, individual income, employment, IRA, etc.), and total the categories on the "Summary of Assessment Certificates Issued," Form 2162. The Chief of the Accounting Branch signs this form certifying the correctness of the mathematical computation of the Accounting Branch personnel. Then the total of all the categories computed is posted on the "Certificate of Assessment," Form 23-C, which is also certified by the signature of the Chief of the Accounting Branch. These two IRS Forms represent the "...recording [of] the liability..." mentioned in section 6203 Page 10.

Situation #2.

Now let's review the procedure when a taxpayer voluntarily submits a tax return and it is challenged by the Examination Branch as being deficient.

After determining that the "...amount ...[of] tax imposed ...exceeds the excess of the..." confessed liability made by the taxpayer on his/her return, the Examination Branch routes the return to the Collection Branch which, among other functions, "...signs and sends statutory notices of deficiency." (section 11(11)5.2 of IR Manual 1100.) The maker of the deficient tax return is sent a notice of that deficiency by means of U.S. Mail certified receipt requested, to the last known address. The notice is commonly called a "90 day letter," because it advises the taxpayer *"If you want to contest this determination in court before making any payment, you have 90 days from the mailing date of this letter to file a petition with the United States Tax Court for a redetermination of the amount of your tax." (Underline added.)*

If the maker/filer of the tax return decides to petition the tax court, then he/she is, by the petition, pleadings and rules of that court, agreeing to accept the finding of fact that will be made by that court. Thereafter, the tax court's finding is routed to and certified by the Chief of the Accounting Branch as the Assessment in the same manner as an uncontested return. But, because the tax assessed is unpaid, it is mandatory that within 60 days of the certification, a "NOTICE AND DEMAND FOR TAX" pursuant to IR Code section 6303, be sent to the taxpayer by the Chief of the Collection Branch. (This important procedure will be covered in detail later in this article.)

SEC. 6303. NOTICE AND DEMAND FOR TAX.

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

Situation #3.

Now let's examine this very same deficiency procedure, but this time it involves a Patriot that did not make, execute nor file a tax return.

Usually this Patriot would receive a Notice of Deficiency from the District Director. A review of IR Manual 1100 sections 11(12)1, "District Director;" 11(12)1.1, "Chief, Examination Division;" and 11(12)1.21, "Chief, Collection Division," reveals that no such authority exists therein. (NOTE: In the District Office, Collection and Examination are called Divisions, and in the Service Center they are called Branches.) Whether it comes from the District Office or the service center the instruction are the same, i.e., petition the tax court within 90 days or a statutory lien will be filed against you, and following that comes the distracting implication: **PAY UP OR WE WILL BE TAKING YOUR PROPERTY!!!**

Situation #3, Scenario No.1:

Not knowing any better, and afraid of losing the property that was acquired by hard labor, the Patriot petitions the tax court to try to put off what he believes to be the inevitable. The problem with this route is that following the rules and procedures of that court has the same effect as asking the United States Tax Court to file a income tax return for you. The Patriot even supplies the information needed to do so. (In some cases the Patriot, listening to some uninformed guru, petitions to enter into the court's jurisdiction and then tells the court that it does not have the "jurisdiction" the Patriot just gave it. Of course the IRS District Counsel moves for summary judgment and a frivolous petition fine, which the court eagerly grants.) It is surprising that some seemingly intelligent individuals have fallen into this IRS trap, and even more so, that some are still blindly going along today.

When a finding is made by the Tax Court, like the one mentioned above, it can and will be certified by the Chief of the Accounting Branch, and within 60 days there will be a "Notice and Demand for Payment" sent to the "taxpayer." This does not mean that all is lost (as will be explained later on), but it sure does make it much more difficult and in some cases maybe impossible.

Situation #3, Scenario No. 2:

But you are a S.A.P. Fellowship member, and well informed by the Fellowship's voice, *Reasonable Action*. Therefore, you do not fall for this fraudulent snare. Instead you answer this fraudulent extortion attempt with a letter ("VEHICLE..." #8), that:

1. challenges the District Director's authority to send such a document to you;
2. asks to have sent to you a copy of the tax return that the deficient shortfall or error occurred in, stating that you did not file any tax return(s) for the year(s) in question; and
3. asks if they filed such a return for you, and if so by what authority it was executed.

You will not receive any answer, and there is no law that requires him/them to answer. The reason they will not answer is that they have no lawful rebuttal that they can make.

In the *Bothke v. Fluor Engineers & Constructors, Inc., 713 F2d 1405* (copy supplied with "VEHICLE..." #8) the court ruled such a letter, if written within the first 60 days, to be a "request for an abatement" under IR Code section 6213(b)(2), (repro-

See FRAUDULENT Page 12.

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(2) Abatement of assessment of mathematical or clerical errors.—

(A) Request for abatement.—Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection.—In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

FRAUDULENT from Page 11.

duced on Page 12.) The court held this even though Bothke's letter was not a formal request for abatement. What this means is that the IRS loses its presumption of correctness, (that it should not have in the first place), and has to prove what it claims!!!

We initiated this procedure in March of 1989, and have refined it several times since then; so far so good. We have had several Patriots call and say that the IRS followed up with a demand for money. Upon investigation it was discovered that the Patriots did not follow SAP's sample letter. One Patriot admitted that she was afraid to tell the IRS that she had not filed a return for the years in question! This statement is one of the main elements of the procedure. Another Patriot mailed the letter on the 62nd day.

Don't be upset if an IRS official does not answer your letters. The law only requires IRS Disclosure Officers to send documents that can be disclosed by law, and even they are not required to answer questions. If you want questions answered, you should write the IRS Assistant Commissioner for Public Affairs, Washington, D.C. 20224.

After sending in SAP's suggested "90 day letter response," you wait until about seven (7) or eight (8) months after the date posted on the Notice of Deficiency and then you make a request for "...a copy of the record of the assessment" (section 6203 IR Code). (We recommend that you use the requests that we have developed, they will save you time and mental anguish, see "VEHICLE..." #3.) If you make the request before that time has elapsed, most likely you will receive a response saying "no record of assessment." Many Patriots misunderstand and misinterpret this response, believing the IRS has given up. The fact is you just did not give the bureaucracy enough time to perfect its imperfections. If before the seven (7) or eight (8) months elapses you receive from the IRS a demand for money, that means the imperfection is now fully developed, then you should immediately request the "assessment record."

SPECIAL NOTE:

For those who find this process a bit much to handle, we just started a service where you can give us a Power-of-Attorney and SAP Headquarters will do it for you. Call SAP Headquarters for information.

THE RECORD OF ASSESSMENT

This record is posted on a document called the "Certificate of Assessments and Payments." Usually it is a computer paper print-out (ADP [Automatic Data Processing] printed from a computer file) with a certification and signature by an IRS officer that it is the complete assessment record. Because this document opens the door to the exposure of the fraudulent assessment activity, and the IRS is starting to realize that we Patriots know how to use it, they are trying every trick possible to keep it out of our hands. (We cannot emphasize enough about the proper wording of this request and follow up; that is why we urge the use of our services.)

This record also is posted sometimes on a printed form numbered Form 4340, "Certificate of Assessments and Payments," (NON-ADP [Non-Automatic Data Processing] meaning it is not printed from a computer file.) Our request, before the latest up-date, requested assessment information to be produced on this specific hard copy form.

Some Service Centers have been telling Patriots that they have searched their records and are "unable to locate any Form 4340" pertaining to the Patriot. This is a half-truth, told in hopes that the Patriot does not know any better and will give up, as many do. (Patriots caught up in "wild theories," usually are ignorant of IRS internal procedures, and are set-ups for such half-truths.) The truth is, there are no Form 4340's pertaining to anyone in any records of the IRS! However, when the assessment record is requested, the Service Center Accounting Branch personnel access the Martinsburg (West Virginia) Computer Center and retrieve the required information needed to print-out on computer paper or fill in the blanks on Form 4340 to fulfill that particular request. The certifying date of this document is always after the date of the request.

You should become familiar with Form 4340 so that you will know all the data that is supposed to be thereon. (See sample this page.) Then if they send you the computer printout (discussed above), or a Form 4340 you will know if any pertinent information has been left off. More information on this document can be found in IR Manual 3500, "Account Services," at 35(65)0, "Transcripts." We can expect the IRS to try not to fully provide requested information more and more as our knowledge of this scam grows, and we learn how to use it.

LOOKING AT FORM 4340

The information is arranged in columns. You must take each piece of information in each column and relate it to the pertinent IR Code and IR Regulation sections. And also compare its relationship to other pieces of information on the form. Take a minute right now and see how many inconsistencies and evidence of fraud that you can find on this sample Form 4340.

Some Service Center Disclosure Officers tell Patriots that they do not use Form 4340 anymore; this is not true. You must insist on the Form, or the computer print-out containing the same information. If need be, contact your congressman or U.S Senator;

given sufficient pressure the IRS will provide it.

The federal courts have recently held:

TAXATION

89-349 CHILA v. U.S.

Ruling below (CA 11, 871 F2d 1015):

Certificate of assessments and payments and account card provide all information required by IRS Code Section 6203 and regulations, including identification of taxpayer, character of liability assessed, taxable period, and date and amount of assessment, and thus are presumptive proof of valid assessment; lack of notice required by IRS Code Section 6303 deprives IRS of pursuit of any administrative remedy against taxpayer, but does not prevent suit to collect withholding taxes that were not paid over to government.

GOVERNMENT TURNED AGAINST THE CITIZEN

Notice the words "presumptive proof" in the *Chila* case above. The doctrine of "Presumptive Proof" was established in the beginning of President Roosevelt's administration. This ploy was created by his cronies whom he packed into the Supreme Court. It was their sophistic way of getting around the unconstitutionality of Roosevelt's socialist "New Deal." In a nutshell this means, that what government agencies do is not necessarily lawful and correct. However, it is just presumed to be lawful and correct, and the burden falls on the individual citizen or resident alien to prove otherwise. Prior to this so-called "doctrine" the burden of proof always fell on the government, when rights of the citizen were involved. Once understood, it is easy to see that this doctrine is one of the major causes of our governmental problems today. In our example, if this "Certificate of Assessments and Payments" is the presumptive proof of an IRS Assessment against you, then let's remove this presumption!!!

"NOTICE AND DEMAND FOR TAX" FINALLY FOUND!!!

For years Patriots have speculated as to what IRS form constituted the "NOTICE AND DEMAND FOR TAX." Finally this elusive "four leaf clover" was found just last month in the Maryland State Law Library in Annapolis by SAP's "word scouting editor" David Baker, and it is beginning to be used with great effect for Fellowship members.

Notice the *Chila* case (Page 12) says, "...**lack of notice required by IRS Code Section 6303 deprives IRS of pursuit of any administrative remedy against taxpayer...**"

A "Certificate of Assessments and Payments" record belonging to a SAP member had posted on it that the "First Notice" was sent on "06/29/87." There was no "document locator number" listed to the right of that entry. Isn't that interesting? We requested a copy of the notice required by IR Code Section 6303, relating to that and other like entries for two other years, from the Atlanta Service Center. The Disclosure Officer replied: "*Notices are computer generated and mailed to the Taxpayer as required by IRS Regulations 301.6303-1 and Internal Revenue Code Section 6303. We do not maintain copies.*"

Reproduced on Page 14 is our somewhat pointed reply:

(The documentation showing the identity of the famous IR Code 6303 "NOTICE" is reproduced on Page 14 and 15.)

As stated in the *Chila* case, lack of notice bars IRS collection, and a document that cannot be produced -- IS PRESUMED TO NEVER HAVE EXISTED!!!

We are presently waiting for Ms. Barksdale's reply. It took her just eight days to answer the original request. As of the date of this writing, it has been fourteen days since she received our reply. We will keep you posted!!!

Certificate of Assessments and Payments

Name of Taxpayer | Address (Number, street, city, and state) | [EIN or SSN]

Date (a)	Explanation of Transactions (b)	Assessment (Minimum) (c)	Credit (Credit Accrued) (d)	Balance (e)	DLN or Account Number (f)	ZIC Date (g)	Period Ending (h)
09-05-83	Assessed Tax	- 0 -		- 0 -		09-05-83	1980
02-20-86	Additional Tax	$ 689.00		$ 689.00			
02-20-86	Assessed Interest	602.05		1,291.05			
02-20-86	Negligence Penalty	34.45		1,325.50			
02-20-86	Delinquency Penalty	172.25		1,497.75			
02-20-86	Misc. Penalty	4,000.00		5,497.75			
02-20-86	Est. Tax Penalty	43.99		5,541.74			
10-31-86	Subsequent Payment		660.00	4,881.74			
12-01-86	Subsequent Payment		660.00	4,221.74			
12-30-86	Subsequent Payment		103.80	4,117.94			
11-02-87	Credit Applied		4,951.25	833.31			
02-08-88	Interest Assessed	823.30		10.01			
02-08-88	Clearance of Overpayment	.01		10.00			
02-22-88	Fees and Collection Cost	129.30		139.30			
11-02-87	Payment of Fees and Cost		129.30	10.00			

I certify that the foregoing transcript of the taxpayer named above is complete transcript for the period stated, and all assessments, abatements, payments, and other transactions recorded to the date of this certification are shown thereon.

Signature of Disclosure Officer: [signature] | Location: Ft. Lauderdale District Office | Date: 3/2/89

Form 4340

PERSONAL DEFENSE RECOMMENDATIONS

In order to have a clear understanding and be able to investigate IRS fraudulent assessment procedures, and give you the ability to spread the truth, and not be taken in by some "wild theory" that will cause you loss of property and mental anguish, the Patriot should own and have a personal working knowledge of the following IRS documents: (1) a complete IR Code Book; (2) a complete set of the IR Regulations; (3) IR Manual Chapters 1100, "ORGANIZATION AND STAFFING;" 5200, "DELINQUENT RETURN PROCEDURES;" 5400, "SERVICE CENTER COLLECTION BRANCHES PROCEDURES;" and (4) 6209 Computer Transcript Decoding Handbook. (See VEHICLES and Book Shop sections this issue.)

P.O. Box 91
Westminster, MD 21157

April 23, 1990

Re: CID F-90-314

Concerning :
David M. de Camp
SS: 068-34-1432 (Revoked 4-4-90)

Certified Mail P 231 149 485

Ms. Betty B. Barksdale, Disclosure Officer
Internal Revenue Service Center
Southeast Region
Atlanta, GA 31101

Dear Ms. Barksdale:

Thank you for your prompt response to the above referenced request.

Enclosed for your review are photocopies from the "Internal Revenue Service Practice and Procedure Deskbook" published by Practising Law Institute, New York City. Notice that on Page 86 it addresses "NOTICE AND DEMAND" pursuant to IR Code section 6303. Also notice on Page 87 is states: "...the Service has always given at least two, and often up to four, notices to the taxpayer demanding payment." It then refers to footnote 11, references "...appendixes 25-28..." These appendixes are found beginning at Page 533, indicating that Form 4084, is the "First Notice;" that the "Second Notice" (Page 537) is Form 3967-(C); "Third Notice" (Page 539) is Form 4839; and the "Fourth Notice" (Page 541) is Form 4840.

Also enclosed is a copy of Page 48 from IR Publication 676 (Rev. 2-86), it list Form 4084 as: "Correction Notice Amount Due IRS." On Page 59 of IR Publication 676 (Rev. 2-90) (copy enclosed), it lists Form 3967C as, "Second Notice-Payment Overdue," and on Page 61 (copy enclosed), Form 4839 is listed as: "Letter Advising Taxpayer of Possibility of Additional Penalty and Interest Charges if Tax Not Paid;" and Form 4840 as: "Letter Advising Taxpayer of Possibility of Additional Penalty and Interest Charges if Tax Not Paid-Final Notice." These IRS forms are not just computer notices, they are reported, as exhibited by the copies enclosed, to be hard copy

In IR Manual 1(15)59.26-11, "Forms Listing for Records Control Schedule 206," (copy enclosed), at Page 56, Form 4084 ("First Notice"), is given an Item Number of 168. In that same manual on Page 27, Item Number 168 calls for the destruction of

Page 1 of 2.

Form 4084 "...5 years after end of processing year." The "processing year" posted on the Certificates of Assessments and Payments, that I forwarded along with the FOIA request, was the same for all three years, 1980, 1981, and 1982: "06/29/87." That would mean that the documents requested would have to be in the possession of the Internal Revenue Service until 06/29/92. If this is incorrect, would you please explain in detail how and why it is wrong. If it is not incorrect, I am requesting that you certify that the document(s) requested, per the request referenced above, do not exist.

Please respond in ten working days as required in 601.702(c)(7).

Yours,

John B. Kotmair, Jr.

Enclosures:

Copies of Pages 86, 87, 533, 534, 535, 536, 537, 538, 539, 540, and 541 of "Internal Revenue Service Practice and Procedure Deskbook," published by Practising Law Institute, New York City.

Copy of IR Publication 676 (Rev. 2-86), Page 48.

Copies of IR Publication 676 (Rev. 2-90), Pages 59 and 61.

Copies of IR Manual MT 1(15)59.26-11, Pages 27 and 56.

Internal Revenue Service Practice and Procedure Deskbook

Second Edition

Ira L. Shafiroff

[illegible]

RECEIVED

IRS Practice and Procedure

Service and the taxpayer or the taxpayer's authorized representative.[3] In addition, if the taxpayer has provided the Service with a bond,[4] the Service may maintain a suit on the bond even though the six-year statute of limitations has expired.[5]

NOTICE AND DEMAND

Except where otherwise provided by the Code,[6] the Service is required within sixty days of making an assessment of tax to give notice stating the amount of tax due and demanding payment thereof. Such notice must be left at the residence or usual place of business of the taxpayer or sent by mail to his or her last known address.[7] However, the failure to give notice within sixty days does not invalidate the notice.[8] Moreover, it appears that the notice may be informal.[9] It also seems probable that the taxpayer could waive the right to a notice of demand, although there are no cases on this point.

A critical reading of Code section 6303 clearly indicates that the Service is required to give only one notice before a lien arises or a forced collection action proceeds.[10] Historically,

3. [illegible]
4. [illegible]
5. Treas. Reg. § 301.6502-1.
6. [illegible]
7. I.R.C. § 6303(a) [illegible]; Treas. Reg. § 301.6303-1(a).
8. Treas. Reg. § 301.6303-1(a).
9. [illegible]
10. [illegible]

86

Collection Process

however, the Service has always given at least two, and often up to four, notices to the taxpayer demanding payment.[11]

Assuming the taxpayer can make full payment after receiving notice demanding payment, he or she may generally pay by check, money order, or cash. If the taxpayer pays by check or money order, the cancelled instrument will usually serve as the receipt for payment. In addition, it is important that the taxpayer write on the face of the check his or her Social Security number (the working spouse's number if a joint tax return is involved), the type of tax involved (e.g., income tax, excise tax, etc.), and the tax year involved (along with the quarter, if appropriate, e.g., for payroll taxes or estimated tax payments). This will ensure the Service does not credit the wrong year or tax.

If payment is made in cash, the Service is required to give a receipt that details all the above information.[12]

THE FEDERAL TAX LIEN—WHEN YOUR CLIENT CANNOT PAY IN FULL

There clearly is no problem if the taxpayer, upon receiving the notice demanding payment, pays the Service the amount in full. The problem arises when the taxpayer does not have

11. See appendixes 25-28 for the four different types of notices that the Service sends out. Careful note should be taken that the final notice, often referred to as "final notice before seizure," requires that the taxpayer move immediately to make arrangements with the Service for payment or otherwise subject himself or herself to harsh forced-collection actions. These forced collection actions are discussed in depth throughout the rest of this chapter. See also the section in this chapter dealing with [illegible], wherein is explained why it is critical for the taxpayer or taxpayer's representative to move swiftly; indeed, by the time the taxpayer receives the final notice before seizure, it may be too late to negotiate an installment agreement, as the mechanisms for forced collection are already in movement and may not always be turned back.
12. Treas. Reg. § 301.6311-1(a).

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LEARNING FROM THE BOTHKE DECISION

by: John Knox

[Editor's Note: This article should be read in conjunction with John Kotmair's article, this issue, as both represent the leading edge of research and understanding of combating illegal and improper IRS procedure.]

The U.S. Court of Appeals ruled in Bothke v. Fluor Engineers and Constructors, Inc., 713 F.2d 1405 (1983) (in pertinent part) that an IRS agent loses immunity from suit if, after a "taxpayer" has informed him/her that the "taxpayer" believes there to be error in the assessment, such agent moves ahead with levy action without first investigating and determining if the "taxpayer's" argument has merit. A recent reanalysis of the Bothke decision shows that Hans Bothke had read the United States Constitution, and the relevant Internal Revenue Code (Title 26, U.S. Code) sections and was well aware of his rights, including administrative appeal rights. This article discusses how today's Patriot can benefit from the lessons now understood about this important decision.

WHAT THE BOTHKE CASE IS ABOUT

The full title of the appeal reads:

Hans BOTHKE,
Plaintiff-Appellant,

v.

FLUOR ENGINEERS AND CONSTRUCTORS, INC., et al.,
Defendants,
and
W.J. Terry,
Defendant-Appellee.
No. 81-5457
United States Court of Appeals
Ninth Circuit
Argued and Submitted Dec. 10, 1982.
Decided Jan. 24, 1983.

Bothke argued this appeal pro per (himself) in front of the Appeals Court. To understand the significance of any court case, you have to understand the situation and the facts. This case was an appeal from a U.S. District Court summary judgment against Bothke. He had filed suit, *for damages for claimed constitutional violations in the allegedly wrongful levy of his wages.*, according to the introduction of the appeal ruling. W.J. Terry is the IRS employee who caused the issuance of IRS levy forms to Bothke's employer, causing them to turn Bothke's money over to the IRS. Bothke was a "taxpayer" and had filed an income tax return (presumably a Form 1040) for the year 1977. The case summary clearly describes the situation:

Plaintiff-appellant Bothke filed a timely but unusual income tax return for 1977. On several lines he entered asterisks [* *] in lieu of dollar amounts. Under the amount to be refunded, he entered $1154.62, an amount corresponding to taxes his employer had withheld from his salary as shown on the W-2 form accompanying the return.*

The asterisks were referenced to a lengthy exegesis [interpretation] *on why he had not provided the information. The substance was that Bothke felt the IRS had mistreated him over his 1976 return by ignoring the figures he provided, by failing to help resolve questions about the return, and by assessing a deficiency before according him the prior administrative hearing its literature allegedly indicated he was entitled to. It went on to state that he had concluded the IRS had acted in bad faith depriving him of due process and, to protect his constitutional rights, on this return he was exercising his First, Fourth, Fifth, Sixth, Eighth, Ninth and Tenth Amendment rights not to provide the information.*

Bothke's return was reviewed at the Fresno, California IRS center and on March 5, 1979, it sent him a notice of "Correction to Arithmetic" (this is almost 11 months after April 15, 1978.) The notice informed him that the IRS had *adjusted tax due on the return from zero to $6755.80, which adding penalty and interest, left a balance due of $6177.87.* Bothke responded ten days later (3/15) with his objection to this notice. Bothke then received a letter from the Service Center director, telling him that his refund claim had been disallowed, "also referring to alleged claims by Bothke that the tax laws were unconstitutional."

The IRS sent Bothke another letter dated June 6, saying that, although notices and demands had been made for payment of 1977 taxes, no money

See BOTHKE Page 16

Appendix 25/Form 4084

Department of the Treasury
Internal Revenue Service

If you have any questions, refer to this information:

Date of This Notice:
Social Security Number:
Document Locator Number:
Form Tax Year Ended:

Call:

or

Write: Chief, Taxpayer Assistance Section
Internal Revenue Service Center

If you write, be sure to attach the bottom part of the notice. Include your telephone number and the best time to call.

Correction Notice — Amount Due IRS

As a result of an error we corrected on your tax return, you owe IRS $ _____. If you believe this amount is not correct, please see the back of this notice. Make your check or money order payable to the Internal Revenue Service. Please write your social security number on your payment and mail it with the bottom part of this notice. An envelope is enclosed for your convenience.

Allow for enough mailing time to be sure that we receive your payment by

Thank you for your cooperation.

had been received, further warning him that levy or seizure could happen to his wages or property unless he paid the amount or called the IRS within 10 days. On the eighth day, Bothke wrote the Fresno IRS office and objected to both documents sent to him and *denying he had challenged the constitutionality of the tax laws.*, said the ruling.

Bothke's case was given to the IRS field office, and agent W.J. Terry received the Tax Delinquent Account (TDA) on 8/3/79, to investigate and collect on. Several times she tried to get a copy of Bothke's filed return from the Fresno IRS Center. "When no copy of the tax return arrived after some time, she elected to proceed without it.", said the ruling. Terry visited Bothke's home on 11/21/79 and not finding him there, left a note for him to call. He called, *again protesting that the IRS had violated his rights.* Terry told him that he had to pay the tax and the IRS would contact him.

The appeal ruling introduction then shows what happened next:

On November 26, 1979, Terry served on his employer a levy of Bothke's wages. On November 29, she received a protest from Bothke by certified mail. He also made a written protest to his employer. The levy of $3,415.43 was executed several days later.

Bothke resigned from his job to prevent the further attachment of his wages. He then filed an amended return for 1977, using dollar amounts instead of asterisks. It indicated that a refund was due from the amounts withheld and levied. When Bothke sued another IRS agent regarding levy of other property, the Service elected as a policy matter to abate any then-existing assessment and release any liens with respect to his 1977 taxes.

Bothke then sued, in federal district court, his employer (Fluor Engineers...), the employer's assistant legal counsel who had accepted the IRS levy, and IRS agent W.J. Terry. *He alleged violations of his constitutional rights and sought compensatory and punitive damages.*[1] [Footnote discussed later.]

The Bothke appeal court introduction completes the pre-appeal summary of the case thusly:

The first two defendants were dismissed early from the case. On the magistrate's recommendation, the trial judge rendered summary judgment for defendant Terry, on the ground that she was either absolutely or qualifiedly immune, and dismissed the action.

It is this lower court summary judgment that Bothke is appealing.

The decision footnote (1) (on page 1409), reproduced in full on these pages, is revealing of the appeal court judges' attitude of Bothke's appeal, and of Bothke's point of view:

After reviewing the record and listening to Bothke's oral argument, we are satisfied that this lawsuit and his misguided, unorthodox 1977 tax return were not frivolous attempts solely to challenge or burden the tax system or harass its agents. Rather, his predominant theme has been that this country's laws are just and that government agents must conform to them, a matter of importance to him as an immigrant who has lived under totalitarian regimes in Eastern Europe.

Bothke emphasized below that he was suing agent Terry individually for allegedly acting in violation of legal duties and was not suing the United States... [Underlines added.]

(The appeals court is apparently being candid about how they treated Bothke's appeal, seeming to tell us that if he had been a so-called "tax protester" they would have handled it differently...)

> 1. After reviewing the record and listening to Bothke's oral argument, we are satisfied that this lawsuit and his misguided, unorthodox 1977 tax return were not frivolous attempts solely to challenge or burden the tax system or harass its agents. Rather, his predominant theme has been that this country's laws are just and that government agents must conform to them, a matter of importance to him as an immigrant who has lived under totalitarian regimes in Eastern Europe.
>
> Bothke emphasized below that he was suing agent Terry individually for allegedly acting in violation of legal duties and was not suing the United States. At a hearing the magistrate rejected Terry's sovereign immunity defense, and correctly so. Defendant's argument, that the suit was really against the government because 26 U.S.C. § 7423 authorizes reimbursement of IRS agents for all damages recovered from them for acts done in performance of official duties, was specious. *Cf. also United States v. Nunnally Investment Co.*, 316 U.S. 258, 260, 62 S.Ct. 1064, 1065, 86 L.Ed. 1455 (1942).

RECENT ANALYSIS ZEROS IN ON SECTION 6213

In the head notes (topical summaries of points of law covered in the decision), the Appeal Court references the U.S. Constitution Art. I., section 8, clause 1; Amendments 3, 4, 5, 8, 10, 14, 16; 5 U.S.C.A. sections 552-557; 26 U.S.C.A. sections 6212, 6213(a), (b)(1), (g)(2), 6331(a), 7421(A); 42 U.S.C.A.

This writer has had this case in hand for over five years. I'd never taken the time to fully analyze, until recently, IR Code section 6213 as referenced by the Court. Reproduced on the next page are the pertinent sections of 6213.

Note that in section 6213(b) the title is "Exceptions to Restrictions on Assessment." Then, in (2), the title is "Abatement of assessment of mathematical or clerical error.":

(A) Request for abatement... a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under the subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

Then, at (2)(B) "Stay of Collection":

In the case of any assessment referred to in paragraph (1)... No levy or proceeding in court for collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

Next, look at the definitions in 6213(g), which pertain to the terms used in all of section 6213:

(1) Return - The term "return" includes any return, any statement, any schedule or any list and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A [income tax] or B [estate and gift tax] or..."

The nouns modified by "any" encompass the entire range of reasons to notify the Internal Revenue service of ANY mathematical or clerical error that could apply.

Applying the Bothke example, if you had not filed a return and received a "90 day letter", you would tell the IRS that you believe there to be a

problem with the assessment because you had not filed a return and you request abatement. Note that in section 6213 it says within 60 days after such notice. It does not say what notice, so the "notice" could theoretically be any notice and demand for money you receive from the IRS. [Editor's note: John Kotmair's article reveals the identity of the "notice."]

BOTHKE HAD FILED A FORM 1040

Bothke had filed a Form 1040. As described earlier in this article, he'd assessed himself "zero" tax and requested that the withheld tax be refunded. Attached to the return was a strongly worded protest, claiming, among other rights, the protection of the 5th Amendment to the Constitution.

SEC. 6213. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) Time for Filing Petition and Restriction on Assessment.—Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided in section 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B, chapter 41, 42, 43, or 44 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421(a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court, including the Tax Court. The Tax Court shall have no jurisdiction to enjoin any action or proceeding under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.

(b) Exceptions to Restrictions on Assessment.—

(1) Assessments arising out of mathematical or clerical errors.—If the taxpayer is notified that, on account of a mathematical or clerical error appearing on the return, an amount of tax in excess of that shown on the return is due, and that an assessment

(2) Abatement of assessment of mathematical or clerical errors.—

(A) Request for abatement.—Notwithstanding section 6404(b), a taxpayer may file with the Secretary within 60 days after notice is sent under paragraph (1) a request for an abatement of any assessment specified in such notice, and upon receipt of such request, the Secretary shall abate the assessment. Any reassessment of the tax with respect to which an abatement is made under this subparagraph shall be subject to the deficiency procedures prescribed by this subchapter.

(B) Stay of collection.—In the case of any assessment referred to in paragraph (1), notwithstanding paragraph (1), no levy or proceeding in court for the collection of such assessment shall be made, begun, or prosecuted during the period in which such assessment may be abated under this paragraph.

(g) Definitions.—For purposes of this section—

(1) Return.—The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or Clerical Error.—The term "mathematical or clerical error" means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return, and

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return.

§ 6213(g)(2)

[EDITOR'S NOTE: The timely filing of a "5th Amendment return" was recently upheld in the 9th Circuit in United States v. Kimball (No. 87-1392; 896 F 2d,1218, decided 2/26/90.) Kimball had been charged with "willful failure to file an income tax return" under section 7203. The Appeals Court ruled, in overturning his conviction, that the "5th Amendment returns" he'd filed were valid returns. SAP Headquarters warns that the filing of any return to the IRS, creates the presumption that you are liable for the tax imposed; the filing of a "5th Amendment return" will not stop the IRS from proceeding with collection activities based on information it obtains on its own. Breaking the presumption with an SAP "AFFIDAVIT OF REVOCATION AND RESCISSION", properly filed and recorded, ends any presumed requirement to file any IRS form, ever. We do not recommend, and never have, nor will ever, the filing of a "5th Amendment" 1040 return, or any illegal act.]

Bothke followed up the IRS's subsequent collection notices with strongly worded protests. This is what the Appeals Court said about these letters, at page 1414:

(17) The IRS failed to construe his protest as a request for abatement because he did not cite this statute [6213(b)(2)]. *But the notice to Bothke did not suggest that the IRS expected a statutory reference before it would conclude that the taxpayer's procedural rights under the statute had been triggered. Rather, it indicated that Bothke could challenge the correction merely by "let[ting] us know if you believe the balance due is correct."*

(18) More importantly, the statute does not require that the taxpayer put a legal classification on his protest. The Service, however, with its expertise, is obliged to know its own governing statutes and to apply them realistically. Bothke's strongly worded protest should reasonably have been construed as a request for abatement. It seems the IRS proceeded illegally even under its interpretation of the proper procedure to use for his tax return. [Underlines added.]

IRS agent Terry did not interpret Bothke's response letters as a "request for abatement" and went ahead

See BOTHKE Page 18.

with levy actions, taking over $3,400. Bothke then sued his employer, the employer's attorney, and agent Terry in Tort (civil suit for compensatory and punitive damages.)

DUE PROCESS RIGHTS DENIED

Bothke's Fifth Amendment due process of law rights were also involved. The Court ruled that he had this right at the administrative level under the Administrative Procedures Act, 5 U.S.C. 552-557 (see page 1411 of Bothke decision.) This law provides for a formal hearing presided over by an impartial decision maker. The Bothke court said this in comparing an administrative hearing to the usual court proceeding:

Formal administrative adjudication shares with judge- supervised trials two key qualities that diminish the need for individual suits to correct constitutional transgressions: (1) the impartiality of the decision maker, and (2) the reliability of the information forming the basis of the decision. See Butz, 438 U.S. at 512-13, 98 S.Ct. at 2913-14. Safeguards inherent in both forums foster these qualities.

In a formal administrative hearing, which is held independent of agency (IRS) control, the determination is made after hearing testimony and reviewing exhibits, which constitute the exclusive record of the proceeding. This is an a adversarial procedure and *allows cross-examination of witnesses, a challenge to the government's theories, and the sobering requirement of airing these theories in a public forum,* said the Bothke decision at page 1411. The decision-maker must explain his/her decision with finding and conclusions.

The Bothke court said that the above two qualities were "conspicuously absent" from agent Terry's activities, stating:

The role she played, if analogized to a traditional trial, was an amalgam of the roles of prosecutor, judge, jury, and marshal executing the JUDGMENT as well, as her duties included agency investigation and enforcement, judgmental functions, assessment of information, and execution of the levy. (Emphasis added.)

Apparently, the Court was not pleased with the quality and quantity of evidence agent Terry used as the basis for her actions, saying:

...the intra-agency file forwarded to her as a basis for her decision bears little resemblance to the complete and reliable record created and tested by the adversarial process in a trial or formal agency hearing.

WHAT THIS ALL MEANS TO US TODAY

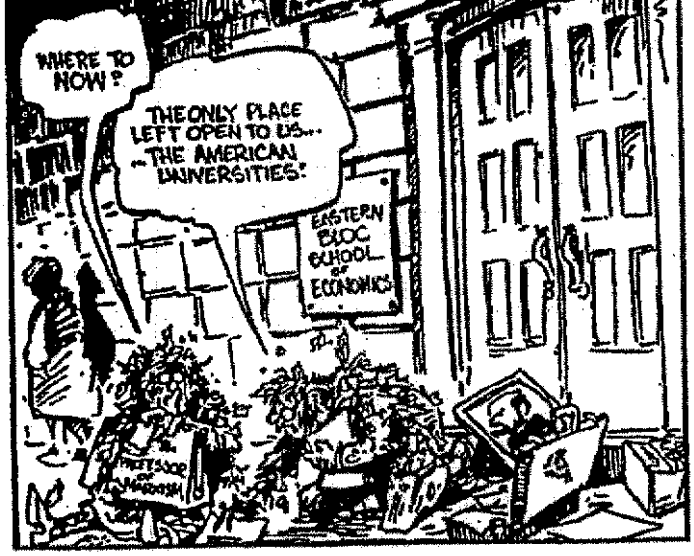
The Bothke decision delivered a severe drubbing to the IRS, blowing away their claim of "absolute" or "qualified" immunity for their personnel who are "just doing their job." The agent is fully protected from suit if he/she follows proper procedure and after being put on notice that the "taxpayer" believes there to be a problem or error in the IRS's allegations of money amount due, correctly interprets such notice as a request for abatement and follows proper procedure for that request.

It seems to me that if you have determined that under the Constitution and the laws of the United States, that you are not liable for the income tax, and did not file a Form 1040 and the IRS sends you a notice, such as a 90-day letter, you would be within your rights to send a strongly worded protest such as Bothke did. Think about this: If you did not file a Form 1040, which is the complete basis for a lawful assessment, how can the IRS then make a clerical decision that you are required to file this form, then file a Substitute For Return (SFR) for you, computing the tax owed as "zero" (0), then create a mathematical error and add penalties and interest? Does this not sound like a reasonable basis to ask for an abatement under section 6213?

Certainly you want all your response letters timely filed. Especially the 90 day letter response; this must be dated before the 60th day! If the IRS then proceeds, after you have given them notice, they will not be able to shield the offending agent(s). The IRS usually contends that the agent(s) has acted within the scope of their office, and that any suit you may bring against the individual agent(s) is actually against the United States. Asking the judge to dismiss your suit, because the U.S. did not waive "sovereign immunity", is the ploy the IRS uses almost every time. So it is imperative that you set your case in concrete, by proceeding properly and timely, having evidence in hand, not giving them an inch of "wiggle room" before you start a lawsuit. Why waste your time, energy, and money and possibly create bad case law, by having your suit dismissed because you haven't done your homework? We know enough now to properly proceed against the underhanded tactics of the IRS, that it is "shame on you" if you don't properly respond and prepare. We are clearly seeing the light at the end of the tunnel, and it shines like Liberty.

SUMMARY

All responses to an IRS Notice of Deficiency, when you've not filed a tax return, should be responded to questioning the validity of the Deficiency. Refer to, and include a complete copy of the Bothke decision, this will put them on notice of the improper procedures. Consult SAP Headquarters for suggested "VEHICLES..." responses.



VEHICLES TO CONVEY PATRIOTS TO YORKTOWN

[EDITOR'S NOTE: The numbers and prices have again changed from those of previous issues of RA, and are effective as of 6/1/90. When ordering by phone or letter, please refer to the date of the issue you are referring to, the VEHICLE... number and name, and cost. Because of production costs, we reserve the right to change the listed prices at any time without notice.]

SAP Headquarters has decided that it is in the best interest of the Fellowship to restrict the availability of our exclusive VEHICLES... to the Membership only. Also, effective May 1, 1990, we will provide our VEHICLES... in personalized form only. We will no longer offer non-personalized versions due to the low demand, and to ensure that you are using the proper response for the need at hand.

We have also divided the VEHICLES... into two sections: PERSONALIZED and INFORMATIONAL, as an aid in understanding their use.

To repeat: you must be an *SAP Fellowship* member to receive either the PERSONALIZED VEHICLE, or an INFORMATIONAL VEHICLE.

THE PURPOSE OF *SAP'S* EXCLUSIVE VEHICLES...: To accelerate the determined march to achieve individual liberty, we have developed the following documents for our *Fellowship* members' use. The PERSONALIZED VEHICLES... are merge-printed using our computer and letter-quality printer to type out a professional quality letter ready for your signature.

You may order these "VEHICLES..." by either: 1. write to *SAP Headquarters*, referencing the VEHICLE... by number(s) and name and supply the information needed for each (also your telephone number if we have questions), enclose the proper cost of the VEHICLE(s)... in cash or totally blank Postal Money Order; or 2. telephone *SAP Headquarters* M-F, 9 a.m. to 5 p.m. Eastern time, please have all of the information needed readily at hand.

PERSONALIZED VEHICLES...

#1. "AFFIDAVIT OF REVOCATION AND RESCISSION."

IMPORTANT: this "VEHICLE..." must precede all of the following VEHICLES... which are used in conjunction with it.

SAP recommends the use of this (6-page) legal instrument for every U.S. citizen and resident alien who has discovered the fact that there was NO legal requirement to file that first, and any subsequent, income tax return and wants to revoke that and all other Internal Revenue Service documents ever filed (W-4, etc.), and rescind their signature(s) therefrom. The affidavit is an allegation of "constructive fraud" that confronts the presumption of liability, head-on. According to Title 5, United States Code (USC) section 556(d), when jurisdiction is challenged the burden of proof reverts to the government agency, in this case, the IRS.

Two versions of the AFFIDAVIT... are available: 1. including a paragraph with the proper wording to revoke the original Form SS- 5 application for the Taxpayer Identification Number/Social Security Number by rescinding your signature therefrom (see *Reasonable Action*, November/December 1989, page 10 for an article on the legal requirement to obtain this number); 2. without the before-mentioned paragraph. Note: the retention of the TIN/SSN causes jurisdictional complications with both State and Federal taxing codes, i.e. Form W-4 entanglement for Patriots working for a wage. (If you have questions, call.)

Cost: 20 FRNs, same price for either version.

Info needed to personalize: your full name, street address, Social Security Number (whether you are revoking Form SS-5 or not); name of both U.S. Senators, name of Congressman from your district.

#2. TAXPAYER DELINQUENCY INVESTIGATION (TDI) LETTER RESPONSE.

This letter is used to respond to the IRS's TDI form letter(s) (typically Letter 1862SC), inquiring about the alleged non-filing of a tax return (typically Form 1040). We suggest that you respond as soon as possible to this, not wait till the last minute to respond. The IRS response time requirement is 10 days. If you miss this response time it is not fatal, it just moves the TDI into the next procedural phase and makes it that much more difficult to overcome. If you do not respond, then it is presumed that you have a filing requirement and that you are delinquent. (This VEHICLE... will help to lay the proper foundation for a criminal defense, if such becomes necessary.)

Cost: 8 FRNs personalized.

Information needed to personalize: your name, address, IRS Service Center (look on your IRS inquiry letter), date of TDI letter, the year(s) mentioned on the TDI letter, name and title of IRS person who signed the letter, name of IRS "person to contact" if any.

#3. FREEDOM OF INFORMATION ACT (FOIA) and PRIVACY ACT REQUEST LETTERS.

[SPECIAL NOTE: If you do not have the time, ability, and/or knowledge of procedure to properly keep track of your requests, *SAP Headquarters* will, for a fee of 25 FRNs per

See VEHICLES Page 20.

VEHICLES from Page 19.

letter, write the necessary FOIA/Privacy Act request letters you need and keep track of the response times. "Power-of-attorney" must be signed over to accomplish this. Please call (don't write) *SAP Headquarters* for more information.

These information and document request letters we have developed are constantly being updated to take advantage of the discovery of new (previously unknown) IRS documents you need for evidence. We are now making requests for documents that prove the IRS is misapplying the tax laws. All Patriots should use the FOIA to obtain their "Individual Master File" (IMF) every six months to keep tabs on IRS activity concerning them, (and possibly nip their action in the bud.) We recommend that you request only that/those document(s) pertaining to that particular part of the fraudulent assessment procedure that you are involved with. This tactic makes it easier for you to keep track of your requests and helps to show the needed investigative pattern in any subsequent fraud action against the IRS. This also counters the IRS's new tactic of assessment of large fees for "searches for documents." They know that this monetary obstacle bars many Patriots from gathering the much-needed evidence.

We suggest that unless you are expert at FOIA request submissions, you use our requests. Our vantage point as your information clearing house keeps us up-to-the-minute in IRS shifts in procedure and tactics. We can save you valuable time and money.

At present our requests deal mainly with civil assessment procedures. We are now in the process of developing requests targeted at the forms used by the Criminal Investigation Division (CID), this should be a tremendous help in stopping IRS's misuse of their criminal prosecution procedures.

Cost: 8 FRNs per request letter.

Information needed to personalize: your name and address; Social Security Number, (and date that the SS No. application was revoked, i.e. date affidavit [Vehicle #1] was executed); the years in question, (from the first year that an income tax return was not filed); your IRS Regional Service Center and District Office (if during any of the year(s) involved you moved, give old IRS offices).

#4. 26 CFR, SECTION 1.1441-5 "Claiming to be a person not subject to withholding."

This is a statement of citizenship (or residency, if you are a permanent resident alien) which is to be used in place of a Form W-4 Employees Withholding Allowance Certificate. This statement, drafted according to the above-noted federal regulation, is given to an employee's withholding agent (chief of payroll, etc.) This VEHICLE... comes with instructions, copy of IRS Publication 515 page 2, copy of 26 CFR section 1.1441-5, sample "letter of transmittal" the company should retype on their stationary or corporate letterhead.

Cost: 8 FRNs personalized.

Information needed to personalize: your name, street address, birth date, place of birth (hospital, home, etc., street & city), employer's name & address.

#5. RESPONSE TO EMPLOYER'S DEMAND FOR FORM W-4.

This VEHICLE... is ONLY used if or when a "statement of citizenship/residency" (VEHICLE... #4) is refused by your current employer as a replacement for any Form W-4 you may have previously signed and given to him. OR if you have previously filed a Form W-4 "EXEMPT", that you have let expire, and given your employer a "statement..." to replace it, but whose employer then demands that a Form W-4 be submitted to him/her. This VEHICLE... is a letter detailing the law and the facts involving the filing of IRS forms, and advises the employer to forward it on to the company's attorney.

Cost: 8 FRNs personalized.

Information needed to personalize: your name, address, your county, name of company, address of company, name and title of the head (president, chairman, etc.) of company only.

#6. RESPONSE TO FORM W-9 LETTER.

Many Patriots who are in business, or deal with brokerage houses, etc., have run into the problem (due to deceptive IRS instructions) of having that institution demanding a Social Security Number be given to them. If not provided, they threaten to "backup withhold" 20% from the business transaction payment and turn it over to the IRS. This VEHICLE..., a letter, has had some success in thwarting this IRS tactic.

Cost: 8 FRNs personalized.

Information needed to personalize: your name, address, county, name of the company, address, name and title of the head of the company only.

#7. RESPONSE TO A 90-DAY LETTER / NOTICE OF DEFICIENCY.

If you receive one of these letters, you MUST respond to it within sixty (60) days of the date on that letter; the "90 days" only applies if you are going to petition the Tax Court (which is not appropriate in responding to this letter -- See *RA* editorial, July/Aug '89, beginning page 20, and John Kotmair's and John Knox's *RA* articles in the March/April 1990 issue for background information.) If you receive one of these IRS demands for the (usually) exorbitant amount listed at the bottom line, and have not filed a Form 1040 for the year(s) listed, you are holding a fraudulent document in your hands. This VEHICLE... lays the legal groundwork for a fraud action against IRS agents, etc. Included in this VEHICLE... are instructions, response letters, copy of relevant court case.

Cost: 15 FRNs personalized.

The information needed to personalize must be called into *SAP Headquarters.*

#8. RESPONSE TO A 30-DAY LETTER / PROPOSED ADJUSTMENT.

The IRS has several different "30-day letters", sent out for similar reason: presenting a "proposed adjustment" to "your account" and giving you the options of paying up or disagreeing with the figures. The usual IRS cover letter is "Letter 2321-SC"

and the attached estimates of alleged tax owed and interest and penalty computations appear to be computer-printed. Because of the differences in the various IRS letters, we have prepared appropriate responses. It is best to call *SAP Headquarters* and have the IRS letter in front of you, to determine which response to send. This VEHICLE... is only appropriate if you have not filed Form 1040 returns for the year(s) listed on the IRS docu ments. This VEHICLE...questions the correctness of the assess ment, puts the agent(s) on notice of this fact, and asks what authority the "proposed adjustment" was prepared under. Included are instructions, letter(s) to the IRS agent(s) and copy of relevant court case.

Cost 15 FRNs personalized.

The information needed to personalize must be called into *SAP Headquarters*.

#9. 668-W (AND OTHERS) NOTICE OF LEVY RESPONSE.

This is a new VEHICLE... (introduced in *RA* Jan./Feb. 1990) that replaces the former #9. "Notice of Levy Response." After the publication of the RA Sept/Oct '89 page 10 story "SAP INFO STOPS LEVY! IRS RETURNS MONEY!!", we had many requests for assistance in preparing similar responses. We began work on a specific VEHICLE... for this and happily, even more information has now been discovered to make this one powerful response. (See John Sasscer's article *RA* Jan/Feb '90, page 4, detailing levy and seizure authority.) Included are: complete instructions, 1 ea. letter to the IRS employee issuing the document, 1 ea. FOIA request for documents supporting authority to issue the document, 1 ea. copy of relevant court case, sample "levy letters" for use as a guide in writing your own letters to those who might cooper ate with IRS actions.

Cost: 25 FRNs, personalized.

Information needed to personalize: your name, address, SSN (and the date you revoked it), your phone number if we have questions, the specific name of the Form 668 you received, name of issuing IRS employee, IRS address, IRS District, the year(s) listed on the 668.

#10. IRS NOTICE OF LIEN RESPONSE.

This VEHICLE... is also now possible because of newly discovered information about IRS authority and procedure. The IRS typically uses a "lien" recorded in a county courthouse, as a basis for the seizure and sale of real property. (See John Sasscer's article *RA* Jan/Feb '90, page 4, about seizure and levy authority.)

Included are: complete instructions, 1 ea. letter to the IRS employee issuing the document, 1 ea. FOIA request for documents supporting authority to issue the document, 1 ea. copy of relevant court case, sample "levy letters" for use as a guide in writing your own to those who might cooperate with IRS actions.

Cost: 25 FRNs, personalized.

Information needed to personalize: your name, address, SSN (and the date you revoked it), your phone number if we have questions, the specific name of the lien form you received, name of issuing IRS employee, the issuing IRS address, IRS District, the year(s) listed on the lien, serial number(s) of lien(s) listed.

#11. IRS COLLECTION SUMMONS RESPONSE.

New information concerning the IRS's procedures and authority to issue any type of "summons" to someone makes this VEHICLE... another powerful tool. The IRS typically sets a place, date and time for a meeting, directing the targeted citizen to bring along "books, papers, and records." This VEHICLE... response directly challenges the authority of the IRS to issue this "summons." (We suggest you obtain the "JAKE SNAKE" Informational VEHICLE... also, for suggestions of future strategies and tactics.)

Included are: complete instructions, 1 ea. letter to the IRS employee issuing the document, 1 ea. FOIA request for documents supporting authority to issue the document.

Cost: 15 FRNs, personalized only. Information needed to personalize: your name, address, SSN (and the date you revoked it), your phone number if we have questions, the specific name of the "summons" form you received, name of issuing IRS employee, the issuing IRS address, IRS District.

INFORMATIONAL VEHICLES...

#A. STATE FOIA REQUEST LETTER SAMPLES.

This is a collection of most of a year's worth (1989) of Maryland Public Information Act requests submitted to state agencies by David Baker. These requests may be of use to you in drafting your own letters and responding to the bureaucrats. Use this VEHICLE... in conjunction with the articles David has written (*RA* Sept/Oct '89, Jan/Feb '90). We hope these samples of requests are as helpful to you as they were fruitful to us, in gaining documents needed to expose the wrongful application of the tax laws by your state bureaucrats. Cost: 25 FRNs.

#B. TAX COURT WITHDRAWAL INSTRUCTIONS.

We have had requests for the procedure on how to withdraw from the U.S. Tax Court, from those who have petitioned that court, out of ignorance, before they executed an AFFIDAVIT OF REVOCATION AND RESCISSION. (There is no official procedure.) The instructions are based on the fact that you petitioned the court in error, that you are not "taxpayer" who has standing to petition that court. (See *RA* editorial, July/Aug '89, beginning page 20, for a full explanation of this.) You will have to follow the instructions provided and prepare your own documents for submission. Included in this VEHICLE... are complete in structions and sample letters (Exhibits).

Cost: 15 FRNs.

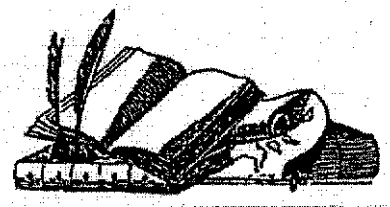
#C. JAKE SNAKE LETTERS PROGRAM FOR IRS CRIMINAL INVESTIGATION TARGETS.

These sample letters are for use in your response to any IRS inquiry for information, after you have executed an AFFIDAVIT OF REVOCATION AND RESCISSION. (Note:

See VEHICLES Page 23.

BOOK SHOP

The following books we believe to be essential references in the modern Patriot's library.



The following books are endorsed by the editors of Reasonable Action as being recommended to be read and used as references by all Fellowship members and every American Patriot! All prices show the shipping cost to be added. Street address needed for proper shipping. Orders will be accepted prepaid only, the usual cash or totally blank Postal Money Order only.

1990 Prentice-Hall Internal Revenue Code.

45 FRNs (Shipping, add 8 FRNs).

1989 Prentice-Hall Income Tax Regulations.

65 FRNs (Shipping, add 10 FRNs).

We consider this the best way to have a complete set of the Regs, because purchasing the Government Printing Office's 17 individual volumes would cost over 300 FRNs.

26 CFR Part 600 to End. (Rev. as of 4-1-89)

11 FRNs (Shipping, add 1 FRN).

This part is not in the Prentice-Hall Regs. It contains the important "Part 601 - Statement of Procedural Rules" and "OMB Numbers." We suggest you add this to your collect of "must have" references.

Noah Webster's 1828 Dictionary of the English Language

55 FRNs (Shipping, add 10 FRNs).

Noah Webster was a contemporary of many of the Founding Fathers and shared their ideals for the new Republic. To understand historical documents such as the Federalists Papers or Madison's Notes or even the U.S. Constitution itself, you must use the meanings of the "legal terms" as they applied in the time they were written. Noah's Dictionary is indispensable for the task. This reprint also has an essay detailing events of the early days of the new Republic and the vital part that Mr. Webster himself played in the drama.

Elementary Catechism on the Constitution of the United States For the Use of Schools.

by: Arthur J. Stansbury, 1828.

6 FRNs (Shipping, add 1 FRN).

This is a text which should be required reading in every school in the present day! (The teacher is required to instruct the students about the lawful changes since made to the Constitution.) We recommend you use this book to reacquaint yourself about how the United States used to be under strict Constitutional government. We also suggest it be used as a starting point to educate your children and/or grandchildren! (See p. 18-19 for "taxes.")

VALLEY OF DECISION

by: Dr. Sterling Lacy (1988)

5 FRNs (Shipping, add 1 FRN).

This slim volume is best described by quoting part of the "Forward" by retired Congressman Jim Jefferies: "VALLEY OF DECISION will take the reader on a fast-paced trip from the thoughts of our Founding Fathers to the thoughts of today's leaders. The ideas being projected today toward our youth, our families, and our country would literally have Washington, Franklin, Jefferson, Madison and the others spinning in their graves..." It also provides a primer on the "One Worlder" philosophy, helping to put the actions of the socialist/communist, the Fed and the IRS into perspective.

CITIZENS RULE BOOK

1 to 9, 3 FRNs ea.; 10 to 24, 2.50 FRNs ea.; 25+, 2.00 ea. FRNs. (Shipping prepaid).

This 60 page little book is the handiest way to carry the Liberty documents with you. You cannot play the game of life within the United States without the RULES!! It is divided into three sections: I. A HANDBOOK FOR JURORS, (the biggest secret kept by today's prosecutors); II. Give Me Liberty (Observations of Patrick Henry, William Penn, and Thomas Jefferson); III. Original Documents (Declaration..., Constitution, Bill of Rights. This book will give you more education about your country and rights than you ever received in school.

BELIEVE IT OR NOT...

(Newly updated SAP recruitment flyer.)
25 - 3 FRNs; 50 - 5 FRNs; 100 - 7 FRNs; 250 - 15 FRNs; 500 - 25 FRNs; 1000 - 40 FRNs (Shipping, add 15%).

This flyer, continually updated with the latest information, offers 10,000 FRNs to anyone who can prove the facts presented to be false. In print for over 8 years, we have never had a single fact challenged by the U.S. Government! IRS agents have been observed to turn purple with rage after reading this flyer! This is one of our best recruitment tools. Please order as many as you can afford and distribute them during the "tax season," anywhere crowds of people gather!

REASONABLE ACTION

Available to *RA* subscribers only.
1 to 9 3 FRNs; 10 - 15 FRNs; 20 - 20 FRNs; 30 - 25 FRNs; 50 - 40 FRNs; 100 - 60 FRNs. (Shipping, add 15%).

We recommend that you keep a complete set of these newsletters in a binder for reference.

Available:
Vol. III, No. 1 - Summer 1987;
Vol. IV, No. 1 - Winter 1988;
Vol. IV, No. 2 - Summer/Fall 1988;
Vol. V, No. 1 - July/August 1989;
Vol. V, No. 2 - Sept./Oct. 1989;
Vol. V, No. 3 - Nov./Dec. 1989;
Vol. VI, No. 1 - Jan./Feb. 1990;
and
Vol. VI, No. 2 - March/April 1990.
Vol. V, No. 3 - EXTRA EDITION 11/1/89

Specially priced: 1 - 1 FRN; 200 - 20 FRNs; 500 - 45 FRNs; 1000 - 65 FRNs.

VEHICLES from Page 21.

see VEHICLE... #2 for TDI response.) These are SAMPLE LETTERS ONLY! Do not use them word for word! Use them as a guide for tactics and strategies in creating material facts that can be used by a sharp Patriot defense attorney to tell the whole story to the average uninformed jury. (Material facts cannot be kept from a jury.) When this program has been properly utilized, the IRS loses its appetite to prosecute. (Note: do not engage any IRS Special Agent in conversation of any type! Do not answer verbal questions! If they have anything to ask you, tell them to put it in writing.)

Cost: 13 FRNs.

#D. COMMON LAW TRUST SERVICE

Patriots who want to make sure that their legacy goes to their heirs, can do so before death by the use of a trust. There are many kinds of trusts. We believe the one most beneficial to Patriots is the Irrevocable Common Law Trust. If you are interested and have some knowledge of trusts, send for the "Trust Questionnaire". If you have no knowledge of trusts, call *S.A.P. Headquarters* for free consultation.

#E. PARALEGAL SERVICES

Limited paralegal services are now available through the Fellowship. If you have some legal savvy and want to manage a civil action yourself, a paralegal can provide valuable expertise in preparing the necessary documents. Please call for details.

Reasonable Action

THE BARKSDALE REPLY! (dated May 22, 1990)

VEHICLES continued.

This is in response to your correspondence dated April 23, 1990, requesting a copy of Notice and demand.

We agree that Section 6303(a) requires the forwarding of such a notice within 60 days of making an assessment; however, the regulation does not require that the IRS maintain a printed copy of such notice on file. These notices are now computer generated and our record that such a notice has been issued is an IMF computer entry. Therefore, we have no copies of this document to provide you. I am enclosing a transcript of your account showing the dates the notices were issued.

The IRM 1(15)59.26 requirement to maintain Form 4084 for five years does not apply to the original issuance of the notice but when the notice is used to process a payment or other miscellaneous adjustments.

Signed: *B.B. Barksdale.*

Continued on Page 24.

RA from Page 23.

Nice try Betty, BUT --

It is quite obvious that the IRS's house of cards is falling apart. They have been playing this game of income taxation for years using smoke and mirrors, and Ms. Barksdale's answer just substantiates that fact. Notice she says *...the regulation does not require...IRS* [to] *maintain a printed copy...* She is right, there is no such requirement within 301.6303-1, so what is that suppose to mean? Evidently she saying that the IRS does not have to keep copies of documents. It is perfectly alright with us for the IRS to take that posture. The only problem they will have, is that it does not agree with the rules of evidence.

She indicates that now that the *...notices are...computer generated...* the record need only be the *...IMF computer entry.* She even was so gracious as to provide an unrequested "IMF MCC TRANSCRIPT-SPECIFIC," which we thank her for. The only problem that she is going to have, is, that the courts do not agree that such record keeping is up to speed:

Internal Revenue Service computer printout was inadmissible hearsay. Federal Rules of Evidence, rules 801(c), 802 - 805, 803(8)(B,C), 1005, 28 U.S.C.A.

US v. Ruffin, 575 F 2d 346.

Further, she states that *The...requirement to maintain Form 4084 for five years does not apply to the original issuance of the notice but when the notice is used to process a*[n]*...adjustment.* According to this statement the life of the notice is beyond five years. Which raises the question, if an adjustment never occurs does the document have to be maintained forever?

Finally, no where within her letter does Ms. Barksdale deny that Form 4084 is the "First Notice." A review of the reproduction of this form on Page 15, this issue, connecting it with the analogy of the above letter, reveals some very interesting facts. First notice that the form has a space for a "Document Locator Number," then read the first sentence. Isn't a "correction" on a "tax return" an adjustment? If you do not file a tax return can there be an adjustment?

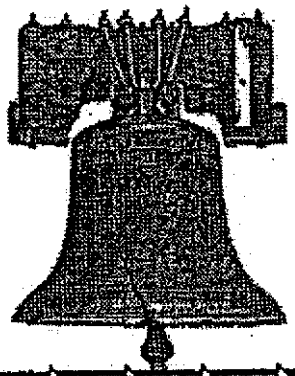
Oh Ms. Barksdale -- WHAT A TANGLED WEB WE WEAVE!!

Telling government officials and employees what they are doing wrong is a very negative approach, and it can only bring negative results. Such course of action does not even compel a response, and if one is forth coming, it is evasive and challenging to the accuser's credentials. But asking well thought out questions commands an answer, for if none is forth coming, it is a sure sign of guilt. Those who have something to hide, always eventually slip-up!

The IRS has become so large and impossible to control, that it is inconceivable that it can keep its dark secrets hidden. The more proper research and study; the more thoroughly thought out questions; the more suppressed secrets will come to the surface. Of course, the only way the *Cause of Liberty* will be served, is if this valuable information is spread far and wide, for that is-- *Reasonable Action!*

Save-A-Patriot Fellowship
Post Office Box 91
Westminster, Maryland 21157

Tel. (301) 876-6342



"If men, through fear, fraud, or mistake, should in terms renounce or give up any natural right, the eternal law of reason and the grand end of society would absolutely vacate such renounciation. The right to freedom being the gift of God, it is not in the power of man to alienate this gift and voluntarily become a slave."

Sam Adams

Samuel Adams was the Father of the American Revolution

Statement of Citizenship

Letter from member confirms SOC acceptance

+--+
| From the "Reasonable Action" Newsletter |
| |
| S.A.P. Fellowship |
| P.O. Box 91 |
| Westminster, MD 21158 |
| |
| 410-857-4441 (Voice) |
| 410-857-5249 (Fax) |
| info@save-a-patriot.org (E-mail) |
+--+

AN INCREASING NUMBER OF EMPLOYERS ARE ACCEPTING STATEMENTS OF CITIZENSHIP AND COMPLYING WITH THE LAW

To the Editor --

My name is Steven, and I live in New York. I am a Licensed Practical Nurse working for the local hospital in town. During the summer of 1992, 1 applied for a position with a local health center that was affiliated with another hospital. I learned of the position through an advertisement placed in a local newspaper which said that a part time or per diem position was opening for an L.P.N. and that applications were being taken at their office.

I filled out the application (minus a social security number) and dropped it off at the nursing office. Several weeks went by without a response, and since I was busy with several other private duty positions, I'd pretty much forgotten about the job. Several months passed and one afternoon I was in the grocery store and ran into the nurse that was in charge of the health center. She asked me why I had not applied for the job and I explained to her that I had submitted an application but had not yet been contacted for an interview. She asked me to give her a call at the office and said she would make sure that I was interviewed if I was still interested.

Within a few days the lady who does the hiring contacted me and asked if I could come in for an interview and "fill out the required paperwork." When I arrived at the office I went thru a small orientation. Then I filled out the forms but when she handed me the final form to fill out it was a W-4. I told her that I was not required to file this form and that I did not have a social security number. She said "ALL" Americans are required to file this form so that the proper amount of taxes can be withheld each week. I remained calm and polite but informed her that she was mistaken. I explained that not all Americans were required to do this and that in fact, compliance was voluntary. She was becoming visibly upset with me. I thought it would be wise to explain that I had the documentation she would need to accept my claim and

Exhibit 11

the suggested letter of transmittal supplied by S.A.P. I went thru each and every page and explained to her what it all meant. Then I advised her that the burden of responsibility for these claims rested with me, and that regardless of what she believed, the law required her to forward my "statement of citizenship" to Philadelphia so that they could make a determination. I went on to explain that she would be obeying the law and that there was no reason to fear any repercussions for doing so. I thought that it was important to carefully explain the "Letter of Transmittal" to make sure that it was directed to the I.R.S. in Philadelphia ONLY.

It never seems to fail. No matter how many times you explain this to someone, they will call or write the local office of the I.R.S. instead of Philadelphia. The local office will immediately give the employer incorrect information and then the employer tells the employee, "I told you so."

She was unsure of what to do even after I explained the correct procedure, so she forwarded my paperwork to their main office it the hospital in New York to dump the problem on them. Just as I thought, the Finance Director at the main office ignored the requirements of the law and called the local IRS office to ask what they should do.

Naturally they told her that I was wrong and that I was "required" to file the same W-4 as everyone else.

Well, in the meantime I started to work for the health center. 'They made the standard deductions without my permission, and I waited to hear from the home office about the disposition of my statement of citizenship not realizing they had contacted the local IRS. It was a month later before the office manager finally informed me that the "Statement of Citizenship" and related paperwork was invalid and that she was under pressure from New York to get a signed W-4 with a social security number. I delayed as long as was possible while trying to explain to the director that she had made a mistake by not following the directions I had given, and that this could all be resolved by simply sending the letter of transmittal to the Philadelphia Office of the IRS. She refused, and kept taking money from my paycheck each week.

I decided it was time to call Save-A-Patriot. After talking with Irma in the National Workers Rights department, she wrote a letter to the New York office to explain the law. About a week or so later I received an inter-office memo from the home office with a check for $224.00 and a letter of apology from the Finance Director. She said that she had never encountered a situation such as this, and was returning what they had deducted up until that time to cover state and federal taxes. Not only did I receive a complete refund, but I am currently receiving my full paycheck with no deductions and they no longer want a W-4 or a social security number.

[END]

Back to Reasonable Action...

Instruction Sheet for Execution of Power-of-Attorney Forms to be Used for the SSA

TO: [redacted]

According to Code of Federal Regulations, Power-of-Attorney (POA) forms are only good for sixty days. Any request or response made on your behalf using a Power-of-Attorney form that was executed sixty days prior to the request or response, will not be honored by the government, in this case, the Social Security Administration (SSA).

Please use this master to photocopy three (3) forms. Execute the photocopied forms, in blue ink, before a notary and return them to our office immediately. Also, please note the date of execution on your calendar, and send us three (3) executed original Power-of-Attorney forms before the 60 day period has expired. Continue this throughout the year so that we can maintain a supply of current forms in your file.

The information that will be requested from the Social Security Administration is the SS-5 Application for Social Security Number. We hope to use the information on the application to lay the ground work for challenging your agreement with Social Security and once and for all sever you from the Social Security Number, subsequently the Social Security Administration and, the Internal Revenue Service.

Presently, the SSA is charging a 7.00 FRN fee for searching for and copying the original SS-5 application. Please enclose a Money Order made out to the Social Security Administration, from yourself, with your signed POAs in order to expedite this action. **Cash will not be accepted, the additional 75¢ cost and time spent by the staff to obtain Money Orders for each person cannot be absorbed by the Fellowship!!!** If you have already sent in the 7.00 FRN Money Order search and copy fee for your SS-5, please disregard this portion of these instructions. Had you executed an Affidavit of Revocation and Rescission please send in two (2) copies and the cover letter to the Secretary of the Treasury, one for our SSA file and one for the Commissioner of the SSA.

If you are not sure if your membership has expired, please do not proceed as above, but contact the office about clarification of your status before requesting this work to be done. If everything is in order please provide your membership I.D. # in this blank _____ and return this form.

Yours in and for LIBERTY,

Thurston, SSA-Caseworker
SSA-POA Dept.

Exhibit 12

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.

This form will give John B. Kotmair, Jr., of Post Office Box 91, Westminster, Maryland 21158, in his capacity as Fiduciary of Save-A-Patriot Fellowship, permission to investigate this matter for me.

I, [redacted] a member of the Save-A-Patriot Fellowship, do hereby give to John B. Kotmair, Jr., the Fiduciary of Save-A-Patriot Fellowship, permission to represent, inquire of and procure from the Social Security Administration any and all of the records, pertaining to me maintained within any Social Security Administration Office.

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 FLORIDA, County of SARASOTA, on this 30TH day of DECEMBER A.D, 1994.

Notary Public /ARLENE N AUCLAIR

My Commission Expires On: [redacted]

ARLENE N. AUCLAIR
MY COMMISSION # CC 212710
EXPIRES: July 6, 1996
Bonded Thru Notary Public Underwriters

To:

[redacted]

August 29, 1994

SUBJECT: 26 Code of Federal Regulations Part 1, Section 1.1441-5,
"Claiming to be a person not subject to withholding."

In accordance with Chapter 3, Subchapter A of the Internal Revenue Code (26 USC), Code of Federal Regulations (26 CFR) Section 1.1441-5, and related IRS Publication 515 I hereby provide you with written notice in duplicate that I am a citizen/resident of the United States.

As stated in Publication 515, the accompanying notice in duplicate will relieve you of any duty or liability to withhold any monies from any and all payments due me.

I am a citizen of the State of Florida, and of the United States of America. I am not a non-resident alien, foreign corporation, officer, director, stockholder or employee of a foreign corporation. Nor am I receiving and/or making payments for another person as a broker and/or a nominee.

The attached duplicate copy of the "Statement of Citizenship," along with a letter of transmittal, must be sent to the Internal Revenue Service Center in Philadelphia, Pennsylvania only, for verification as instructed in 26 Code of Federal Regulations, Section 1.1441-5.

Sincerely yours,

[redacted]

Enclosures:
Copy, in duplicate, Statement of Citizenship.
Copy of page 2 IRS Publication 515.
Copy of CFR 26, Section 1.1441-5.

[redacted]

Mr. Frank Newman, Secretary
Department of the Treasury
1500 Pennsylvania Ave. N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

Would you be so kind as to forward the enclosed asseveration to the appropriate governmental office(s) so that proper notice can be taken thereof its content, and suitable action to comply with its mandate therewith.

If I do not hear from you, or any of your delegates, within ninety days (90), I will presume that my statements are correct and that you do not have any rebuttal.

Thank you.

Sincerely,

[redacted]

cc:
copy retained

STATEMENT OF CITIZENSHIP
(in duplicate)

Name: [redacted]
address [redacted]

To: [redacted]

I am a citizen of the United States of America by birth.

I was born in: [redacted]

This statement is provided in duplicate to conform to the provisions of internal revenue regulations which will relieve a withholding agent of any duty to withhold money from payments to a United States citizen and/or resident. The withholding agent is also relieved of any liability, pursuant to the regulations, because money is not withheld.

"Section 1.1441-5 Claiming to be not subject to withholding.

"(a) Individuals. For purpose of Chapter 3 of the code, an individual's written statement that he or she is a citizen or resident of the United States may be relied upon by the payor of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate."

The duplicate copy of this statement of citizenship, along with a letter of transmittal, must be sent only to Internal Revenue Service Center, Philadelphia, PA 19255, by the withholding agent, pursuant to 26 Code of Federal Regulations section 1.1441-5.

Thank you,

_____
[redacted]

Subscribed and sworn to before me, a Notary Public, for the State of_____, County of_____, this _____day of _____, 19_____.

_____

Notary Public

My Commission Expires On: _____.

Affidavit of Revocation and Rescission Instructions

Read the following very carefully before using this *affidavit*:

1. Be aware that once you file this *affidavit* you will no longer be eligible for Social InSecurity Benefits. As we all know, if you are 40 years of age or younger it is very questionable whether you will receive any "benefits" anyway.

2. **THE FOLLOWING IS OPTIONAL:** Before sending this *affidavit* to the Secretary of the Treasure, **IF** you want to make it part of the public record, take it to your county courthouse and have it recorded among the books that contain miscellaneous documents, (**note:** some states do not have such books), and ask the clerk for a "true test copy" of it. When you receive the true test copy, take a lead pencil and lightly blacken the raised seal of the court, then make copies of this to send with the enclosed *cover letter* and the *affidavit*. (Use the *cover letter* supplied with the *affidavit* **only**.) You may send copies of the *affidavit* and *cover letter* to others as the case may require, but simply state that it is for their information only. Never quote law, court cases, or anything else. The less you say the better, let the *affidavit* talk for you.

3. Any future correspondence from either the state or IRS plunderers should be answered with S.A.P. Vehicles. All initial correspondence from the Internal Revenue Service has to contain a Privacy Act notice (Notice 609) and/or the applicable state requirement stating the authority the state agency has to accost you. Any absence of such a statement of authority should be, before doing anything else, challenged.

4. You cannot file an IRS Form W-4 with an employer, or any other IRS or state income tax forms, once you execute and forward the *affidavit* to whomever. In fact, the filing of any IRS or state income tax form(s) with anybody will invalidate the *affidavit*. In lieu of the Form W-4 you would use a Statement of Citizenship pursuant to 26 CFR 1.1441-5.

5. This *affidavit* must be sent U.S. Postal Service Certified Mail Receipt Requested (to the Secretary only). If not you will not be able to use Vehicles #1(a) and #1(b).

If you have any questions about the above, or any other situation or condition that might come to mind or arise out of the use of this *affidavit*, please telephone S.A.P. headquarters (410) 857-4441. Do not write as our time to answer mail is becoming more limited as time goes on.

NOTICE: Along the line of this *affidavit*, we also issue an affidavit to establish the date you purchased our video presentation "Evidence That Demands Action." If you rely on the facts contained within this video presentation, and if the Internal Revenue Service charges you criminally for the year the purchase was made in, or any year thereafter, the video presentation becomes a material fact relating to your intent and cannot be kept from the jury.

Save-A-Patriot Fellowship
Post Office Box 91
Westminster, Maryland 21158
Tel: 410-857-4441
FAX: 410-857-5249

August 19, 1994

[redacted]

Fee for the enclosed: 2 Affidavits of R.&R. (35.00 each), Statement of Citizenship (25.00).

Certified Mail () costs:
Total fee: 95.00

Please return this bill with your payment. If this bill is not returned, your payment will not be credited. Please make your payment with cash (FRN's) or a totally blank U.S. Postal money order Thank you.

Suggested "letter of transmittal" per 26 CFR section 1.1441-5:

[YOUR COMPANY LETTERHEAD]

[DATE MAILED]

Certified Mail No._____

Internal Revenue Service Center
Philadelphia, PA 19255

Dear Sir/Madam:

I am enclosing herein the duplicate copy of the "Statement of Citizenship" received from [NAME OF THE PERSON SUBMITTING THE STATEMENT], as directed by Code of Federal Regulation 26 CFR 1.1441-5.

If I do not receive a written detailed determination from your office within thirty (30) days of your receipt of this letter, I will continue to obey the above referenced law as it is written.

Sincerely,

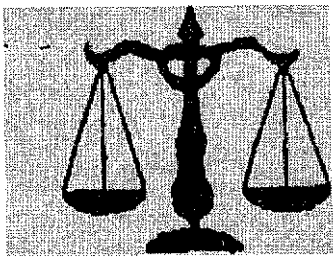
[RESPONSIBLE CORPORATE OFFICER]

Enclosure:

Copy of duplicate "Statement of Citizenship."

cc:

[person who submitted the "Statement..."]



NATIONAL WORKER'S RIGHTS COMMITTEE

12 Carroll Street, Suite 105
Westminster, Maryland 21157
Tel. (410) 857-5444
Fax (410) 857-5249

Certified Mail No.

May 2, 2005

Re: Withholding from [redacted]

To Whom It May Concern:

[redacted] has authorized us, via his power-of-attorney (copy enclosed), to write to you regarding his having terminated his Form W-4 ("Employee Withholding Allowance Certificate"). [redacted] recently informed me that he sent a "termination of voluntary agreement" notice to you, which you will soon receive, if you haven't already. It is my hope that by informing you of the law on this matter, you will discontinue withholding monies from [redacted] pay, which would be the legally correct thing to do, as I shall show herein.

I realize that there is much confusion in this area of the law. Indeed, even former Federal District Court Judge Harry Claiborne admitted that, while he was a federal judge, he knew nothing of federal tax law, yet decided tax cases.' In *Bursten v. US*, 395 F.2d 976, 981(5th Cir., 1968), the Court acknowledged:

> *"We must note here, as a matter of judicial knowledge, that most lawyers have only scant knowledge of the tax laws."*

Be this as it may, we here at the *National Workers' Rights Committee* have all the tax laws and regulations (state and federal); and the Internal Revenue Manual on computer disks (updated regularly). We have been researching this area of law for over 21 years. Our substantial research of the law conclusively indicates that when a citizen who works for a living in the 50 states of the Union, submits a "Termination of Voluntary Agreement," the legal requirement to withhold monies from payments to said citizen – such as [redacted] ceases to exist.

Many employers–and indeed, even accountants and attorneys–are quite unaware that a withholding agreement can be terminated at any time, pursuant to 26 Code of Federal Regulations § 31.3402(p)-1 (b) (2), which states in relevant part:

> § 31.3402(p)-1 (b) (2) *"An agreement under section 3402(p) shall be effective for such period as the employer and employee mutually agree upon. **However, either the employer or the employee may terminate the agreement prior to the end of***

Exhibit 13

such period by furnishing a signed written notice to the other." [Emphasis added]

A reading of Internal Revenue Code § 3402 (as well as IRS Publications 15 (Circular E, 1679 and 1281) oftentimes causes people to believe that withholding is required of all employers, regardless of the existence of a withholding agreement, but this is not so. To begin, if withholding *were* required by law in all instances, then no such withholding agreement would be required in the first instance–the employer would just do it. But this is not the case. Indeed, the terms "employer," "employee" and "wages" are technical terms defined within this chapter of the Internal Revenue Code, which only includes certain individuals for whom withholding is mandatory. Conversely, this does not include those workers such as [redacted] for whom there is no valid Form W-4 in effect; in other words, for the purposes of the law [redacted] is not an "employee" upon whom withholding is mandatory (once Notice is served). Thus, under § 3402, "employers" are mandated to "deduct and withhold" only from the "wages" paid by that "employer."

§ 3401 defines "wages" in relevant part as follows:

§ 3401. Definitions

(a) *Wages.--For purposes of this chapter, the term "wages" means all remuneration ... for services performed by an employee for his employer, ...*" [Emphasis added]

And the word "employee" is defined thusly:

§ 3401. Definitions

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

That definition is not expanded upon anywhere else within the Internal Revenue Code. [redacted] is not an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. Neither is [redacted] an officer of a corporation. Further, there is no information suggesting that he is or might be within any one of the foregoing classifications wherein withholding is mandatory (in the absence of a valid Form W-4).

It is also worth noting that the IRS regulations governing withholding state no less than 5 times, that the Form W-4 is a *request* for withholding. For instance:

§ 31.3402 (p)-1 (b) Form and duration of agreement. (1)(i) *Except as provided in subdivision (ii) of this subparagraph, an employee who desires to enter into an agreement under section 3402(p) shall furnish his employer with Form W-4*

(withholding exemption certificate) executed in accordance with the provisions of section 3402(f) and the regulations thereunder. The furnishing of such Form W-4 shall constitute a request for withholding.[1]

I might also point out that any income taxes [redacted] owes can be paid pursuant to Chapter 2 of the Internal Revenue Code, whereby he would file quarterly much the same as any contractee or self-employed person who owes an income tax.

Notwithstanding being informed of the foregoing, some companies, due to their concerns over inadvertent error in IRS matters, choose to go out of their way documenting their compliance with the law, oftentimes requiring their workers to supply a "Statement of Citizenship." [redacted] has informed me that he has provided you with one. This document indemnifies the withholding agent from any penalties arising from not withholding Subtitle A income tax.

If someone, such as an accountant or a lawyer were to advise withholding anyway, you should ask him to cite the law that requires such. He shall not be able to cite any written statute that requires this in the case o[redacted] Moreover, legally incorrect advice could result in constructive conversion, which is unlawful. In any event, if such individuals are not convinced that the contents of this letter are correct, I would ask that they call me, so that we might discuss this, provide copies of the relevant laws, etc.[2] After all, it behooves every citizen of this country to abide by our written laws. Or, if you just have a few questions yourself, please do not hesitate to call me at, (410)857-5444.

I thank you for your time and anticipated compliance with [redacted] request to discontinue unauthorized withholding.

Thank You,

for
John B. Kotmair, Jr.
Director,
NWRC
Paralegal Division

James W. Kerr,
Investigator

[1] Emphasis mine.

[2] Furthermore, you can verify the statutory and regulatory cites at any law library; or on the Internet at several cites, including <irs.gov> and <findlaw.com>.

NATIONAL WORKER'S RIGHTS COMMITTEE
Paralegal division
12 Carroll Street
Westminster, Maryland 21157
(410) 857-5444
Fax (410) 857-5249

Instructions for EEOC and DOJ complaints:

We have either found your name in our computer and found that you could be in the process of filing complaints with the EEOC, or the U.S. Department of Justice, against your employer for not accepting the documents related to the Statement of Citizenship, or you have contacted us to assist you in such a matter.

This letter is being sent as there is a change in tactics at this time. Please take notice that if you are in the process of filing an EEOC complaint, and it has either:

A. not been accepted yet, or;

B. no response has come yet:

Please immediately inform the EEOC of your giving Power of Attorney to NWRC and its Director John B. Kotmair, Jr. An original of the POA being sent by you immediately will expedite this process.

This is to facilitate a connection between you and NWRC for specific litigation against EEOC. If your case is past points A or B, you are probably already filing a complaint with the Department of Justice. In this case, please inform the DOJ that NWRC and Mr. Kotmair have been appointed by you as you POA in this matter.

The POA master used by NWRC to write to your employer initially will suffice as the POA to be presented in such notification either by your letter or you may indicate this option on the complaint forms sent to you by the Agency.

For those about to file Agency complaint forms, these forms should be sent to NWRC along with three POAs so that we may file the complaint, pursuant to your POA, from the beginning of the process.

We are going to continue to use our initial complaint letter to trigger the Agency to send you the complaint forms.

Should you have any questions pertaining to the process of giving power of attorney, please do not hesitate to call.

Exhibit 14

Q. So the affidavit would simply state that they are a citizen of this country?

A. As it's -- well, it's cited -- it used to be in the 515 publication where it would tell them that, you know, that's what you do.

And it comes out of 1441 and it says, if you're a resident or a citizen of the United States and not subject to withholding, you give the withholding agent a statement of citizenship, and he's relieved from withholding

Exhibit 15

the tax.

Q. Is this a form that you prepared or is this --

A. No. It's from the Internal Revenue Service regs. It's from the regulations.

Q. The regulations don't have forms.

A. Oh, no, there's no form. It just

tells them to do a statement of citizenship, so it's just a statement saying that they're a citizen.

Q. That's what I'm asking.

A. Right.

Q. Is it -- you're referring to the regulations, but this is -- this isn't a federal form that they're submitting.

A. No. The regs tell them to just tell them, the withholding agent, that you're a citizen.

Q. Right.

So it's an affidavit that you -- did you prepare the affidavit?

A. No.

Q. It's a statement. I'm sorry.

A. It's just a statement. It's a statement that they're a citizen.

Q. Who prepares the statement?

A. I don't know if they do them at the office or not, because normally we just tell people it's a statement.

Q. You just tell them to prepare a statement?

A. Yeah. It's just a statement saying that we're a citizen.

Q. But you don't know if the National Workers Rights Committee, if they prepare them?

A. I don't think the National Workers Rights Committee would do that. No.

Q. No?

A. They would answer any questions that might arise from it just by citing the law itself.

In other words, if a question arose, the National Workers Rights Committee would

probably send the regulation, a photocopy of the regulation showing the statement of citizenship to the employer. What the employer does with that is his business.

Q. They would send it directly to the employer?

A. If the employer has any questions, right, then -- and the member would ask us to do that for him.

Q. So is it incumbent upon the individual fellowship member to write the statement themselves?

A. I couldn't answer that. I don't know if there's a statement there or not.

Q. Okay. I think I asked you that.

A. Yeah. But any which way, it's merely a statement that I'm a citizen.

Q. No. I understand.

A. Right.

Q. So really the National Workers Rights Committee with respect to these statements would really just be answering

questions if there was a dispute between the employer and employee?

A. Well, a dispute, if any questions arise. Well, I guess the word "dispute" could be used clear across the board as it's descriptive. It doesn't mean that we're going to interfere with the employer's business.

Q. I understand.

A. The employer, you know, if they have any questions about this, then we send them the regulations. That's all it amounts to.

Q. So it would really just be responsive to questions --

A. To any questions that the employer

would have about the statement.

Q. Or the member.

A. Well, the member wouldn't have any or he wouldn't have sent the statement of citizenship to his employer or given it to him, one or the other.

Q. But it would be assisting him in following up in the procedures in order to send

the statement of citizenship --

A. It's merely explaining the law --

Q. -- to the employer?

A. -- by giving them the law.

Q. But explaining it to the employer.

A. Yeah.

Q. Okay.

A. The employer says, you know -- you know, most people have a mindset, including, you know, I mean, when we lecture about the

law. We have these lectures which -- you saw Just the Facts. And sometimes -- it's from the mindset that you have all your life -- it takes some people to sit there three or four times through that before they start saying, you know, I understand what you're talking about.

So if an employer all his life has done this and he thought that's all there is and you show him the law that says opposite, then they're going to say, Whoa, what is this?

And that's all that is.

So we send them the law and explain it

to them.

Q. And if there --

A. They might even -- the National Workers might even include 42405s, title 42, section 405, showing about the numbers, you know. They might even show them that because most people think that you're required to have a

social security number when you're not.

Q. If there was a dispute between the employee and employer over this or the social security --

A. No. We don't get involved in any dispute as such.

In other words, if the employer and them -- if the employer says, I don't want to fool with this, that's none of our affair.

Q. But you have represented employees in administrative hearings before administrative law judges; is that right?

A. But that's not employers, nothing to do with employers.

Q. Well, between the employer and

employee?

A. No. Never.

Q. No, you haven't?

A. Not that I recall.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 11, 1997

MICHAEL K. LEE, Complainant, v. AT&T, Respondent.	)))) 8 U.S.C. §1324b Proceeding) OCAHO Case No. 97B00031)))

ORDER EXCLUDING COMPLAINANT'S REPRESENTATIVE

I. *Background*

On November 25, 1996, Complainant Michael K. Lee (hereinafter referred to as Complainant or Lee) filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against AT&T. The complaint is not signed by Lee, but rather by John Kotmair, pursuant to a power of attorney signed by Lee on October 22, 1996, authorizing, *inter alia*, Kotmair to represent him before an Administrative Law Judge.

On January 16, 1997, Lucent Technologies, Inc. (hereinafter Lucent) filed an answer to the complaint, asserting in the answer that it has been divested by AT&T, but that it was the employing entity of Complainant. Although it did not seek formal substitution, Lucent asserts that it is the proper respondent in this matter. The answer admits certain allegations of the complaint and denies certain allegations. For example, the answer admits that Lee worked for Respondent from July 15, 1991 to August 2, 1994, but asserts that he was terminated due to unsatisfactory conduct (insubordination), not because of his citizenship status. The answer further states that the complaint should be dismissed be[illegible]o

Exhibit 16

state a claim upon which relief may be granted, the complaint is untimely, and there is a lack of subject matter jurisdiction.

Since the answer raises an issue as to timeliness, in the First Prehearing Order issued on January 17, 1997, I ordered Complainant to file with the Court any information showing the date he received the determination letter from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) in which OSC informed Complainant that it would not file a complaint on Lee's behalf, but that he could file an action directly with an Administrative Law Judge. On February 6, 1997, Complainant filed a reply to the First Prehearing Order, asserting that, although OSC's determination letter is dated February 12, 1996, Complainant did not receive such notification from OSC until August 28, 1996.

On January 20, 1997, Complainant served a motion to strike the answer to the complaint filed by Lucent and to oppose any further responses from Lucent until Lucent proves that it was divested from AT&T prior to Lee's termination and that the decision to fire Lee was made by Lucent, rather than AT&T. On January 30, 1997, Lucent filed an opposition to the motion to strike. On February 11, 1997, Complainant served another motion to strike Lucent Technologies, and on that same date served a motion for default judgment because AT&T had not filed an answer to the complaint.

In the Second Prehearing Order, issued on February 24, 1997, I ordered Complainant to provide a supplemental response concerning its complaint allegations. I noted in that Order that although the complaint asserted that he was fired on February 6, 1994, in his October 19, 1995 letter to the OSC, he states that he was fired on August 2, 1994. I ordered Complainant either to amend his complaint or to explain the apparent inconsistency. Further, I ordered Complainant to submit a copy of the written notification from Respondent terminating his employment and to state whether the oral or written notification should be considered the date that he was fired. He has not done so. Complainant also was ordered to state the date(s) that AT&T refused to accept the documents specified in the complaint. Since Complainant had named AT&T as the respondent in the lawsuit and was seeking a default judgment against AT&T, I ordered Complainant to address the question of whether service on AT&T had been properly effectuated and to submit any evidence in its possession showing that AT&T was doing business at

1111 Woods Mill Road, Baldwin, Missouri 63011 on December 22, 1996, and that Norman Howard is an employee of AT&T authorized to accept service for AT&T. To date, Complainant has not provided that information.

On March 5, 1997, Complainant served a pleading entitled Response to Second Prehearing Order and Second Request for Default Judgement. Contrary to its title, it was not responsive to, and did not provide the information required by, the Second Prehearing Order. Since the pleading was not responsive to the Second Prehearing Order, and since a motion for default judgment already had been filed, in an order issued on March 6, 1997, I struck Complainant's pleading. I also reminded Complainant that the information required by the Second Prehearing Order must be filed by March 11, 1997, and if he failed to do so, appropriate sanctions might be imposed pursuant to 28 C.F.R. §§68.23 and 68.37. Further, I ordered Complainant not to file any further pleadings until a proper response was made to the Second Prehearing Order.[1]

Despite the clear directions provided by the March 6, 1997 Order, on March 11, 1997, Complainant filed a Motion for Findings of Fact and Conclusions of Law, which, contrary to its title, merely sought reconsideration of the Order Striking Complainant's Pleading. That pleading also was not accepted for filing.

In the Third Prehearing Order issued on March 12, 1997, I noted that I had allowed the parties to conduct limited discovery on the issues raised by the pending motions filed by Complainant, as well as the defenses raised by Lucent concerning lack of jurisdiction, lack of timeliness in filing the complaint, and improper service. I specifically gave leave to Lucent to file a motion addressing the issues raised in its answer to the complaint, as well as whether Lucent is properly substituted as the proper Respondent. I noted that Complainant's failure to comply with the Second Prehearing Order invited the imposition of sanctions or a possible finding of abandonment. Complainant specifically was ordered not to serve any new motions **or pleadings** until I adjudicated the pending motions, and

[1]When dealing with a party who persists in filing frivolous pleadings, it is sometimes necessary to enjoin that party from filing further pleadings without prior permission. *See, e.g., Brock v. Angelone*, 105 F.3d 952, 953 (4th Cir. 1997) (federal circuit court prohibits inmate from filing further appeals unless district court certifies appeal as having some arguable merit).

I stated that any pleadings served in violation of the Order would not be accepted for filing.

Despite this very clear ruling, on April 2, 1997, Complainant served a pleading entitled Answer to Judge Barton's Third Prehearing Order, which was submitted in direct defiance of my prior orders. Consequently, that pleading was stricken by my Order dated April 7, 1997.

Because Complainant's representative continued to violate my orders, I decided to schedule a telephone prehearing conference. On April 8, 1997, both Mr. Goemaat, counsel for Lucent Technologies, and Mr. Kotmair's office were informed by telephone that a telephone conference would be held at 9 a.m. on April 10, 1997, and on that same date a written order was issued directing both Mr. Kotmair and Mr. Goematt to appear for the conference on April 10. The April 8 Order informed the parties that the conference would address Complainant's compliance with past orders, Complainant's submission of unauthorized pleadings, as well as Mr. Kotmair's competence to practice before this tribunal, his compliance with the standards of conduct, and his continued participation in this case. Further, the parties were warned that if a party's representative failed to attend the conference, sanctions might be imposed on the party and/or representative, including possible exclusion of the party's representative.

On April 9, 1997, at 2:34 p.m., my office received by FAX a pleading from Complainant entitled Response to Order Directing Parties to Appear for Telephone Prehearing Conference, in which Kotmair stated that he was unavailable for the prehearing conference on April 10, 1997, and, citing 28 C.F.R. §68.13, requested a reasonable notice of at least seven days. This pleading is more significant for what it did not say than what it did say. First, it is not a motion or even a request for a postponement. Moreover, Mr. Kotmair did not state that he had a previous engagement for 9 a.m. on April 10, or that he would not be in the office at that time. Rather, he asserted that because of prior commitments and an already pressing schedule, he needed more notice.

Contrary to Kotmair's suggestion, the Rules of Practice do not require seven days notice of a prehearing conference and, in fact, do not prescribe any specific number of days notice. Rule 68.33 provides, in pertinent part, that a "judge may direct the parties or their

counsel to participate in a prehearing conference *at any reasonable time* prior to the hearing." (emphasis added). Sometimes prehearing conferences need to be scheduled on short notice, and, in this case, considering the propensity of Complainant's representative to violate orders, I concluded that this issue needed to be addressed very quickly. Moreover, Kotmair failed to show why he could not attend the conference at the scheduled time or why the notice was unreasonable.

Therefore, after receiving the "Response," at my direction, my secretary contacted Mr. Kotmair's office on the afternoon of April 9, 1997, and spoke to his secretary Bonnie and informed her that the conference would proceed as scheduled on April 10 at 9 a.m. Mr. Kotmair then came to the telephone. At that time he did not state that he had another engagement that prevented his attendance, but simply angrily informed my secretary that he would not attend the conference and hung up the telephone.

On April 10, 1997, at 9 a.m., my secretary placed a telephone call to Mr. Kotmair's office that was answered by his secretary Bonnie who stated that Mr. Kotmair was "unavailable" for the conference. When asked whether he was present in the office, she repeated that he was unavailable. My secretary informed her that the conference would proceed without Mr. Kotmair. This telephone conversation was recorded by the court reporter.

The conference then proceeded with Mr. Goemaat present as counsel for Lucent. The conference lasted approximately thirty minutes. At the end of the conference, I ruled that Mr. Kotmair had shown by his past actions, including his failure to attend the conference, that he was incompetent to represent Complainant in this action. I also ruled that he had violated the standards of conduct prescribed by 28 C.F.R. §68.35 by failing to comply with directions, by engaging in dilatory tactics, by refusing to adhere to reasonable standards of orderly and ethical conduct, and by failing to act in good faith. I further ruled that no further pleadings signed or prepared by Mr. Kotmair would be accepted for filing. Lucent was ordered to serve Complainant Michael Lee with any pleadings or communications, rather than Mr. Kotmair, and I stated that any further pleadings served on Lucent by Mr. Kotmair could be ignored since he was being excluded immediately from any further participation in the case.

Mr. Goemaat stated that on March 14, 1997 requests for admissions and interrogatories had been served on Mr. Kotmair as Complainant's representative. I ordered Lucent to serve those discovery requests directly on Mr. Lee, and Mr. Goemaat indicated he would do so by April 14, 1997. Finally, I gave Lucent an extension of time until June 2, 1997, to serve the motion referenced in the Third and Fourth Prehearing Orders.

The entire conference has been recorded by the court reporter. While these oral rulings are on the record, since Mr. Kotmair did not attend the conference, I stated during the conference that a written ruling also would be issued. After the service of this Order, Mr. Kotmair will be deleted from the service list.

II. *Lay Representatives*

As noted previously, Complainant has executed a power of attorney that authorizes a lay representative, John Kotmair, to represent him in this proceeding. Kotmair does not claim to be a lawyer, or to have attended law school. However, he is currently representing several individuals in other cases pending before this judge and other OCAHO Administrative Law Judges.

The Rules of Practice neither specifically authorize nor prohibit lay representation. *See* 28 C.F.R. §68.33 (1996). However, it has been the practice in past OCAHO cases to allow an individual party, whether a complainant or respondent, to appear *pro se.* It also has been the practice to allow a corporate party to be represented by a non-attorney owner or officer.[2] Nevertheless, the Rules of Practice do not specify what types of lay representation are permissible.

In this case an individual seeks to be represented by a non-attorney. Prior to the recent cases involving Mr. Kotmair, I have found only one OCAHO case that involved lay representation of an individual, and that representative was a relative of the individual respon-

[2]Since a corporation is not a natural person, but rather a legal entity, it can only appear in a lawsuit through an individual. Thus, allowing an owner, officer, or director to appear on behalf of a corporation is equivalent to *pro se* representation. While such *pro se* representation of a corporate party is not normally permissible in court proceedings, *see Annotation, Propriety and Effect of Corporation's Appearance Pro Se through Agent who is not Attorney,* 8 A.L.R. 5th (1993), it has been allowed in OCAHO administrative proceedings.

dent. *See United States v. Chaudry*, 3 OCAHO 588, at 1 (1993) (upon receiving no objection from the complainant and upon finding no prejudice to the Court, the respondent's brother, a non-attorney, was allowed to represent the respondent). Prior to Kotmair's appearance, there have not been any OCAHO cases involving lay representation of an individual complainant.[3]

When a party seeks to be represented by a lay individual, two questions are presented:

1. Whether the OCAHO Rules of Practice authorize the Judge to allow such representation; and

2. Whether the OCAHO Rules of Practice require the Judge to permit such representation.

With respect to the first question, Rule 68.33 does not specifically address the question of whether lay representatives are allowed. Rule 68.33 permits a party to appear on his own behalf, which suggests that *pro se* representation is allowed, and it specifically authorizes a party to be represented by a qualified attorney. 28 C.F.R. §68.33(a), (b) (1996). However, the Rules do not specifically authorize lay representation.

Rule 68.35, which governs Standards of Conduct, does suggest that lay representation is permitted. Rule 68.35(b) provides that the Administrative Law Judge may exclude a representative from a proceeding and "may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or *representative*." (emphasis added). Since the rule refers to both an attorney and a representative, the latter can only mean a lay representative. Nevertheless, the rule is silent as to when and what type of lay representation is permitted. The rule certainly could be interpreted as allowing only certain types of lay representation (e.g., someone associated with the party, such as an officer or owner of a corporate party).

[3] In *Alvarez v. Interstate Highway Constr.*, 2 OCAHO 385, at 2 (1991), the Judge permitted an association of employers to represent the respondent company upon finding reliable proof that the party had authorized representation by a lay representative and that the non-attorney association possessed some degree of competence, "including a familiarity with the statute and regulations that govern these proceedings."

The issue of Mr. Kotmair's lay representation has been discussed in some recent orders. In *Lee v. Airtouch Communications*, 6 OCAHO 901, at 8 (1996), the respondent sought to exclude Mr. Kotmair as a lay representative, in part because he is an alleged convicted felon.[4] However, since the case was dismissed on other grounds, the Judge made no findings or ruling on the lay representation issue. *Id.* at 13. In *Costigan v. NYNEX*, 6 OCAHO 918 (1997), a case decided by the undersigned, the respondent in that case moved to disqualify Complainant's representative, John Kotmair, solely on the ground that he is not an attorney. I concluded that the Rules of Practice neither specifically authorized nor prohibited lay representation, but suggested that lay representation might be permissible under the OCAHO Rules of Practice. As in *Airtouch*, because I granted NYNEX's motion to dismiss, I declined to decide the issue of lay representation. *Id.* at 12.

In *Costigan*, I further stated that, even assuming that lay representation is permissible, a particular lay representative may not be permitted to appear if there are reasonable concerns about his competence or ethical standards. If a lay representative seeks to represent a party in a particular case, the lay representative must act in accordance with the same ethical standards required of attorneys. Moreover, a representative may be barred from the proceeding if he fails to comply with directions or fails to adhere to reasonable standards of orderly and ethical conduct. 28 C.F.R. §68.35(b) (1996).

While I conclude that the OCAHO Rules of Practice do not bar all types of lay representation, I also find that lay representation is not a matter of right, but is subject to the direction and control of the judge. At the initial stage of the case, even assuming that the lay representative has secured the necessary authorization from the party, the lay representative's appearance in the case is subject to the control of the presiding judge, whether any objection is made by the opposing party or not. Thus, the Court serves as a gatekeeper to assure that a lay representative is competent and qualified to represent a party in the lawsuit, and that the representative will abide by the standards of conduct. Even assuming that the judge initially permits the lay representative to appear on behalf of a party, the lay representative must act in accordance with the same ethical standards required of attorneys. A representative may be barred by the judge

[4]The official record in that case shows that Mr. Kotmair was convicted in the federal district court of Maryland in 1982 for wilful failure to file income tax returns and aiding and abetting, and was sentenced by Judge Miller of that Court to serve one year in prison and to pay a fine of $5,000.

from the proceeding if the representative fails to act competently or fails to act in accordance with the standards of conduct required by 28 C.F.R. §68.35(b).

III. *Exclusion of Complainant's Representative*

In this case I conclude that Complainant's representative should be excluded for two reasons:

1. He is not competent to act as Complainant's representative in this proceeding; and

2. He has not acted in accordance with the standards of conduct.

With respect to the issue of competency, there are several important legal issues that have been raised in this lawsuit, including whether this tribunal has subject matter jurisdiction, whether the complaint is timely filed, whether the charge with OSC was filed in a timely manner, whether the complaint states a claim upon which relief may be granted, and whether Lucent may be properly substituted for AT&T as the party respondent in this case.[5] Although Complainant served a motion for default judgment (in fact, two default judgment motions), such motions are not automatically granted, even if the named respondent has not filed an answer to the complaint, especially if there are serious questions about jurisdiction.[6] I ordered both parties to submit further information with respect to these issues. Complainant's representative has failed to provide the information that my Second Prehearing Order directed him to provide. Moreover, his simplistic approach to these issues reflected in his pleadings shows that he either does not understand the legal issues or is acting in bad faith. In either case, he has amply demonstrated that he is not competent to act as Complainant's representative in this proceeding.

[5]Although the OCAHO Rules do not directly address the issue of substitution of parties, the Federal Rules of Civil Procedure may be utilized as a general guideline in any situation not covered by the OCAHO Rules. 28 C.F.R. §68.1 (1996). Therefore, Rule 25 of the FRCP may be relevant to the issue of substitution of parties in this case.

[6]Complainant's representative does not seem to understand that default judgments are disfavored in the law and should be used only where the inaction of a party causes the case to come to a halt. *See H.F. Livermore Corp. v. Aktiengesellschaft Gebruder Loepfe*, 432 F.2d 689, 691 (D.C. Cir. 1970); *United States v. R & M Fashion, Inc.*, 6 OCAHO 826, at 2 (1995). The preferred disposition of a case is upon the merits and not by default judgment. *Gomes v. Williams*, 420 F.2d 1364, 1366 (10th Cir. 1970). An answer to the complaint has been filed in this case, and the question pending before this tribunal is whether the answer should be accepted, which depends on whether Lucent should be substituted for AT&T as the party respondent. Kotmair's insistence on entry of a default judgment in such an instance only shows his lack of understanding of the issues in this case.

Even assuming that a lay representative is competent to represent a party in a proceeding, the representative may be barred if he does not comport with the standards of conduct. The Rules of Practice specifically provide that a Judge may exclude a representative for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, or failure to act in good faith. 28 C.F.R. §68.35(b) (1996). Although the Rule is phrased in the disjunctive, not the conjunctive, I find that all four factors are present here.

Mr. Kotmair clearly has failed to comply with directions. He has not provided the information required by the Second Prehearing Order issued on February 24, 1997. That Order required that the information be filed within 15 days, or not later than March 11, 1997. Moreover, in the Third Prehearing Order issued on March 12, 1997, I reminded Complainant that he had not provided the information required by the Second Prehearing Order, and that his failure to act invited the imposition of sanctions.

Despite very specific rulings, Complainant's representative has continued to defy my orders prohibiting filing of any new motions or pleadings until he complied with the Second Prehearing Order, and until the pending motions, including Complainant's motion for default judgment, were adjudicated. On March 6, 1997, in rejecting Complainant's Response to Second Prehearing Order, I specifically ordered Complainant "not to file any further pleadings until a proper response is made to the Second Prehearing Order." In the Third Prehearing Order, I directed Complainant not to serve any new motions or pleadings until I had adjudicated the pending motions, and I warned that any pleadings served in violation of that Order would not be accepted for filing. Yet despite those very clear directions, on April 2, 1997, Kotmair served an unauthorized answer to the Third Prehearing Order. That pleading was stricken in an Order issued on April 7, 1997.

To date, Kotmair has submitted three unauthorized pleadings which have been stricken.[7] Addressing these unauthorized pleadings

[7]The unauthorized pleadings that were stricken are entitled "Response to Second Prehearing Order and Second Request for Default Judgment," served on March 5, 1997; "Motion for Findings of Fact and Conclusions of Law," served on March 11, 1997; and "Answer to Judge Barton's Third Prehearing Order," served on April 2, 1997. All of these unauthorized pleadings were signed by John Kotmair, and, therefore, he is responsible for their contents. *See* Fed. R. Civ. P. 11(b).

wastes valuable judicial time and resources, and there is no assurance that he will refrain from filing unauthorized pleadings in the future.

As a final example of refusal to comply with orders, Kotmair failed, without good cause, to attend the prehearing conference scheduled for April 10, 1997.[8] The conference was scheduled to give Kotmair the opportunity to show that he was competent to practice before this tribunal, that he would adhere to the standards of conduct, and that in the future he would refrain from filing unauthorized pleadings and that he would obey this tribunal's orders. By refusing to attend the conference (except on his own terms), he has waived the opportunity for a hearing on his fitness to practice. I hereby find that Kotmair has failed to comply with directions, and there is a substantial likelihood that such conduct will continue in the future.

Kotmair also has engaged in dilatory tactics by filing frivolous and unauthorized motions. A prime example was the filing of a second request for default judgment, when the first motion had not yet been adjudicated! The filing of these various motions simply has wasted judicial time and resources, which could have been utilized in considering the merits of this case.[9]

I find that Kotmair has refused to adhere to reasonable standards of orderly and ethical conduct and has failed to act in good faith. In addition to his propensity for ignoring and violating orders, the language used in the pleadings signed and filed by Kotmair are disrespectful and vituperative and would warrant sanctions and referral to the bar against any attorney utilizing such language. Although he is a lay representative, he is expected to comport himself with the

[8]Courts have dismissed actions or entered default judgments when a party has failed to attend a pretrial conference. *Ikerd v. Lacy*, 852 F.2d 1256, 1256, 1258 (10th Cir. 1988); *Price v. McGlathery* 792 F.2d 472, 475-76 (5th Cir. 1986). However, here dismissing the complaint would be punishing the client for Kotmair's misconduct. While that might be justified, the more appropriate sanction is to exclude the representative and allow the case to proceed.

[9]It is difficult to understand why the Complainant's representative would engage in such self-defeating maneuvers, since normally it is in the interest of the party bringing an action to proceed with the litigation. It is elemental that the Complainant only can obtain the relief sought in the complaint after the judge has issued a ruling on the merits and awarded back pay. Kotmair's actions may simply be a reflection of his lack of understanding of the legal process.

same high standards expected of legal counsel. As provided in 28 C.F.R. §68.35(a), all persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity and in an ethical manner.

The pleadings filed by Kotmair raise questions as to his fitness and competency to represent the Complainant in this case. The Judge may exclude from proceedings parties, or their representatives, who refuse to comply with directions, continue to use dilatory tactics, refuse to adhere to reasonable standards of orderly and ethical conduct, or fail to act in good faith. Kotmair's filings in this case raise serious questions both as to his competency and his ethics. By refusing to provide the information directed by the Second Prehearing Order, by serving repetitive, frivolous, and unauthorized pleadings in violation of my prior orders, and by his use of contemptuous and disrespectful language, I find that Kotmair has failed to comply with directions, has engaged in dilatory tactics, has failed to adhere to reasonable standards of orderly and ethical conduct, and has failed to act in good faith.

Consequently, I find that Mr. Kotmair is not qualified to act in a representative capacity, within the meaning of 28 C.F.R. §68.33, and has not comported himself with the standards of conduct required by 28 C.F.R. §68.35. He is hereby excluded from any further participation in this proceeding. No further filings signed or prepared by Mr. Kotmair will be accepted in this case. Further, Lucent Technologies is directed not to serve Mr. Kotmair with any further pleadings, but rather to serve the same on Complainant Lee directly, until he secures another representative.

Complainant may represent himself in this proceeding or may seek to obtain other representation. Any new representative must file a notice of appearance as required by the Rules of Practice. 28 C.F.R. §68.33. If Complainant again selects a non-attorney representative, that person will be required to show his qualifications, as well as his authority to act. If Complainant does not select another representative, he will be required to represent himself in this matter.

As provided during the prehearing conference on April 10, 1997, Lucent shall serve Michael Lee directly with the outstanding discovery requests. Lucent shall have until June 2, 1997, to file the motion referenced in the Third and Fourth Prehearing Orders.

IT IS SO ORDERED.

ROBERT L. BARTON, JR.
Administrative Law Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

September 2, 1997

RICHARD AGUILAR, Complainant,	)	8 U.S.C. § 1324b
v.	)	OCAHO Case No. 97B00079
UNITED PARCEL SERVICE, Respondent.	)	

FINAL DECISION AND ORDER OF DISMISSAL

I. PROCEDURAL HISTORY

This is an action arising under the Immigration and Nationality Act, 8 U.S.C. § 1324b (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA) and by the Immigration Act of 1990 (IMMACT),[1] in which Richard Aguilar is the complainant and United Parcel Service (UPS), Anaheim, California, is the respondent. A letter dated December 9, 1996, to the Office of Special Counsel for Unfair Immigration-Related Employment Practices (OSC) from John B. Kotmair, Jr. (Kotmair), Director of the National Worker's Rights Committee, accompanies the complaint.

Also accompanying the complaint is a letter dated January 30, 1997 from OSC to Kotmair informing him that with respect to charges filed by him on behalf of eleven different individuals, including Aguilar:

> Based on this Office's investigation, the Special Counsel has determined that there is insufficient evidence of reasonable cause to believe that any of these charges state a cause of action under 8 U.S.C. § 1324b. See Tossaint (sic) v. Tekwood Associates, Inc., ___ OCAHO ___ (1996).

The letter authorizes the filing of a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) within 90 days of receipt.

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[1] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 208, 110 Stat. 3009 (IIRIRA), amended § 1324b(a)(6) as it applies to practices after set within one year subsequent to September 30, 1996. The amendments have no app this case.

Exhibit 17

The complaint was filed with OCAHO on March 31, 1997, with various attachments. Kotmair's Notice of Appearance was subsequently filed on April 11, 1997. [2] Although Aguilar was employed by UPS from 1975 or 1976 until his termination on February 12, 1997, he seeks back pay from May 1996. The significance of that date is unexplained.

On his complaint form, Aguilar checked the box stating "yes" to the following statement:

> The Business/Employer refused to accept the documents that I presented to show I can work in the United States.

However, he crossed out the phrase, "to show I can work in the United States."

Specifically, the complaint alleges that UPS engaged in conduct prohibited by the INA when it refused to accept Aguilar's "Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status,"[3] as well as his "Affidavit of Constructive Notice asserting my rights as a Citizen of the U.S. as seen by the U.S. Supreme Court, and there by [sic] revealing that I am not to be treated as an alien." According to Kotmair's letter to OSC, the documents were submitted to UPS on June 24, 1996.

Aguilar also checked the box on the complaint form stating "yes" in response to the following statement:

> I was intimidated, threatened, coerced or retaliated against because I filed or planned to file a complaint, or to keep me from assisting someone else to file a complaint.

Aguilar was terminated on February 12, 1997. Attached to the complaint is an explanation of the alleged acts of retaliation which describes the events leading to his termination

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[2] Kotmair's Notice of Appearance references an "enclosed Power of Attorney of the complainant," although no such document appears to have been submitted with that Notice. A power of attorney document is attached to the original complaint, apparently appended to a charge filed against UPS by Aguilar with the Equal Employment Opportunity Commission (EEOC). That power of attorney grants Kotmair "permission" to represent Aguilar "before ... OCAHO" and "before an Administrative Law Judge in OCAHO."

[3] Aguilar's "Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status" is not part of the record, and there is no assertion that it is related in any way to INS forms N-560 or N-561 Certificate of United States Citizenship. These forms, issued by the INS, do not purport to address issues of federal taxation.

as a driver for UPS. It states that on December 18, 1996, he was arrested and charged with "DWI" [Driving While Intoxicated]. Upon his release, he notified his manager. On February 6, 1997, he was found guilty and sentenced. He did not learn until some time after February 6, 1997 that his driver's license had been suspended since December 28, 1996. Aguilar had shown his license to his UPS supervisor after his arrest when he did not know that it had been suspended. The reason proffered by UPS for his dismissal, according to Aguilar, was "dishonesty about my license." Aguilar claims that at no time had he been dishonest or failed to inform his UPS supervisor of "all that I was aware of or that had happened." Aguilar does not allege any causal connection between the submission of his documents and his termination as a driver. Neither does he allege that his termination was related to his citizenship or national origin.

On May 13, 1997, UPS filed an answer denying the material allegations of the complaint together with a motion to dismiss the complaint for failure to state a claim. Respondent admits that Aguilar worked for UPS since 1975 or 1976 and that he was fired from his job as a driver on February 12, 1997. Three grounds are asserted for its motion to dismiss: first, that complainant does not allege that his termination was on the basis of citizenship status or national origin; second, that complainant alleges no improper conduct with regard to verification of any work authorization document; and third, that complainant is apparently confusing a New Mexico Department of Motor Vehicles work permit driver's license with an INS work permit authorization.

On June 6, 1997, complainant filed his reply to respondent's answer and motion to dismiss. That reply addresses only UPS's refusal to honor Aguilar's Statement of Citizenship and Affidavit of Constructive Notice. It does not discuss Aguilar's discharge or any alleged acts of retaliation. Instead, it states that "Respondent is correct in its assertion that 'The Complaint Does not Allege Termination on the Basis of Citizenship or National Origin." Rather, "[t]he substance of the complainant's charge relates solely to the respondent's refusal to recognize and honor the documents."

The response acknowledges that Aguilar's documents were submitted for the purpose of avoiding his federal income tax obligations, not for the purpose of verifying his employment eligibility. Aguilar sets forth at length the theory that only nonresident aliens, and not United States citizens, are required to participate in the social security system or to be subject to withholding for income taxes.

III. STANDARDS FOR RULING ON A MOTION TO DISMISS

A motion to dismiss should be granted only in the very limited circumstances where it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984). Although I must liberally construe the allegations in the complaint in the light most favorable to complainant, I am not required to assume that Aguilar can prove facts which have not been alleged, see Associated Contractors of California, Inc. v. California State Council of Carpenters, 459 U.S.

519, 526 (1983), to consider facts which would be inadmissible at a hearing, or to make unwarranted inferences. Neither am I required to accept as true any conclusions regarding the legal effects which flow from the events Aguilar sets out.

Even liberal pleading standards have their limits and complainant must allege more than unsupported conclusions of law to defeat an otherwise meritorious motion to dismiss. See, Pulda v. General Dynamics Corp., 47 F.3d 872, 878 (7th Cir. 1995). If there is no reasonable prospect that a valid claim can be made out based on the facts alleged, the motion to dismiss should be granted. A complaint which does not set forth either direct or inferential allegations respecting all of the material elements necessary to sustain a recovery under some viable legal theory is subject to dismissal. LRL Properties v. Portage Metro Hous. Auth., 55 F.3d 1097, 1103 (6th Cir. 1995).

DISCUSSION

IRCA established a comprehensive system of employment eligibility verification, 8 U.S.C. § 1324a, as well as prohibitions against certain unfair immigration-related employment practices, 8 U.S.C. § 1324b. Congress for the first time made it unlawful for an employer to hire employees without verifying their eligibility to work in the United States. A prospective employer is obligated under the employment eligibility verification system to examine certain documents acceptable for demonstrating a worker's identity and employment eligibility under § 1324a(b)(1), 8 C.F.R. § 274a.2(b)(1)(v)(1996), and to complete a Form I-9 for each new employee.

The specific provision at issue in this proceeding, 8 U.S.C. § 1324b(a)(6) was added by the Immigration Act of 1990 (IMMACT) to address concerns that employers were rejecting valid work documents. It provides that certain documentary practices may be treated as discriminatory hiring practices.

> For purposes of paragraph (1),[4] a person's or other entity's request, for purposes of satisfying the requirements of section 1324a(b)[5] of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals. (emphasis added).

Regulations identifying the specific documents acceptable to show identity and employment eligibility are set out in 8 U.S.C. §§ 1324a(b)(1)(B), (C), and (D), 8 C.F.R.

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[4] Paragraph (1) deals with the hiring, recruitment, referral for a fee, or discharge of employees.

[5] Section 1324a(b) sets forth the specifics of the employment eligibility verification system.

§§ 274a.2(b)(1)(v)(A), (B), and (C). When a document from those lists is presented for purposes of satisfying the requirements of the employment eligibility verification system, an employer, recruiter, or referrer for a fee is obligated to accept the document if it appears on its face to be genuine. The documents Aguilar submitted are not among the listed documents acceptable to show identity or work eligibility pursuant to these regulations.

As is by now well established in OCAHO jurisprudence, the activities prohibited by 8 U.S.C. § 1324b include discrimination in hiring, firing, recruitment, referral for a fee, retaliation for engaging in protected activity, and document abuse. 8 U.S.C. §§ 1324b(a)(1), (a)(5), and (a)(6). Mathews v. Goodyear Tire & Rubber Co., 7 OCAHO 929, at 9 (1997) (citing Smiley v. City of Philadelphia, 7 OCAHO 925, at 18 (1997)); Tal v. M.L. Energia, Inc., 4 OCAHO 705, at 14 (1994). Other terms and conditions of employment such as wages, promotions, employee benefits, and the like are beyond the reach of the INA. See, Lareau v. USAir, Inc., 7 OCAHO 932, at 11 (1997) (citing cases). Thus, a long-term incumbent employee's complaints about the terms and conditions of his employment fail to state a claim under § 1324b. Wilson v. Harrisburg Sch. Dist., 6 OCAHO 919, at 3-4, 9 (1997); Horne v. Hampstead, 6 OCAHO 906, at 5-6 (1997).

Regulations implementing the employment eligibility verification system make clear that the statute was to have prospective application only. Employers are required to examine documents and to complete a Form I-9 only for individuals hired after November 6, 1986 who continued to be employed after May 31, 1987. 8 C.F.R. § 274a.2. The penalty provisions similarly have no application to employees hired prior to November 7, 1986 who continued in their employment. 8 C.F.R. § 274a.7. Accordingly, the rejection of a prospective employee's proffered documents will be treated as an unfair hiring practice if, and only if, (1) the employee was recruited, hired, or referred for a fee after November 6, 1986; (2) the documents were presented to an employer, recruiter, or referrer for a fee by a prospective employee for the purpose of hiring, recruitment, or referral; (3) the documents on their face appear to be genuine; and (4) the employer, recruiter, or referrer refuses to honor the documents as satisfying the requirements of the employment eligibility verification system. The facts of this case as alleged in the complaint fail to satisfy any of these elements.

First, because Aguilar was steadily employed by respondent from 1975-1976 until February 1997, he was not an employee hired subsequent to the enactment of IRCA in 1986. UPS never had any obligation to make an inquiry as to his employment eligibility, to review any documents establishing his employment eligibility, or to complete a Form I-9 for him. Indeed, the complaint does not allege that UPS ever requested any documents whatsoever for the purposes of establishing Aguilar's eligibility to work in the United States. The employment eligibility verification process never comes into the picture at all for an individual who remained continually employed by the same employer from 1975-76 to 1997.

Second, both the original complaint form and complainant's reply to respondent's motion to dismiss acknowledge that Aguilar's "Statement of Citizenship" and "Affidavit of Constructive Notice" were not tendered to show his eligibility for hire in the United States. It is not alleged

that UPS requested any documents, or that document submission was required to verify employment eligibility or comply with federal law. Rather, Aguilar's documents were submitted for the purpose of avoiding his federal income tax obligations.

Third, neither the INS nor the Social Security Administration has exempted Aguilar from withholding for taxes and no other entity, including the National Worker's Rights Committee, has any statutory authority to do so and it is accordingly unclear how the documents could appear to be "genuine."

Fourth, the documents tendered were not in any event documents acceptable to show identity and/or employment authorization for purposes of satisfying the requirements of the employment verification system set out at § 1324a(b). Neither document appears on List A, B or C. Because Aguilar's documents are not documents acceptable to show he can work in the United States, the refusal of his employer to accept them, even had they been presented for that purpose, would not violate the INA.

Jurisdiction of administrative law judges over allegations of document abuse is limited by the terms of the governing statute. The employment verification system is set out in 8 U.S.C. § 1324a(b) which identifies the specific documents approved for the purpose of establishing identity and employment eligibility. Nothing in the statutory scheme permits much less requires an employer to accept documents other than the ones specifically approved to show eligibility to work in the United States. Nothing in the employment eligibility verification process touches on an employee's federal income tax withholding obligations. Rejection of an employee's unilateral claim of tax exemption is not an immigration-related employment practice. The issues complainant raises have nothing whatever to do with immigration-related employment practices related to the hiring of individuals, and are simply beyond the reach of 8 U.S.C. § 1324b(a)(6).

Aguilar purports to believe that the INA applies not only to documents presented in support of an Employment Eligibility Verification Form (Form I-9), but to any documents whatever submitted by an employee for the alleged purpose of "secur[ing] all of his rights as a U.S. Citizen in relationship to his employer." One of those rights, according to Aguilar, is the right to be free of withholding for taxes.

This case is one of a rapidly growing number of OCAHO cases premised upon the same or substantially similar allegations seeking to transform OCAHO proceedings into a forum for the exposition of the political agenda of the National Worker's Rights Committee. Manning v. City of Jacksonville, 7 OCAHO 956 (1997); Hutchinson v. GTE Data Servs., Inc., 7 OCAHO 954 (1997); Hogenmiller v. Lincare, Inc., 7 OCAHO 953 (1997); D'Amico v. Erie Community College, 7 OCAHO 948 (1997); Hollingsworth v. Applied Research Assocs., 7 OCAHO 942 (1997); Hutchinson v. End Stage Renal Disease Network of Fla., Inc., 7 OCAHO 939 (1997); Kosatschkow v. Allen-Stevens Corp., 7 OCAHO 938 (1997); Werline v. Public Service Elec. & Gas Co., 7 OCAHO 935 (1997); Cholerton v. Hadley, 7 OCAHO 934 (1997); Lareau v. USAir, Inc., 7 OCAHO 932 (1997); Jarvis v. A.K. Steel, 7 OCAHO 930 (1997); Mathews v. Goodyear

Tire & Rubber Co., 7 OCAHO 929 (1997); Winkler v. West Capital Fin. Servs., 7 OCAHO 928 (1997); Smiley v. Philadelphia, 7 OCAHO 925 (1997); Austin v. Jitney-Jungle Stores of Am., Inc.; 6 OCAHO 923 (1997); Wilson v. Harrisburg Sch. Dist., 6 OCAHO 919 (1997); Costigan v. Nynex, 6 OCAHO 918 (1997); Boyd v. Sherling, 6 OCAHO 916 (1997); Winkler v. Timlin Corp., 6 OCAHO 912 (1997); Horne v. Hampstead, 6 OCAHO 906 (1997); Lee v. Airtouch Communications, 6 OCAHO 901 (1996), appeal filed, No. 97-70124 (9th Cir. 1997); Toussaint v. Tekwood Assocs., Inc.,[6] 6 OCAHO 892 (1996), appeal filed No. 96-3688 (3d Cir. 1996). Each of these cases asserted similar claims that a respondent employer's requirement for an employee's social security number and/or an employer's withholding of sums from an employee's wages for taxes, is an immigration-related unfair employment practice or otherwise discriminates in violation of 8 U.S.C. § 1324b. All of these cases were dismissed at an early stage; none has survived preliminary motions to dismiss either on jurisdictional grounds or for failure to state a claim.

Aguilar's assertion that citizens of the United States residing therein are not subject to federal taxation and are free to decline participation in the social security system have been rejected in a number of other federal fora. For over 75 years, the Supreme Court and lower federal courts have recognized the Sixteenth Amendment's authorization of non-apportioned direct income taxes upon United States citizens residing in the United States. Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 12-19 (1916), Lovell v. United States, 755 F.2d 517, 519 (7th Cir. 1984), Parker v. Commissioner, 724 F.2d 469, 471 (5th Cir. 1984), United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981). Employers are required by 26 U.S.C. § 3102(a) and § 3402(a) to deduct and withhold income and social security taxes from the wages of their employees. It is also well established by the highest authority that one may not unilaterally opt out of the social security system. United States v. Lee, 455 U.S. 252, 258 (1982). The Ninth Circuit has long held that an employer is not liable to an employee for complying with a legal duty to withhold for taxes. Bright v. Bechtel Petroleum, Inc., 780 F.2d 766, 770 (9th Cir. 1986). These clear precedents are not vulnerable to overruling by an administrative tribunal with jurisdiction limited to specific provisions of the INA.

The complaint sets forth no factual assertions which could remotely give rise to an inference of retaliation. If Aguilar's driver's license was suspended, he may not lawfully work as a driver. No causal relation has been alleged or can reasonably be inferred between Aguilar's termination and the submission of his documents several months previously. While Aguilar is entitled to the benefit of every reasonable inference, no factfinder could draw such an inference from the facts alleged.

The complaint must be dismissed. Ordinarily the dismissal of a claim for failure to meet minimal pleading requirements should be accompanied by a grant of leave to file an amended complaint to cure the defect. However, where it appears to a certainty that amendment would be futile, there is no reason to permit such filing. Cf. Acito v. IMCERA Group, Inc., 47 F.3d 47, 55

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[6] While neither Kotmair or the National Worker's Rights Committee appear of record in Toussaint, the allegations are substantially similar.

(2d Cir. 1995). In light of the increasing weight of developing precedent in this forum summarily and unanimously rejecting similar frivolous claims, no amendment will be permitted.

FINDINGS

1. Richard Aguilar was hired by United Parcel Service in 1975 or 1976.

2. Richard Aguilar continued to work at United Parcel Service from 1975 or 1976 until February 12, 1997.

3. On June 24, 1996, Richard Aguilar presented to United Parcel Service documents entitled "A Statement of Citizenship proving my Citizenship and asserting my rights as a Citizen under Federal law, and affecting others linked to my status" and "Affidavit of Constructive Notice asserting my rights as a Citizen of the U.S. as seen by the U.S. Supreme Court, and there by (sic) revealing that I am not to be treated as an alien."

4. The precise origin of the documents is undisclosed.

5. The documents were presented to United Parcel Service for the purpose of persuading the employer to cease withholding sums from Aguilar's wages for federal taxes and social security contributions.

6. United Parcel Service declined to honor the documents or to cease withholding sums from Aguilar's wages for federal taxes and social security contributions as Aguilar requested.

7. The documents were not presented in the process of hiring, recruitment, or referral for a fee.

8. The documents were not presented for the purpose of showing Aguilar's identity or eligibility to work in the United States.

9. The documents are not documents acceptable for the purpose of showing an employee's identity or eligibility to work in the United States.

10. United Parcel Service had no obligation to ascertain Aguilar's eligibility to work in the United States or to complete a Form I-9 for him.

11. United Parcel Service's rejection of Aguilar's documents does not violate 8 U.S.C. § 1324b.

12. Richard Aguilar was terminated from his job as a driver with UPS on February 12, 1997.

13. Aguilar's termination was related to the suspension of his driver's license.

14. Aguilar's termination was not related to his submission of the subject documents.

CONCLUSIONS

1. The circumstances surrounding Aguilar's termination are not circumstances from which an inference of citizenship discrimination or of retaliation within the meaning of 8 U.S.C. § 1324b may be drawn by any reasonable factfinder.

2. Aguilar's complaint fails to state a claim upon which relief can be granted because it poses no issues cognizable under 8 U.S.C. § 1324b. It is accordingly dismissed.

SO ORDERED

Dated and entered this 2nd day of September, 1997.

Ellen K. Thomas
Administrative Law Judge

APPEAL INFORMATION

In accordance with the provisions of 8 U.S.C. § 1324b(g)(1), this Order shall become final upon issuance and service upon the parties, unless, as provided for under the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such Order seeks timely review of that Order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business, and does so no later than 60 days after the entry of such Order.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 1997, I have served copies of the foregoing Final Decision and Order of Dismissal on the following persons at the addresses indicated:

Poli Marmelejos, Esq.
Acting Special Counsel
Office of Special Counsel for Immigration-
Related Unfair Employment Practices
P.O. Box 27728
Washington, D.C. 20038-7728

Christopher J. Brelje, Esq.
Lewis and Roca LLP
40 North Central Avenue
Phoenix, AZ 85004

John B. Kotmair, Jr.
National Worker's Rights Committee
12 Carroll Street
Westminster, MD 21157-9999

Richard Aguilar
c/o 1812 Corte Del Sol
Alamogordo, NM 88310-9999

United Parcel Service
1331 South Vernon Street
Anaheim, CA 92805-9999

Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041

Cynthia A. Castañeda
Legal Technician to
Ellen K. Thomas
Administrative Law Judge
Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, VA 22041
(703) 305-1742