IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S OPPOSITION TO UNITED STATES' MOTION FOR SUMMARY JUDGMENT

Defendant Save-A-Patriot Fellowship, for the reasons set forth in the attached memorandum and exhibits, opposes the United States' Motion for Summary Judgment and prays that this Court reject Plaintiff's demands.

Respectfully submitted on this 7th day of July, 2006.

/s/ George Harp
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CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing "Defendant Save-A-Patriot Fellowship's Opposition To United States' Motion For Summary Judgment" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 8th day of July, 2006.

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

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BACKGROUND

Defendant, SAVE-A-PATRIOT FELLOWSHIP (SAPF or the Fellowship), is an unincorporated association domiciled in the State of Maryland, engaged in protected 1st Amendment activities.[1] On May 13, 2005, Plaintiff filed suit claiming SAPF was engaging in conduct alleged generally to be in violation of I.R.C. § 6700 and § 6701 (and other unknown and unspecified tax laws), and seeking to enjoin Defendant pursuant to 26 U.S.C. (I.R.C.) § 7408 and § 7402. On May 31, 2006, Defendant moved this Court for summary judgment in its favor, and on June 19, 2006, Plaintiff opposed Defendant's motion and filed its own motion for summary judgment.

OBJECTIONS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT

Defendant SAPF objects to Plaintiff's instant motion for the reasons that (a) the complaint lacks specificity pursuant to Rule 9(b); (b) the government is attempting to amend its defective complaint by alleging new facts via affidavit and argument rather than pursuant to Rule 15(a); (c) the affidavits of witnesses never before disclosed should be disregarded, along with any evidence introduced through them, pursuant to Rule 37(c)(1); and (d) evidence introduced through Rowe's declaration should be disregarded, pursuant to Rule 56(e), and (e) Newman's declaration should be disregarded, as it is not admissible as evidence. Defendant prays this Court will disregard all new allegations and new evidence introduced, identified *infra*, including the declarations and affidavits of the persons identified *infra*.

I. Plaintiff's complaint is defective.

With respect to pleadings, FRCP Rule 9(b) provides as follows:

"Rule 9. Pleading Special Matters

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[1] See *Save-A-Patriot Fellowship v. United States of America*, MJG-95-935, United States District Court for the District of Maryland (962 F.Supp. 695). See also Exhibit 18, Docket 38.

(b) **Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity ..."

This rule requires that the pleader state the time, place, and content of the false misrepresentations, the fact misrepresented and what was retained or given up as a consequence of the fraud. *U. S. ex rel. Williams v. Martin-Baker Aircraft Co., Ltd.,* 389 F.3d 1251 (App. D.C. 2004). The particularity required to plead fraud demands a higher degree of notice than is required of other claims and the claim must state who, what, where, when and how. *U. S. ex rel Costner v U. S.*, 317 F.3d 883 (App. 8th Cir. 2003). Plaintiff's complaint is defective in all of these respects, and Plaintiff's motion for summary judgment, insofar as it attempts to enlarge the original complaint, is objected to.

The heightened standard of pleading fraud has three purposes: the rule ensures defendant has sufficient information to formulate a defense by putting it on notice of the conduct complained of; it is intended to eliminate fraud actions in which all the facts are learned after discovery; and it protects defendants from harm to their goodwill and reputation.[2]

In addition to the prejudice it suffers in formulating a defense, Defendant has been severely hampered by Plaintiff in attempting to further ascertain the precise fraud alleged. For example, Plaintiff refused to respond to Defendant's interrogatory, "Please list and identify all documents and other tangible evidence you are relying upon to determine I.R.C. § 6700 fraud." Rather than answering, Plaintiff objected to "the use of the term 'fraud' as stated in this request,"[3] and proceeded to recite, *without* particularity, categories of documents it apparently hoped to rely upon. But in *Bennett v. Berg*

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[2] See *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776 (App. 4th Cir., 1999); *Levine v. Prudential Bache Properties, Inc.*, 855 F.Supp. 924 (N.D. Ill. 1994); *Tribune Co. v. Pureigliotti*, 869 F.Supp 1076 (S.D.N.Y. 1994), *Pittiglio v. Michigan Nat. Corp.*, 906 F.Supp.1145 (E.D. Mich. 1995), *Guidry v. Bank of LaPlace,* 954 F.2d 278 (5th Cir. 1992).

[3] Exhibit 5, United States response to SAPF's interrogatories, p. 5.

685 F.2d 1053 (App. 8th Cir. 1982), allegations of false statements as being a "pamphlet" or "promotional material" were not considered sufficiently particular to satisfy Rule 9(b). Neither is labeling documents or reports false or misleading; there must be further identification of the statements made and in what respects they were false or misleading. See *Rich v. Touche Ross & Co.* 68 F.R.D. 243 (D.C.N.Y. 1975).

At Agent Rowe's deposition, Defendants attempted to narrow the nebulous allegations to particular instances of alleged fraud or even specific statements alleged to be false. When Agent Rowe was asked if she recalled anything from the file related to a particular instance of fraud, however, United States' counsel objected: "That calls for a legal conclusion that she would have to determine what is fraud. And I don't think she's competent to testify as to that ... she can't make that determination."[4] When Agent Rowe was asked again if she recalled anything in the SAPF member handbook that she thought was a false statement, counsel again objected, "She can't — she can't testify as to a false statement because what you're asking her to do is draw a conclusion that the statement is false. ... she cannot testify as to legal conclusions."[5] These objections were tendered in spite of the fact that Rowe testified earlier, regarding § 6700 penalty investigations: "[w]e look for false statements, we look for knowledge of the false statements [*i.e.*, fraud], and we look for their cause and effect."

Of particular concern to Defendant in this case has been Plaintiff's attempt to abuse the discovery process in order to obtain virtually all Defendant's files and records, indeed, the entire list of members, including names, addresses, and social security account numbers.[6] It now appears that in addition to Plaintiff's attempts to acquire the relief it prayed for through the discovery process, Plaintiff

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[4] Exhibit 2, Deposition of Agent Rowe, 17:14–18:2.
[5] Exhibit 2, Deposition of Agent Rowe, 24:4–25:23.

filed the instant suit in order to engage in a fishing expedition, attempting to uncover wrongs, acquire relevant information, and then introduce it all by affidavit later. Yet, Rule 9(b)'s purpose is to prevent just this type of conduct, *i.e.,* the filing of suits that simply hope to uncover relevant information during discovery, or the filing of conclusory complaints as a pretext for using discovery to uncover wrongs.[7]

Again, Rule 9(b)'s requirement of particularity is satisfied only if the complaint sets forth precisely the statement(s) made, the time, place and person responsible for each statement, the content of the statement and its effect on plaintiff and what the defendant gained from the fraud.[8] In the present case, Plaintiff has not only failed to allege these particularities in its complaint; it has refused at every turn to even narrow the broad allegations of the complaint — until just now, when it is attempting to amend and particularize the complaint by affidavit, further discussed *infra*. The complaint is conclusory; it contains not a single specific claim upon which relief can be granted, and Defendant is entitled to summary judgment in its favor on all counts.

II. Plaintiff is barred from amending complaint via affidavit.

Defendants object to the expansion of the original complaint by the inclusion of additional allegations in the motion for summary judgment and additional facts outside the original pleadings. With respect to pleadings, FRCP Rule 15(a) provides as follows:

> "Rule 15. Amended and Supplemental Pleadings
> (a) AMENDMENTS. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. ..."

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[6] See Docket 50, p. 17.
[7] See *Doyle v. Hasbro, Inc.,* 103 F.3d 186 (1st Cir. 1996); *Toner v. Allstate Insurance Co.,* 821 F.Supp 276 (D.C. Del. 1993); *Fujisawa Pharmaceutical Co., Ltd. v. Kapoor,* 814 F.Supp.720 (N.D. Ill. 1993).
[8] See *Official Publications, Inc. v. Kable News Co.*, Inc. 775 F.Supp 631 (S.D.N.Y. 1991).

In addition to Agent Rowe's declaration, which contains conclusory allegations and new "facts," Plaintiff is introducing five affidavits from witnesses never before identified, discussed *infra.* Plaintiff cannot now rely on affidavits filed with its motion for summary judgment to satisfy the Rule 9(b) requirement that fraud be pled with particularity, as such affidavits are not formal pleadings. *Miller v. Gain Financial, Inc.* 995 F.2d 706 (App. 7th Cir. 1993). Any attempt to amend the complaint via affidavits is violative of the Federal Rules of civil procedure and such material should be stricken from the record.

Specifically, these new allegations include all allegations and evidence relative to: (a) Defendant Kotmair's representative status before the Internal Revenue Service, and any statements Defendants have made regarding said status,[9] (b) the "Affidavit of Revocation and Rescission"[10] and the "Statement of Citizenship," and statements made by SAPF regarding said documents,[11] (c) "the § 861 argument" and the "U.S.-Source" "tax-fraud scheme(s),"[12] including the filing of court pleadings advocating these "arguments," or that Defendant knows that the IRS views the "arguments" as frivolous, (d) the provision of "tax advice",[13] including allegations that Defendant advises members not to report or pay taxes, (e) the contention that "Kotmair claims to be a tax law expert,"[14] (f) "assisting members in evading federal income and employment tax payment requirements,"[15] (g) Defendant "knowing" that "two former employees, Thurston Bell and Richard Haraka," were enjoined for "identical conduct.,"[16] (h) the number

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[9] Introduced in Rowe's Declaration, Docket 43, at ¶ 37.
[10] Plaintiff repeatedly and erroneously terms this the "Affidavit of Revocation" in its complaint.
[11] Introduced in Plaintiff's motion for summary judgment, at p. 3.
[12] *Ibid.,* at p. 2.
[13] *Ibid.,* at p. 5.
[14] *Ibid.,* at p. 2.
[15] *Ibid.,* at p. 3.
[16] *Ibid.,* at p. 7.

of SAPF members for whom letters are written,[17] (i) IRS estimates of the costs of handling letters sent to them,[18] (j) the contention that Defendant "market[s] a line of tax evasion products and services," also called "commercial products,"[19] (k) the sending of "threatening" letters and filing complaints against employers,[20] (l) the contention that SAPF operates as, or describes itself as, a "business,"[21] and (m) the independent representatives of SAPF.[22]

III. Failure to identify witnesses bars their testimony and related evidence.

Defendant also objects to all testimony and evidence introduced by Plaintiff via the five individual affidavits appended to its motion, on the grounds of FRCP Rule 37(c)(1). The affidavits are those of: Joseph Nagy, Camille Nagy, Nicholas Taflan, Amzi Sherling, and Evan Davis.

FRCP Rule 37(c)(1) *prohibits* the use of witnesses on a plaintiff's motion when, as here, it fails to disclose their identities as required by Rule 26(e)(1).[23] Defendants specifically *requested the identities* of all potential witnesses in discovery,[24] and Plaintiff identified only Defendant Kotmair.[25] After

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[17] *Ibid.*, at p. 7.
[18] *Ibid.*, at p. 7.
[19] *Ibid.*, at p. 23
[20] *Ibid.*, at p. 4.
[21] Introduced in Rowe's declaration, ¶ 8.
[22] Introduced in Plaintiff's motion for summary judgment, at p. 2.
[23] Rule 37(c)(1) states: "(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed."
Rule 26(e)(1) states: "(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing."
[24] Exhibit 5, US answer to interrogatory 3, at p.2.
[25] Exhibit 5, US answer to interrogatory 3, at p.2, and Exhibit 4, US Rule 26(a)(1) disclosures.

Defendants showed, in their opposition to Plaintiff's motion for sanctions,[26] that they were aware of Plaintiff's failure to disclose these witnesses, Plaintiff attempted to repair this transgression by belatedly faxing a letter to Defendants.[27] It was too late.

That Plaintiff's untimely attempt to supplement its discovery responses was due to Defendants' having brought it to the Court's attention is shown by the following excerpt from Plaintiff's counsel's letter:

> "In addition, I am also addressing the contention raised in your response in opposition to the United States' motion for discovery violations that the identity of these individuals was withheld. I spoke with these individuals prior to filing the motion after calling numerous customers of SAPF. Moreover, I have not discussed with these individuals, or the other SAPF customers that I have contacted, whether they would be witnesses in this case."

Plaintiff's counsel attempts to claim that he had "not discussed" with Taflan and the Nagys whether they would be witnesses. However, Defendants' interrogatories sought the identities of "prospective witnesses"[28] and "persons you may call as witnesses at trial."[29] In that Plaintiff has submitted affidavits from these three individuals in its summary judgment motion, it is disingenuous to claim now that they might not be used as witnesses—they are already being used as witnesses.

It should be noted that the affidavits were signed on June 9, 2006, ten days *before* the filing of the motion, while the letter was faxed to Defendants on June 28, 2006, nine days *after* the filing of its motion. Thus, Plaintiff delayed informing Defendants about witnesses it intended to use in its motion for 19 days from the time it secured their affidavits. This has prejudiced Defendants in that it reduced by nearly two-thirds the amount of time available to contradict the testimony of such witnesses.

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[26] Docket 50.
[27] Exhibit 3, Newman's letter of June 28, 2006.
[28] Exhibit 6, US answer to Kotmair's interrogatory no. 1, on p. 1.

Plaintiff never made these witnesses available for depositions, where their claims could be fully explored. This latter prejudice is due to the circumstances surrounding this entire suit—that is, Plaintiff is apparently trying to use civil discovery procedures to conduct an investigation, rather than completing the investigation before the complaint was filed. Moreover, as noted above, Plaintiff also includes affidavits from Amzi Sherling and Evan Davis, whom Plaintiff has to this day not identified as required by its discovery obligations.[30]

For these reasons, and for the reasons noted *supra* in Defendant's objection to new evidence and allegations, all of the evidence associated with Nicholas Taflan, Camille Nagy, Joseph Nagy, Amzi Sherling and Evan Davis should be disregarded pursuant to Rule 37(c)(1). Nevertheless, in the event this Court should regard the testimony of the above witnesses, Defendant calls the Court's attention to the defects of the affidavits themselves as follows:

(1) Joseph Nagy states in ¶ 6 of his declaration: "I did not file an income tax return for 2001 because I relied on SAPF's materials … " SAPF records show that Joseph Nagy joined SAPF on or about August 6, 2001.[31] At ¶8, Nagy indicates that the time he stopped filing federal tax returns predates his joining SAPF by *two years*. The reasons Nagy didn't file returns *before* becoming a member of SAPF may be the very same reasons he didn't file returns *after* he joined SAPF. In other words, no evidence exists that SAPF had any influence whatsoever in his decision not to file returns for any or all years.

(2) Camille Nagy states in ¶ 6 of her declaration: "I did not file an income tax return for 2001 because I relied on SAPF's materials … ". SAPF records indicate that Camille Nagy joined SAPF on or

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[29] Exhibit 5, US answer to SAPF's interrogatory no. 3, on p. 2.
[30] The affidavits from these two individuals were signed on June 8 and June 5, 2006, respectively.

about June 6, 2003.[32] Moreover, she stopped filing tax returns in 2001, two years *before* she became a member.[33] As before, there is no evidence that SAPF had any influence whatsoever in Ms. Nagy's decision to not file federal tax returns for any or all years.

(3) Nicholas Taflan also declared that SAPF prepared bankruptcy documents for him. The only member of the staff that has done this, is Norm Lehnhardt. Lehnhardt is now retired from SAPF's staff, and lives in North Carolina, so there is nothing for the court to enjoin. Moreover, Lehnhardt only prepared said documents as a favor to Taflan. See Affidavit of Norman Lehnhardt (Exhibit 9). This issue is moot. Neither Kotmair nor SAPF staff assist members with bankruptcy petitions; therefore, there is nothing to enjoin.

Plaintiff has also submitted a declaration by Dr. Amzi M. Sherling, wherein at ¶ 8, he states that Kotmair filed a lawsuit against him with the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer ("OCAHO"). Said action was filed approximately ten years ago.. Moreover, Sherling states, in ¶ 5 of his declaration, that the person initiating said OCAHO action, provided a "Statement of Citizenship" and an "Affidavit of Revocation." However, he states that the exhibits to corroborate this statement are "similar to those offered by" this employee. It is not likely that anyone would remember what a document looked like eleven years after he saw it—a document he didn't deem sufficiently important to save. Moreover, the accompanying exhibits to Sherling's declaration did not include an "Affidavit of Revocation."

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[31] See Exhibit 1, Kotmair affidavit, ¶ 57.
[32] See Exhibit 1, Kotmair affidavit, ¶ 58.
[33] See Declaration of Camille Nagy, Docket 46, ¶ 8.

IV. Rowe's and Newman's declarations fail the standards for supporting affidavits.

Thomas Newman's declaration does not set forth any relevant factual elements; it is merely a compilation of court opinions and administrative tribunal opinions. The trial court in its consideration of affidavits submitted on motion for summary judgment may only consider those statements which affiant would be permitted to put before court as testimonial evidence, but must disregard legal conclusions. See *Sword v. Fox*, 317 F.Supp.1055 (W.D.Va.1970). Therefore, Newman's declaration may be disregarded.

Federal Rule of Civil Procedure 56(e) states, in relevant part:

> "(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith." [emphasis added]

Pleadings are "supported" by affidavits made by competent witnesses who have (1) personal knowledge of the factual elements that are material to the cause of action, and (2) are competent to testify on said material factual elements. Agent Rowe fails this standard on both counts.

In contrast, Rowe sets forth allegations in support of plaintiff's motion for summary judgment which require closer scrutiny, for these may be relevant in the event they are true. But close scrutiny reveals that Rowe's declaration fails its intended purpose, in that (1) many of the elements alleged to be material to the case do not arise from her personal knowledge and she is not competent to testify to them; (2) most of her allegations are not material to the allegations of the complaint; (3) Rowe makes conclusory allegations rather than admissible statements.

Generally, affidavits submitted on summary judgment must contain admissible evidence and be based on personal knowledge. See *Evans v. Technologies Applications & Service Co.*, 80 F.3d 954

(App. 4th Cir. 1996). A court "may therefore strike potions of an affidavit that are not based upon the affiant's personal knowledge, contain inadmissible hearsay or make generalize and conclusory statements." *Cox v. County of Prince William,* 249 F.3d 295 (App. 4th Cir., 2001).

In deposition, Plaintiff's counsel asserted that Rowe was incompetent to provide testimony regarding fraud, and further asserted that she could not identify false statements, since that was a legal conclusion, as discussed *supra.* Further, the job description given by Plaintiff for Rowe's position[34] relates in its entirety to tax examination, that is, auditing large and complex returns. Nevertheless, none of the paragraphs of Rowe's declaration are stated as her personal knowledge; only three paragraphs mention something she personally did and therefore is competent to testify to: ¶¶ 58–59 and 37. She states that she "has reviewed" the materials of another agent, and so she is apparently relaying her own impressions of an investigation conducted by someone else; this is hearsay. Despite the fact that stating something is false is a conclusory allegation, one that Rowe is not competent—according to Plaintiff's counsel—to even make, it is startling that fully 15 paragraphs of the complaint contain allegations that something is "false" or "falsely states" or "falsely advises." Fully 14 paragraphs make the conclusory allegation that activities SAPF is engaged in are all a "part of the scheme." Rowe also sets forth paragraph after paragraph with numbers of letters received by the IRS from Defendant, but does state in what manner she gained this information, nor how she gained any of the information presented, except to make bald allegations as to what they are—many of the documents entered are not authenticated. Finally, there are many discrepancies between her statements and Plaintiff's motion for summary judgment. One example may serve to illustrate the types of errors within the entire affidavit — too numerous to mention here—and the motion as well:

Estimated cost to the treasury

Without laying a foundation that Agent Rowe compiled the data and/or generated the numbers pursuant thereto, or even alleging that she is the custodian of such records, Agent Rowe is not competent to provide figures relative to the estimated cost to the treasury. In coming up with an estimate of the alleged cost to the U.S. Treasury, Plaintiff makes contradictory statements. On page 7 of its memorandum, Plaintiff claims that "[t]he IRS has identified 864 SAPF members." However, Rowe, at ¶ 41 of her declaration, testifies that Defendants "sent at least 846 protest letters to the IRS." At ¶ 42, Rowe claims that "Kotmair purported to represent at least 305 individuals." Although Rowe has offered no evidence to support either of these claims, her testimony in these two paragraphs seems to be that 846 letters were sent on behalf of 305 members. Plaintiff likewise offers no evidence to support its claim of having identified 864 members, and the similarity between that number and the number of letters claimed in Rowe's declaration suggests that Plaintiff used the wrong number from that declaration. At any rate, there is certainly some discrepancy in the numbers used to support Plaintiff's estimate of costs.

Later, at ¶ 67, Rowe again refers to "the 846 letters" in estimating the administrative costs of processing the letters. However, in ¶ 68, the 846 letters mysteriously transforms into 846 members, for the purposes of estimating the costs of preparing substitutes for returns. Thus, at best, it appears that the amount calculated in that paragraph is overstated by at least 275 percent.

Further, Exhibit 35, the worksheet showing the alleged costs, is not only unsigned, but has no indication of the person who prepared it, nor has Rowe even testified as to how she acquired it. Certainly, neither Rowe, nor anyone else, has sworn that the information it contains is true. Further, Rowe's job description gives no indication that this is her function. Neither has any evidence been

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[34] Exhibit 5, US answer to SAPF's interrogatory 6.

offered to support the numbers of hours claimed to be necessary to perform the functions listed, nor has any clarification of what those functions really are. For all intents and purposes, Plaintiff's estimate of costs is nothing more than numbers plucked out of the air.

For all these reasons, not only should Plaintiff's Exhibit 35, and all estimates derived from it, be disregarded, but all of the statements made in Agent Rowe's declaration which do not come from *personal knowledge, information, and belief should be disregarded as well.*

ARGUMENT

I. Allegations now ripe for summary judgment in favor of Defendants.

The United States brought a complaint against Defendants devoid of claims upon which relief can be granted. Defendants moved for summary judgment with respect to all claims, and it is clear, from Plaintiff's own motion, that the government has now conceded or abandoned the majority of its original claims. Consequently, judgment for Defendants should be entered with respect to all allegations related to: (1) websites they do not own or control, (2) violations of I.R.C. § 6701 and "frivolous" correspondence, (3) bankruptcy and court filings, and (4) preparing FOIA requests.

A. Allegations related to websites Defendants neither own nor control.

On page 2 of the government's motion for summary judgment, in footnote 3, Plaintiff states, "The United States does not contest that the taxfreedom101.com and taxtruth4u.com websites are not owned by defendants." Thus Plaintiff concurs that summary judgment should be granted in favor of Defendants on all counts related to material attributable to either of those two websites. As addressed in Defendant's motion for summary judgment on pages 5–8, these are: (1) all allegations related to www.taxtruth4u.com, www.taxfreedom101.com, and *The Tax Freedom 101 Report* in ¶ 8; (2) all

allegations related to the "Home Study" program, in ¶¶ 23 and 24, (3) all allegations related to ¶¶ 25e and 25f.[35]

It must be noted that despite its admission, Plaintiff attempts to reconnect these websites to Defendants by stating "some of the false statements listed in the United States' complaint were taken from websites owned by their representatives."[36] On page two, the United States characterizes these representatives as "a salesforce, which SAPF calls independent representatives." Since Plaintiff makes no showing that Defendants own or control statements made on those websites, the undisputed fact remains that statements, programs and newsletters associated specifically with those websites do not form any part of this complaint. Moreover, although the government raises the issue of SAPF's independent representatives for the first time ever in its motion for summary judgment; it doesn't actually allege anything regarding the independent representatives, nor provide any evidence that such representatives are not in fact "independent," just as their name states. In fact, SAPF's independent representatives are required to take a pledge which enumerates things a representative may not say or do as a representative of SAPF. Other than the signing of the pledge, SAPF has no control over the representatives.[37]

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[35] That is, "the following false and fraudulent statements about the federal income tax laws and *the tax advantages of their schemes" (as stated in the complaint) should be struck:*

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

[36] Docket 42, Plaintiff's motion for summary judgment, page 9.

[37] See Exhibit 1, Kotmair affidavit, ¶ 6, and Kotmair Exhibit A.

B. Allegations related to the Membership Assistance Program and the Patriot Defense Fellowship.[38]

A substantial portion of Plaintiff's complaint, ¶¶ 11–15 and 42c, alleges that the Membership Assistance Program (MAP) and the Patriot Defense Fellowship (PDF) provide "financial incentives" which "encourage others to violate the internal revenue laws." In its motion for summary judgment, Defendant SAPF argued, *inter alia*, that these allegations by Plaintiff were unsubstantiated and failed to allege any specific person incited to violate any specific law. Moreover, Plaintiff never cited any law prohibiting "insurance-like protection" such as MAP and PDF. Without a statute establishing the elements necessary to commit a prohibited act, Plaintiff was unable, and did not, allege such elements.[39]

Since Plaintiff provided no rebuttal to Defendant's position anywhere within its motion, the government appears to have abandoned all allegations related to the supposed "financial incentives" which "encourage" others to violate internal revenue laws.

Nevertheless, despite the fact that Plaintiff provided no rebuttal, it attempted twice to again allege, without support in law or fact, that SAPF programs provide financial incentives for violating internal revenue laws. Its first presumption is on page three: "Moreover, defendants offer to reward customers who violate the income tax laws through an "insurance-like" scheme." This statement is wholly unsupported by Plaintiff. Further, the theory that, when members charitably contribute to members who have lost property or been incarcerated, this is somehow a "reward," has already been argued in Defendant's motion for summary judgment (page 32 *et seq.*).

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[38] Plaintiff repeatedly and erroneously called this a "fund" in its complaint.
[39] Docket 38, Defendant's motion for summary judgment, pages 32-34.

The second hypothesis is on page seven: "Moreover, Defendants require that customers use these materials [protest letters and court filings], and employ their delay tactics, in order to claim the benefits of their insurance-like coverage, which rewards customers for violating the income tax laws." This statement is also without any basis, although Plaintiff cites Rowe's declaration ¶¶ 5, 8, 18-21, and the Nagys' declarations at ¶14. None of these cites say anything remotely related to the sentence above, nor even to the MAP or PDF. In fact, *none* of the declarations appended to Plaintiff's motion mention these programs at all. As for the exhibits presented in support: Exhibit 3 is from taxfreedom101.com, already acknowledged by Plaintiff as not belonging to nor controlled by Defendants; Exhibits 1A,[40] 1B, 6A, 6C, and 6D do describe MAP and PDF, but nothing in those exhibits supports the proposition that "defendants require that customers use [SAPF] materials ... in order to claim the benefits of their insurance-like coverage." Further, the phrase "delay tactics"[41] simply means availing oneself of every legal and administrative remedy established by Congress and state legislatures; Defendant Kotmair, SAPF fiduciary, testified to this in his deposition, and the matter was fully addressed in SAPF's answers to the United States' requests for admissions.[42]

Finally, there is no evidence whatsoever within any cited exhibit which can be remotely construed as supporting the proposition that SAPF "rewards" members "for violating the income tax laws." In fact, Plaintiff's exhibits 6A, 6C, and 6D show that the assistance program is for protection against the *illegal actions of government bureaucrats*:

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[40] Page 6 of Plaintiff's Exhibit 1A, SAPF Membership Handbook, describes Victory Express, a hypothetical "what if" situation, not a real one. This was already set forth in SAPF's response to the United States' requests for admissions, ¶¶ 17–20 (Exhibit 8).
[41] See page 28, Plaintiff's Exhibit 1B, SAPF Membership Handbook.
[42] See ¶ 21, Exhibit 8, SAPF's response to US requests for admissions.

"... Fellowship members believe that many Internal Revenue Service (IRS) employees routinely misapply and illegally enforce the provisions of the law and that the public must find a way to hold them within the law. To that end the Fellowship educates the public, shows in its publications what the law actually says, and attempts to clarify the limitations of various tax laws as was intended by Congress. The Fellowship does not advocate or condone unlawful resistance, protest, or other like actions.
... To our knowledge, there is no insurance company willing to buck the system and insure Patriots against criminal acts of government agencies or their employees. ... There was only one totally local answer: a FELLOWSHIP that gives the Patriot insurance-like protection ...
... Simply put, Fellowship members pledge to reimburse other members for losses of cash or property incurred by illegal confiscations." [emphasis added][43]

Exhibit 1A, the membership handbook, states, on page 5:

"One of the greatest fears anyone can face in our society today is the loss of property. This understanding is what led 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. ... Remember, this is not socialist government wealth redistribution under threat of incarceration — this is voluntary charity." [emphasis added]

Finally, Agent Rowe offers just one unsubstantiated allegation[44] that "[t]he investigation .. revealed that defendants reward customers who violate the federal income tax laws by offering to reimburse individuals with civil liabilities or criminal tax charges." Although Rowe does not allege that this refers to the MAP and PDF programs, the only support provided is a copy of a single MAP assessment sent to members, itself evidence that the MAP program operates as described by Defendants:[45] it contains no evidence of being a "reward" for "violating" any law.

In sum, Plaintiff has failed to state a claim upon which relief can be granted, and has failed to make any rebuttal to SAPF's position, nor to make any showing whatsoever, and this matter is ripe for

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[43] Plaintiff's Exhibits 6A (p. 2), 6C (p. 2), and 6D (p. 2).
[44] ¶ 65 of Rowe's declaration, Docket 42.

summary judgment on all counts relating to the encouragement or offering of financial incentives to violate internal revenue laws, *i.e.*, ¶¶ 11–15 and 42c, and the concomitant prayers by Plaintiff to enjoin the MAP and the PDF and to receive a list of the members thereof.[46]

C. Allegations relative to § 6701 and "frivolous" correspondence.

Taken together, ¶¶ 17, 34–37, 38b, and 42[47] of the complaint allege that SAPF "has reason[] to believe" that its "correspondence to the IRS" and "bankruptcy and other court filings" "would result in understatements of customers' tax liabilities" if the IRS (or the courts) "relied on that correspondence."[48] These are the only actual allegations relating to I.R.C. § 6701 in Plaintiff's entire complaint. Defendant's explication of § 6701, along with the utter lack of factual support for Plaintiff's claims, have been laid out in its motion for summary judgment at pages 19–27.

Failing to argue — or to make any showing — that the correspondence prepared by Defendant is in violation of § 6701, Plaintiff now concedes that this correspondence, termed the "frivolous protest letters," is *not* in violation of § 6701 at all: "Moreover, contrary to SAPF assertion, it is these 'affidavits' and 'statements' which violate Section 6701, *not their frivolous protest letters*."[emphasis added][49] Of course, SAPF has always asserted its correspondence does *not* violate § 6701. It is only Plaintiff's complaint which makes this assertion, now conceded as untrue.

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[45] See SAPF's motion for summary judgment, Docket 38, pages 32–34. See also Plaintiff's Exh.34: "Since 1993, when I joined, it has been such an honor to each month send money to someone, somewhere, to help them … to take the edge off the loss."
[46] ¶¶ D7 and F of the complaint.
[47] Insofar as ¶42 of the complaint relates to "frivolous letters" and "frivolous" court filings.
[48] Paragraph 38 goes even further, rephrasing this as "preparing documents understating their customers' tax liabilities."
[49] Footnote on pages 18–19 of Plaintiff's motion for summary judgment.

Moreover, Plaintiff utterly fails to mention, and has apparently abandoned, its allegations that bankruptcy and court filings prepared by Save-A-Patriot Fellowship would result in "understatements" of members' tax liabilities "if the courts relied on them."

Plaintiff, therefore, has not only failed to plead the elements necessary to constitute an offense under § 6701,[50] it has in effectively conceded that Defendant is correct with respect to all counts in its complaint related to the elements of § 6701. Therefore, Plaintiff is not entitled to the injunctive relief it seeks, and all counts with respect to § 6701 are ripe for judgment in Defendant's favor, i.e., ¶¶ 17, 34–37, 38b, and 42.

D. The claim of "frivolous" FOIA requests.

Plaintiff's claim in ¶¶ 18 and 42 that Defendant files frivolous FOIA requests, was shown by SAPF to lack any evidentiary or legal foundation.[51] Unsurprisingly, Plaintiff now only mentions in passing that such privacy act requests are to gather exculpatory evidence, with no further explanation.[52] Evidently, Plaintiff has conceded that it is impossible to file a "frivolous" FOIA request, and summary judgment should be entered in favor of Defendant for ¶18 and 42[53] of the complaint, as well as for the concomitant prayer to enjoin SAPF from preparing FOIA and Privacy Act requests.[54]

II. New allegations regarding violations of § 6701.

As pointed out *supra*, Plaintiff is now attempting to rewrite its complaint by substituting its former allegations regarding § 6701 with a new one: now, the "Statement of Citizenship"—never mentioned in the complaint—and what Plaintiff terms the "Affidavit of Revocation" are the documents

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[50] Docket 38, SAPF's motion for summary judgment, pages 19–25.
[51] Docket 38, SAPF's motion for summary judgment, page 30.
[52] Docket 42, Plaintiff's motion for summary judgment, page 5.
[53] Insofar as ¶ 42 relates to FOIA requests.

alleged to be in violation. Since all counts related to § 6701 have already been conceded, see *supra*, the counts of the complaint cannot now be amended by the introduction of new evidence or argument in a motion for summary judgment. Therefore, without further hearing, summary judgment in favor of Defendants should ensue for any and all new allegations with regard to § 6701.

A. Allegations in complaint were insufficient to state a claim.

There is just one allegation in the complaint regarding the "Affidavit of Revocation and Rescission," at ¶ 16, which says it "consists of letters to the Secretary of the United States Treasury purporting to revoke the member's application for a Social Security number." Plaintiff alleges nothing more in the entire complaint — failing *ab initio* to make any claim relative to any counts in the complaint.

Moreover, it is axiomatic that any document or set of documents, whatever they may be, which purport only to revoke an application for an account number *cannot* violate of §6701 (or § 6700). The requisite element of § 6701, that such document, or any portion thereof, "would result in an understatement of the liability for tax" simply doesn't exist. Beyond this, Defendant's construal that an "understatement of a liability" must contain an actual numerical figure of net amount payable or refundable is wholly undisputed by Plaintiff. On its face, then, the claim in ¶16, even if presumed true, presents no violation of § 6701.

On the other hand, the "Statement of Citizenship" is a phantom: the complaint is devoid of any allegation it even exists, much less that its use violates of §6701. Nevertheless, ¶ 21 of the complaint states "defendants prepare documents for members that they claim will prevent the member's employer from withholding federal taxes from the member's wages." Construed as liberally as possible, this may

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[54] ¶ D3 of the complaint.

be an allusion to the "Statement of Citizenship" Plaintiff now brings forth for the first time, and indeed, no other documents have been produced to fit this vague description. Even so, ¶ 21 is devoid of any manner in which such "documents" violate § 6701, since the requisite element that such document would result in an actual understatement of tax liability is missing. At the outset, a document which actually prevented withholding, *arguendo*, could never affect the underlying tax liability of the withholdee. Rather, it would only influence *the amount withheld*. That is, at the end of the year, when the withholdee filed a return, the total amount *payable* at that time would depend upon the withholding credit(s) he could claim, but his "statement" of tax liability — regardless of amounts withheld — would always be the same with respect *to the taxes imposed by law*.[55] Therefore, ¶21's claim, even if presumed true, presents no violation of § 6701.

B. Newly raised allegations also insufficient to state a claim.

Plaintiff, the government, has not opposed nor rebutted Defendant's explication of Congress' intent as found in the actual words of § 6701.[56] As such, Plaintiff concedes that the same statutory construction should be applied to the newly made allegations—never raised in the pleadings—that rather than the "frivolous" correspondence to the IRS, it is the "Affidavits of Revocation" and "Statements of Citizenship" which form the grounds for the alleged violation of § 6701.

To gloss over the fact that its allegations do not rely on the actual wording and plain meaning of § 6701, Plaintiff prefers to paint that section in its broadest colors, using the general intent of the law as reported by the Senate finance committee: to "help protect taxpayers from advisors who seek to profit by leading innocent taxpayers into fraudulent conduct" and to provide for "more effective enforcement of

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[55] Put another way, the real question in determining "understatement" of a liability is "does the person state on their return that they owe less than the tax laws impose?"

the tax laws by discouraging those who would aid others in the fraudulent underpayment of their tax."[57] While true, on the very next page, the committee report clearly narrows the explanation of § 6701's provisions to encompass only the preparation of (any portion of) documents which will, if used, "result in any understatement of the tax liability of another person," and further states that only persons directly involved in assisting in preparing a "false or fraudulent document *under the tax laws*"[58] [emphasis added] are subject to the statute's penalty — all of which refers to the actual language of the statute.

There is no need to retrace the argument set forth in Defendant SAPF's motion for summary judgment with regard to the intent and meaning of IRC § 6701. However, we note again that "understatement of a liability" still means a statement of actual figures, and that alone precludes these documents from any violation of § 6701, according to Plaintiff's own descriptions of these documents. The "Affidavit of Revocation" is described by Plaintiff as a document which "allegedly revokes [members'] Social Security number and obligation to file income tax returns."

That Plaintiff fully comprehends both the limitation of § 6701 only to documents which, if used, "would result in an understatement of the liability for tax of another person," and the fact that the documents in question do not meet that element is evident by the language it now employs. On page 19 of its motion for summary judgment, it states: "these documents, if used, would result in the understatement of their customers' tax liabilities, withholding obligations, and filing requirements because their customers fail to file returns and request that employers stop withholding taxes." The Plaintiff's very creation of two categories which never appear in the statute — withholding obligations

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[56] Page 20 *et seq*, Docket 38.
[57] Page 9, Docket 42, quoting S. Rep. No. 97-494, vol. 1 at p.275.
[58] Exhibit 10, p. 276.

and filing requirements — is *de facto* evidence that the United States is aware that these documents do not violate § 6701; if they did, it would be enough to state the plain words of the statute.

Beyond contemplating how it would be possible to create a document that would result in the absurd concept of an "understatement of a withholding obligation"—since the only definition of the term understatement has been shown to relate to the statement of liability shown on a *return*, it is unfathomable that a "withholding obligation" could be "understated." Either an obligation exists to withhold, or it does not. In light of this, the concept of an "understatement of a filing requirement" is even more absurd. Either a filing requirement exists, or it does not. Certainly, § 6701 says nothing at all on the subject of filing requirements; the entire statute contemplates the filing of a return by referring to the "understatement of a liability." This is confirmed by Plaintiff in its quote of S. Rep. No. 97-494, vol. 1 at 268, speaking of the powers Congress included in I.R.C. § 7408 so that the IRS would not be "required to await the *filing and examinations of tax returns* by investors."[59][emphasis added].

Plaintiff having failed even to make a *prima facie* case that these newly alleged documents are in violation of § 6701, and showing, moreover, by their description of these documents that they bear no relationship whatsoever to the conduct contemplated by § 6701, Defendant is entitled to summary judgment in its favor with regard to allegations that the "Affidavit of Revocation" and "Statement of Citizenship" are documents which are violative of § 6701.

III. New allegations regarding violations of § 6700.

On page 12 of its motion, Plaintiff raises allegations that it is the statements which Defendants are alleged to have made about the "Affidavit of Revocation and Rescission" and the "Statement of Citizenship" that are in violation of § 6700. It must be remembered here, that although Defendant will

address the nature of the statements made to members about these documents, that statements made about such documents are not statements made regarding the "tax benefits" of SAPF membership — since again, there are no "tax benefits" accruing from membership in SAPF. For this reason, even if it were presumed true that Defendants made false statements about these documents, the requisite elements to be in violation of § 6700 would not be met.

A. Statements made about the "Affidavit of Revocation and Rescission" are not false.

In contrast with Plaintiff's allegation that "Defendants falsely state that participants can revoke their Social Security numbers in order to evade employment tax payments requirements," Rowe's Exhibit 6A (Defendant's newsletter, *Reasonable Action*) actually says: "The AFFIDAVIT includes 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." In other words, it revokes the *voluntary act of applying for the number* by rescinding one's signature from the application, as opposed to "revoking" the number.

That the application for a Social Security Number is indeed voluntary is shown by the Social Security Administration's application for Office of Management and Budget approval of the SS-5, where, under "Obligation to respond," the primary obligation is "Required to obtain or retain benefits" and the only other obligation is "Voluntary." A copy of this approval form, OMB 83-I, is attached as Exhibit 13. Furthermore, Defendant Kotmair testified in his deposition that the purpose of the "Affidavit of Revocation and Rescission" was "so you're actually revoking the *application* and rescinding your signature from it."[60] [emphasis added] Of members who execute such an affidavit, he stated, "they don't

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[59] Quoted on page 9 of Plaintiff's motion, Docket 42.
[60] Exhibit 7, Kotmair deposition, at 163:16

want to have that number, so they revoke their act and rescind their signature from that application. That's all -- that's it."[61] He further testified that anything resulting from that rescission would be a matter of law.[62]

Also damaging to Plaintiff's allegations with respect to the Affidavit of Revocation and Rescission, however, is the fact that it has failed to produce any copy of the document. Instead, Plaintiff resorts to conclusory statements in Rowe's declaration to support its untimely allegations about it, without regard to Federal Rules of Evidence, Rule 1002. Although Plaintiff failed to produce an actual authenticated copy of any "Affidavit of Revocation"(its term), it nevertheless asks this court to decide that fraud has been committed in connection with it (or even by it), based solely on Rowe's conclusions. This, despite the fact that Plaintiff's counsel claimed in Rowe's deposition that she was not even competent to testify as to fraud, *supra*. The Supreme Court said, in *Gordon v. U.S.*, 344 U.S. 414, 421 (1953): "The elementary wisdom of the best evidence rule rests on the fact that the document is a more reliable, complete and accurate source of information as to its contents and meaning than anyone's description ..." Certainly, it is incumbent on Plaintiff to produce any documents it wants this court to render judgment upon. For these reasons, this court should disregard Plaintiff's unsupported allegations about the Affidavit of Revocation and Rescission on pages 3 and 17 of its memorandum and in Rowe's declaration at 52–55, and render summary judgment in favor of Defendants.

B. Statements made about the "Statement of Citizenship" are not false.

With respect to the Statement of Citizenship, Plaintiff asserts: "Defendants falsely state that participants can file these documents in order to proclaim that they are U.S. citizens not subject to

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[61] Exhibit 7, Kotmair deposition, at 164:16
[62] Exhibit 7, Kotmair deposition, at 167:6–173:12.

withholding ..." However, the Statement of Citizenship provided as part of Sherling's Exhibit 1 states that it is "provided to conform to the provisions of internal revenue regulations," and further quotes the regulation from 26 C.F.R. 1.1441-5,[63] which states in part:

> "**Claiming not to be 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 Sates 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."

This written statement is shown by IRS' Publication 515 to relieve withholding agents from the duty of withholding taxes and from any liability for not withholding:

> "You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. ... If an individual gives you a written statement, in duplicate, stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you may accept this statement and are relieved from the duty of withholding the tax."[64]

As can be seen, the Statement of Citizenship was prescribed by the regulations to give to an employer who was a "withholding agent" under Subtitle A, "Income Taxes." While regulation 26 C.F.R. 1.1441-5 was changed in the year 2000 (effective date), the underlying statute (I.R.C. § 1441) has not been changed, so it is clear that a "withholding agent" can still rely on a person's statement that he or she is a citizen, with regard to withholding of "income taxes" within the meaning of § 1441. Consequently, the Statement of Citizenship is merely a statement authorized by the regulations, as was testified to by Defendant Kotmair, in his deposition. The bottom line is that Defendants never claim that it does anything more than what the IRS itself says about it; therefore, summary judgment should be

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[63] A copy of this section from the 1999 version of the CFR is attached as Exhibit 11.
[64] A copy of pages 1 and 2 of the 1990 version of Publication 515 is attached as Exhibit 12.

entered in favor of Defendant with respect to all allegations, raised under the rubric of § 6700, of making false claims about this document, as newly raised in the Plaintiff's motion.

C. Statements made about Defendant Kotmair's representative status are not false.

Agent Rowe says, at ¶ 37 of her declaration, that she investigated Kotmair's status as a representative, and determined that he "is not authorized to represent individuals regarding their personal income tax liabilities before the IRS." This is yet another new issue that does not appear among the complaint's allegations. Nonetheless, Rowe knew—or should have known—that Kotmair had been assigned his representative number in 1990.[65] The number was in fact never revoked, since the IRS has never initiated any procedures to do that. The history of this matter has been thoroughly addressed in Defendants opposition to Plaintiff's motion for sanctions. Kotmair has written to the IRS several times to inquire of the allegations that his number had been revoked, and the IRS never responded. Since a hearing pursuant to IRS Circular No. 230 at at § 10.71 must be conducted before the representative status can be revoked; the IRS has never revoked this status.[66]

Rowe also states, at ¶ 40 of her aforementioned affidavit, that the "IRS informs SAPF customers that the person listed on the power-of-attorney [Kotmair] 'is not eligible to represent you.'" Rowe's Exhibit 21 is a *blank* form letter which does not identify anyone — no representative and no taxpayer — evidence of nothing at all.

Since Plaintiff has established no facts to support its allegation that Defendant Kotmair does not have representative status to represent members before the IRS, and the concomitant allegations that he

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[65] See Docket 50, page 12 and Exhibits 4, 5, 2, 3.
[66] Exhibit 5 of Docket 50, Subpart D of Circular 230.

misrepresents that status, summary judgment should be rendered in favor of Defendant for these new allegations.

D. SAPF does not file lawsuits before OCAHO.

Plaintiff makes much in its motion, for the first time ever, over the alleged filing of complaints against employers by Defendants Kotmair and SAPF. Neither Kotmair nor SAPF staff file lawsuits before OCAHO, nor do they assist anyone in filing such actions. SAPF has not assisted anyone in about eight years with any such filings, something that should be evident from the court records of OCAHO itself. Therefore, regardless of the fact that these types of suits are beyond the scope of § 6700 and § 6701, there is nothing to enjoin.

IV. Response to Plaintiff's motion: allegations from the original complaint.

A. Elements of § 6700: Plans and arrangements

As Plaintiff correctly contends, "courts have included all sorts of abusive tax reduction schemes within its broad sweep."[67] Of course, as was pointed out in Defendant's summary judgment motion, Congress recognized that to keep the penalty from being overbroad, it was necessary to limit its sweep by way of conditions that form an integral part of § 6700.[68] Since those additional conditions explicitly depend on the existence of the plan or arrangement, it is imperative to establish exactly what Plaintiff alleges such plan or arrangement to be. According to § 6700(a)(1), the plan or arrangement must be one which is capable of "organization," and of having an "interest" in it sold.[69] Thus, no matter what courts

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[67] As discussed *infra,* just because courts have followed that course of conduct does not make it valid.
[68] Two of those conditions are: (1) statements must be made in connection with the sale of the plan or arrangement; and (2) statements must be false with respect to tax benefits claimed to be available as a function of participation in the plan or arrangement.
[69] Section 6700(a)(1)(B) refers to "the sale of any interest in an entity or plan or arrangement."

have allowed to be enjoined as tax shelters in the past, the law clearly contemplates only such shelters as have those characteristics.

Despite the necessity of positively identifying the tax shelter Defendants are accused of organizing and selling, Plaintiff has failed to do so. Instead, Plaintiff just speaks in vague general terms of "tax-fraud schemes,"[70] and refers to everything that Defendants do or say as "part of the scheme." In doing so, Plaintiff attempts to side-step all of the limiting conditions, and thereby prevent Defendants from doing anything. The vagueness of Plaintiff's allegations in this regard are exemplified by this statement from page 11 of its memorandum:

> "As discussed above, defendants' schemes involve selling a tax-fraud scheme that falsely claims customers can voluntarily withdraw from paying Social Security taxes, and are not subject to tax payment, withholding, or filing requirements on U.S.-source income. Because defendants are selling tax-fraud services and products, they participated in the organization of an entity, plan or arrangement, within the meaning of 26 U.S.C. § 6700(a)(1)(A)."

Here Plaintiff speaks of schemes within schemes, without specifically identifying any of them. Yet, clearly, if any "entity, plan or arrangement" can be said to exist, it can only be Save-A-Patriot Fellowship itself.[71] That being so, any false statements alleged to have been made must be false with respect to the securing of any "tax benefit by reason of holding an interest in [SAPF] or participating in [SAPF]." Further, the statements must also be made in connection with the sale of membership in SAPF. Certainly, to say—as Plaintiff seems to be trying to do—that each letter SAPF prepares for a member is

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[70] Although Plaintiff uses the term "fraud" throughout its pleadings, it has never alleged the elements of fraud with the particularity required by FRCP Rule 9(b).

[71] Since Plaintiff admits that SAPF was organized in 1984 (see Rowe declaration ¶ 5), it is duplicative to also claim that selling services and products constitutes the organization of an entity, plan or arrangement.

itself an "entity, plan or arrangement" defies all logic, since one cannot "organize" or "sell an interest in" a letter.

This is important because Plaintiff utterly fails to identify any statements made by Defendants that falsely claims that any tax benefits can be secured by reason of becoming or remaining a member of SAPF. That failure is a tacit acknowledgement that § 6700 does not apply to Defendants' activities. The false statements all relate to the broader issue of "tax benefits," if that phrase can be said to apply, alleged to be available solely by reason of being an American citizen. Whether such statements are true or false is simply not material with respect to § 6700.

B. Elements of 6700: "False statements regarding the Internal Revenue Code"

Having already shown, in Defendants' motion for summary judgment, that the allegedly false statements they have been accused in the complaint of making do not fall within the scope of § 6700, in that they are neither made in connection with the sale of membership in the Fellowship, nor even alleged to be false with respect to tax benefits claimed to be available as a result of membership. For these reasons, § 6700 simply does not apply. Undaunted, Plaintiff now, for the first time, alleges a whole different set of statements it claims are false. However, for the same reasons, the new set of statements also do not fall within § 6700.

This is admitted on page 11 of Plaintiff's summary judgment memorandum, where it states, with the regard to the alleged "tax benefits" of Defendant's schemes: "The gravamen of Defendants' scheme is that *ordinary citizens* are not subject to income tax payment or filing requirements for U.S.-source income—the § 861 argument." [emphasis added] Nowhere in the hundreds of pages of its motion and exhibits has it identified even one statement Defendants have made which claims that ANY tax benefit accrues to anyone by virtue of becoming a member of Save-A-Patriot Fellowship. That is because SAPF

has never claimed that joining the Fellowship results in any tax benefit to anyone. Rather, Defendants have always taught that the tax laws written by Congress favor citizens, and so any so-called "tax benefits" are a result of American citizenship, not SAPF membership.

Nevertheless, Plaintiff uses language which implies that Defendants link various tax benefits to membership, but a closer look at some of its allegations shows no actual connection. One such statement is found on page 11 of Plaintiff's memorandum: "Along those same lines, Defendants inform their customers that they are not required to report or pay taxes on domestic income." However, Defendants have only said that citizens—whether they be SAPF members or not—are not taxed on domestic income. There is no way this can be construed as a claimed tax benefit of membership.

Likewise, on page 13 of their memorandum, Plaintiff claims: "Defendants' statements that federal income taxes do not apply to their customers, who are American citizens, are not supported by law." Again, Plaintiff phrases this statement in such a way as to imply that such non-application of income taxes is claimed to be a result of membership, and that being a citizen is secondary, when, in reality, citizenship is the governing factor.

Agent Rowe's declaration tries to blur the distinction by referencing "customers" in each of the claims she alleges. For example, at ¶26, she states: "The letters, prepared by SAPF, falsely state that the SAPF customer is not required to file an income tax return because they are not 'citizens of the United States living or working abroad, …'" Clearly, if not being required to file an income tax return can be considered a "tax benefit," such "benefit" accrues as a function of citizenship. Thus, § 6700 is not applicable to this statement. Likewise, at ¶27, she states: "These letters, prepared by SAPF, falsely state that the SAPF customer is not required to file an income tax return because they did not 'receive any foreign earned income' and, therefore, 'has no requirement to file an income tax return, …'" Again,

whether or not any requirement to file an income tax return exists, it clearly is not claimed to be dependent on SAPF membership.

A careful reading of Rowe's declaration shows that the same PLAN is true for all of the statements she cites. At ¶29, the letters referred to state that the lack of filing requirement with respect to the member is "because they 'received no income from sources listed in 26 CFR§ 1.861-8(f),'" and at ¶30, "because they received no 'Foreign Earned Income.'" At ¶32 and 34, the statements at issue concern the lack of tax liability "as a U.S. citizen" and "because [the members] are not 'withholding agents,'" respectively. Finally, at ¶41, Rowe reiterates the general statement that "SAPF customers are not subject to income tax payment or filing requirements as U.S. citizens living and working in the United States."

There can be no question that all of the above statements relate exclusively to the applicability of various facets of the tax laws as a function of the law itself, and none relate to benefits of any kind as a function of SAPF membership. Rowe admits this at ¶6 of her declaration, where she states: "The preliminary investigation revealed that SAPF publishes false statements regarding the income tax laws..." Likewise, her statement at ¶7 shows that her allegations have nothing whatsoever to do with tax benefits available by reason of SAPF membership, and are not made in connection with the sale of membership. Indeed, many of the statements Plaintiff now cites are contained in letters which are available only after a person becomes a member; obviously, such statements are not made in connection with the sale of membership.

The bottom line is that the crux of Plaintiff's case is that Defendants make statements about the tax laws with which the government disagrees, and that Defendants should be restrained from continuing to make such statements.

C. Elements of § 6700: "Know or have reason to know"

To support this attempt to silence Defendant, Plaintiff shows a number of court decisions where various positions similar to those of Defendant have been rejected, and the advocates of such positions have been silenced. In fact, Plaintiff relies on such decisions to support its claim that Defendants "knew or had reason to know" that statements they make are false. The problem with this legal theory is that it attempts to equate knowing that a statement is false with knowing that courts have said that it is false. Plaintiff admits this on page 15 of its memorandum:

> "Defendants are clearly sophisticated enough to locate relevant court decisions. In fact, defendants' materials routinely criticize court decisions, correspondence from the IRS, and any document opposing their position."

Plaintiff wants to 'prove' that Defendants knew their statements were false because they criticized the court decisions that said they were false. Of course, the reverse is really true: Defendants whole-heartedly believe their statements are true, and criticize court cases, IRS correspondence, etc. which say the opposite because they likewise believe such cases to have been wrongly decided. This goes to the very heart of free speech—the freedom to voice disagreement with what are considered errors of our government, to call attention to wrongs within that government, and to advocate what it considers correct.

Plaintiff obviously does not agree with this view. Rather, it wants to squelch speech unless it toes the government line. If a court (or especially many courts) says that something is false or frivolous, then it must be made illegal to advocate it any longer. Of course, this legal theory ignores the humanity of judges and other government officials. Such men and women are just as prone to error as all other humans; the history of our nation is replete with examples of governmental and judicial error.

One example, referred to in SAPF's summary judgment motion, concerns the protection of commercial speech. When the Supreme Court first considered the matter in *Valentine v. Chrestensen,* 316 U.S. 52 (1942), they decided that commercial speech enjoyed no protection at all, but over the years, they changed that position to acknowledge that the 1st Amendment did offer protection (albeit limited)[72] to such speech. Surely, it cannot be said that those who advocated for the protection of commercial speech during the intervening period were advancing false or frivolous ideas.

An even more glaring example can be seen in the issue of "separate but equal." In 1896, the Supreme Court, in *Plessy v. Ferguson*, 163 U.S. 537 (1896), decided that it was constitutional to force blacks to ride in a separate train car. For 58 years, that decision was considered to be the 'law of the land.' Indeed, some people lived their whole lives under the oppression sanctioned by that decision. By the practice of *stare decisis*, that decision was relied on by all the courts of this country, resulting in countless other court cases which upheld that racist practice. Did the abundance of court decisions make "separate but equal" right or true? Of course not. It was no more right in the years before it was overturned,[73] than it was afterward. Even if it had never been overturned, and was still being upheld today, it would still not be right. As the court said in *United States v. Ekwunoh*, 813 F.Supp 168, 171 (1993):

> "Acquiescence in an invalid rule of law does not make it valid. See *Brown v. Board of Educ.,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), overruling *Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896)."

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[72] It must be noted here that the 1st Amendment does not contain the word "commercial," and so the distinction drawn between commercial speech and all other speech was contrived out of whole cloth by the judiciary.

[73] See *Brown v. Board of Education*, 347 U.S. 483 (1954).

According to Plaintiff's legal theory, the people who, in the 58 years before the court actually reversed themselves, advocated the idea that the court wrongly decided *Plessy* were advocating a false and frivolous position—presumably right up until the reversal, at which time their position would have been magically transformed into truth by the court's new decision.

In the same vein, Plaintiff asserts that "defendants have *more* than a 'reason to know' their statements regarding the tax reporting and payment requirements of U.S.-source income is false."[74] To support this, Plaintiff brings up the convictions of Defendant Kotmair and his son for willful failure to file tax returns. Plaintiff's theory again is that since the courts sent these two men to jail, this proves that their positions were wrong. And yet, the judges (and jurors) in those cases are no less susceptible to error than everyone else. As already shown, people—even judges—make mistakes, and it is Defendant's position that Defendant Kotmair's conviction, as well as that of his son, were just that—errors. It is certainly a matter of public knowledge that many people have been wrongly convicted of crimes—some even being made to suffer decades of false imprisonment. It surely cannot be said that the continued claims of such people of their innocence were false or frivolous merely because the courts convicted them. Defendant acknowledges that Kotmair and his son were convicted, but believes that the courts were wrong in doing so.

On the other hand, Defendant also has no exclusive claim to truth. SAPF members are susceptible to being wrong just as everyone else is. Thus, it may be that some of the positions they advocate are ultimately false. That is the nature of independent thought; anyone *who* thinks for himself takes the chance that he may come to a wrong conclusion. And yet, to put it classically, the freedom of

speech protects the right to be wrong. The Supreme Court stated it succinctly in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974):[75]

> "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. FN8
>
> FN8. As Thomas Jefferson made the point in his first Inaugural Address: 'If there be any among us who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.'"

See also *N.A.A.C.P. v. Button*, 371 U.S. 415, 444 (1963) (Constitution protects expression and association without regard to the truth, popularity, or social utility of the ideas and beliefs which are offered.)

Furthermore, as explained more fully in Defendants' summary judgment motion, § 6700 does not criminalize false statements *per se*. Rather, it prohibits inducing others to participate in some plan or arrangement by making false statements concerning tax benefits that would accrue to the buyer by reason of their participation. Plaintiff has failed to show (or even allege) any statement made by Defendants that fits that description, because, quite simply, Defendants have made none.

D. Enjoining the filing of bankruptcy petitions is outside scope of tax laws

It is alleged that SAPF staff assists members in filing bankruptcy petitions. Of course, if anything about filing bankruptcies were illegal, Plaintiff would have to look to Title 11 U.S.C., and no mention is made, in Plaintiff's pleadings, of this title, so it obviously outside the scope of the alleged cause of

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[74] It must be noted again that "statements regarding the tax reporting and payment requirements of U.S.-source income" do not fall within the parameters of § 6700, unless such statements related to participation in the Fellowship, which they do not.

[75] To be sure, the Supreme Court did draw the line at false facts, in the context of libel, which was at issue in *Gertz*. Yet, that is not the situation here, where defendants conclusions regarding the meaning and effect of the tax laws are at issue.

action. Yet even if it could be said that this activity warrants injunction relative to Title 26 U.S.C., certain of the activities alleged do not warrant injunction merely for the fact that Defendants do not engage in such activities now and have not engaged in such activities for years.[76] Therefore, the argument raised by Plaintiff's motion on page 6 need not be considered by this court, since there is nothing to enjoin.

D. Free Speech or Fraud?

A constitutionally protected right to associate for expressive purposes exists if the activity for which persons are associating is itself protected by the First Amendment. See *Roberts, Acting Commissioner, Minnesota Department of Human Rights, et al. v. United States Jaycees,* 468 U.S. 609, 618, 104 S.Ct. 3244 ("[T]he Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment-speech, assembly, petition for the redress of grievances, and the exercise of religion."); *Cromer v. Brown,* 88 F.3d 1315, 1331 (4th Cir.1996) ("The right to associate in order to express one's views is inseparable from the right to speak freely." (internal quotation marks omitted)); *McCabe v. Sharrett,* 12 F.3d 1558, 1563 (11th Cir.1994) ("The right of expressive association ... is protected by the First Amendment as a necessary corollary of the rights that the amendment protects by its terms.... [A] Plaintiff ... can obtain special protection for an asserted associational right if she can demonstrate ... that the purpose of the association is to engage in activities independently protected by the First Amendment."); *see* also Pi Lambda Phi Fraternity, Inc. v. University of Pittsburgh, *229 F.3d 435, 443-44 (3d Cir.2000) (noting that in City of Dallas v. Stanglin, 490 U.S., the Supreme Court held "that, although the patrons were associating with one another, they*

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[76] Exhibit 1, Kotmair Deposition, 203:4–12.

were not engaging in First Amendment-protected expression while doing so"); and Willis v. Town Of Marshall, N.C. *426 F.3d 251 (C.A.4 (N.C.), 2005).*

Nonetheless, Plaintiff continues to mischaracterize the speech SAPF engages in, *inter alia*, as fraudulent speech. Plaintiff makes lavish inferences that the speech it seeks to enjoin, is fraudulent or false; but Plaintiff never does so with any degree of particularity, as required by FRCP Rule 9(b).[77] Asserting this bald allegation, Plaintiff cites *Madigan v. Telemarketing Assocs.*, 538 U.S. 600 (2003). However, this case is indeed a slender reed upon which to build this argument.

The Attorney General of Illinois had challenged the idea that direct marketers soliciting charitable contributions do not have to reveal how much of the donations actually reach the nonprofit organizations for whom they made such solicitations. One issue was the contention that Telemarketing's whopping 85-percent fee was excessive to the point of being fraudulent. The courts found that the percentage taken by the fundraisers could not be used as a benchmark for fraudulent representation. Statutes limiting fundraising by organizations that don't meet such benchmarks had been invalidated in prior Supreme Court decisions, including *Village of Schaumburg v. Citizens for a Better Environment (1980)* and *Maryland v. Joseph A. Munson Co., (1984).* The other factor contributing to the Attorney General's loss was the notion that charitable fundraising is protected speech under the First Amendment, an interpretation that suggests that requiring disclosure of the proportions going to the for-profit marketer would be unconstitutional "forced speech."

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[77] "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." FRCP Rule 9(b).

Those telemarketers were engaging in false commercial speech—they were ripping people off. SAPF engages in no conduct that even remotely approximates such illegal activities. Collecting donations and keeping nearly all of it has nothing in common with the political speech SAPF engages in.

Insofar as Plaintiff asserts on page 22 of its motion, that appellate courts have addressed First Amendment challenges to injunctions in the context of abusive tax shelter cases, citing *United States v. Estate Preservation Services* (202 F.3d 1093(2000)) and *United States v. Schiff* (379 F.3d 621 (2004)): the former case was an action against financial planners who were allegedly giving abusive tax-shelter advice; and the latter, a business that had nothing in common with a First Amendment unassociated political organization.

E. Impeding and interfering with the administration of the tax laws

There are two main currents that run throughout all of Plaintiff's pleadings in this case: fraud and the intention to impede the administration of the tax laws. The nonspecific allegations of fraud have been discussed *supra*. Plaintiff's general allegations of impeding the IRS are equally without merit. For the most part, they are based on a fallacious legal theory that anything that does not "advance the IRS examination" "interfere[s] with the enforcement of the internal revenue laws."[78] In other words, a person interferes merely by not helping the IRS.

According to this theory then, a person interferes with the IRS by requesting an appeals hearing in response to a notice from the IRS proposing an increase in their tax liability,[79] even though IRS Publication 5 clearly states: "If you don't agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If

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[78] See Plaintiff's memorandum, page 20 and FN60.
[79] See Rowe's declaration, ¶29.

you still don't agree, you may appeal your case to the Appeals Office of IRS."[80] This is precisely what the letter—identified as Exhibit 12 attached to Rowe's declaration—is intended to accomplish.[81] In fact, it cites that publication as the basis for the request. Nevertheless, Plaintiff asserts that the delay (which is simply the natural result of providing for the appeal) interferes with the enforcement of the tax laws, and must therefore be enjoined.[82] Likewise for the rest of the letters attached to Rowe's declaration. All are designed to take advantage of the various opportunities that Congress has established for contesting actions taken by the IRS. If availing oneself of such Congressional remedies is subject to injunction, then Congress' efforts to protect the public thereby is in vain.

The bottom line is that Plaintiff's legal theory is simply wrong. Invoking those remedies does not impede or interfere with the administration of the tax laws. In fact, Congress enacted a law with respect to impeding tax administration, which states:

> § 7212. Attempts to interfere with administration of internal revenue laws
> (a) Corrupt or forcible interference
> Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

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[80] See Exhibit 15, IRS' Publication 5, "Your Appeal Rights and How To Prepare a Protest If You Don't Agree."
[81] Unfortunately, the IRS routinely refuses to grant the requested appeal hearing.
[82] Using the same logic, Plaintiff could equally claim that petitioning the Tax Court pursuant to IRC § 6213(a) should be enjoined.

Congress, in enacting this statute, prohibits only such impediment of tax administration as is done "corruptly or by force or threats of force." Notably, Plaintiff never cites this law in any of its pleadings. This is certainly because Plaintiff knows that Defendants' actions do not fall within the scope of this law. Instead, Plaintiff uses vague general allegations[83] as the basis for Count II of its complaint.

V. Scope of IRC § 7402(a)

Count II of Plaintiff's complaint relies on the provisions of IRC § 7402 for the purposes of enjoining the activities of the Defendants. This statute states, in relevant part:

> "§ 7402. Jurisdiction of district courts
> (a) To issue orders, processes, and judgments.--The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws." [emphasis added]

The Plaintiff has cited, within the four corners of its complaint, IRC §§ 6700 and 6701, and none other, so as to invoke jurisdiction under IRC § 7402. However, Plaintiff proposes that it was the intent of Congress to "enjoin interference with tax enforcement even when such interference does not violate any particular tax statute,"[84] citing *United States v. Ernst & Whinney*, 735 F2d 1296 (1984), and *U.S. v. Kaun*, 633 F.Supp 406 (E.D. Wis. 1986).

In *United States v. Ernst & Whinney, supra*, the 11th Circuit overturned a decision by the District Court of Georgia which held that some "underlying Code section must directly create some duty on the

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[83] One such allegation is on page 4, where Plaintiff states that Defendant sends "threatening letters" to employers. See Rowe's declaration, Exhibit 23 for the only example Plaintiff supplied. Defendant is confident that if the Court reads that letter, it will see that it is not "threatening."
[84] Plaintiff's memorandum, p. 20.

part of the defendant sought to be enjoined" under § 7402(a).[85] The 11th Circuit, in overturning that well-reasoned decision, does no more than dismiss it out of hand, resting on some of the same cases considered and rejected by the lower court.

> "We reject the district court's narrow construction of § 7402(a) and hold that there need not be a showing that a party has violated a particular Internal Revenue Code section in order for an injunction to issue. The language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws. See *United States v. First National Bank*, 568 F.2d 853, 855-56 (2d Cir.1977); *Brody v. United States*, 243 F.2d 378, 384 (1st Cir.1957)."

However, the "broad range of powers" quote taken from *First National City Bank* and *Brody* were made in the context of cases where the same argument was never raised. Thus, these two cases do not support the decision of the 11th Circuit above.

In *Brody*, *supra*, at p. 384, the First Circuit stated:

> "In addition to the support which § 7604(b) gives to the order of January 10, the general grant of jurisdiction contained in § 7402 of the Code independently supplies ample authority for the order. * * * It would be difficult to find language more clearly manifesting a congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws. That the Revenue Service never purported to act under § 7402 in issuing its original summons to the taxpayer or in filing its petition with the district court is entirely irrelevant to the district court's jurisdiction."

The issue of whether any underlying statute must be cited was never raised in *Brody*, and so was not properly before the court. In fact, § 7402 was never cited by either party in the case. Rather, the court's dicta concerning that section was sua sponte.

The 2nd Circuit in *United States v. First National City Bank, supra,* ruled that § 7402(a) gives the district courts jurisdiction to enforce Internal Revenue Service jeopardy levies by summary proceedings. The only argument raised by appellant with respect to IRC § 7402(a) in that case was that it authorized

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[85] *United States v. Ernst & Whinney,* 549 F.Supp. 1303, 1311 (D.C. Ga. 1982).

only "writs and orders" ancillary to plenary civil actions, and not the enforcement of levies. The court stated, "We hold, as the Third Circuit did in *United States v. Mellon Bank*, 521 F.2d 708, 710-11 (3 Cir. 1975) that [§] 7402(a) authorized the summary enforcement proceedings in the district court." *First National City Bank, supra,* p. 856. Just like in *Brody*, however, appellant never raised the issue of an underlying statute to be enforced, and so that issue was never decided by the court. Defendants do not dispute that the courts have broad powers to compel compliance with IRS laws, only that it is necessary to cite which tax laws are being violated or must be complied with, in order for an injunction to issue.

The court in *Ernst & Whinney, supra*, at p. 1300, went on to state:

> "It has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute. See *United States v. Ekblad,* 732 F.2d 562 (7th Cir.1984) (§ 7402 used to enjoin individual's harassment of IRS agents designed to hinder their effectiveness); *United States v. Hart*, 701 F.2d 749 (8th Cir.1983) (same); *United States v. VanDyke*, 568 F.Supp. 820 (D.Or.1983) (same). Furthermore, the statute has been relied upon to enjoin activities of third parties that encourage taxpayers to make fraudulent claims. *United States v. Landsberger*, 692 F.2d 501 (8th Cir.1982); *United States v. May*, 555 F.Supp. 1008 (E.D.Mich.1983). These cases demonstrate that § 7402(a) does give the district court the power to enjoin Ernst's activities as a tax adviser." [emphasis added]

Likewise, the issue of the necessity of an underlying statute to be enforced pursuant to § 7402(a) was also never raised in any of these cases. In *Ekblad*, the appellant raised only general jurisdictional issues which were rejected by the court by referring to § 7402(a). In *Hart, supra*, p. 749, appellant's jurisdictional argument was that "inferior federal courts ... have no 'civil jurisdiction over a sovereign citizen.'" That court also referred to § 7402(a) in rejecting the argument. In *VanDyke*, the court specifically cited § 7402(a) as its authority to enjoin defendants there from filing "common-law liens" against federal employees, but the only issue mentioned by the court was one raised by a co-defendant that "he was not subject to courts convened under Article III of the United States Constitution, only

courts convened under Article I." (*supra*, p. 822, FN2) The only reference to § 7402(a) in *United States v. Landsberger, supra*, p. 502, is this opening statement of the court's opinion:

> "Pursuant to sections 7402(a) and 7407 of the Internal Revenue Code, title 26, the district court, the Honorable Robert G. Renner presiding, permanently enjoined Gerald J. Landsberger from engaging in fraudulent and deceptive conduct that substantially interfered with the proper administration of the tax laws."

The lower court in that case noted that "it ha[d] jurisdiction to grant such an injunction under both sections 7402(a) and 7407 of the Internal Revenue Code." *United States v. Landsberger,* 534 F.Supp. 142, 144 (1982). Not only does the record of that case not reflect any issue being raised concerning 7402(a), but since the court found that both sections cited conferred jurisdiction, there would have been no reason to consider one. Finally, in *United States v. May*, the court again held that both §§ 7402(a) and 7407 conferred jurisdiction to issue an injunction against the defendant, but the only arguments May raised with respect to § 7402(a) were "that he [was] the victim of selective prosecution and that the First Amendment prevents the prior restraint the government seeks," *supra*, p. 1010.

Plaintiff also cites *United States v. Kaun*, 633 F.Supp. 406 (E.D.Wis. 1986) to support its contention that it is unnecessary to specify the particular statute it seeks to have enforced pursuant to § 7402(a). The court alludes to a number of jurisdictional issues raised by defendant in that case, but never indicates that the above issue was one of them. Nonetheless, citing the *Brody*, *First National City Bank*, *May*, and *Landsberger* cases—already discussed above—the court did discuss at some length the jurisdictional aspects of that section. It said in part:

> "By its very terms, this statutory provision authorizes the federal district courts to fashion appropriate, remedial relief designed to ensure compliance with both the spirit and the letter of the Internal Revenue laws—all without enumerating the many, particular methods by which these laws may be violated or their intent thwarted. ... Moreover, the Court's jurisdiction in this litigation is further established by Sections 6700 and 7408 of Title 26 of the United States Code-provisions enacted by Congress as part of the Tax

> Equity and Fiscal Responsibility Act of 1982, commonly known as TEFRA." *Supra*, at p. 409.

However, while the court did say that § 7402(a) did not have to enumerate the many ways the tax laws might be violated, it did *not* say that it was unnecessary to cite the particular tax law alleged to have been violated. Moreover, the court also used § 7408 to establish its jurisdiction to issue the injunction. In rejecting Kaun's contention on appeal "that the district court had no statutory authority to enter an injunction against him," (*supra*, p. 1145) the 7th Circuit affirmed the lower court's injunction, but most explicitly did *not* consider the lower court's reliance on § 7402(a):

> "We conclude that the injunction against *Kaun* was proper under § 7408. We therefore need not consider whether the district court's action was also proper under § 7402(a), which authorizes a district court, at the request of the United States, to issue such injunctions and other judgments and decrees 'as may be necessary or appropriate for the enforcement of the internal revenue laws,' I.R.C. § 7402(a) (1982)." *Supra*, at p. 1147.

In summary, the only court shown to have fully considered the issue of the necessity of an underlying statute to enforce by the authority given in § 7402—the Georgia District Court in *Ernst & Whinney,* 549 F.Supp. 1303—agreed with Defendant in the instant case. The 11th Circuit overturned that decision on the basis of cases that do not actually support their reversal. Defendants pray this Court will follow the lead of the former and disregard the latter.

CONCLUSION

The general nature of much of Plaintiff's Motion for Summary Judgment renders it insufficient, in regard to FRCP Rule 9(b), to warrant the injunctive relief Plaintiff seeks. Its broad characterizations do not apprise Defendant of the necessary elements of any alleged violation of law, and its attempt to amend its complaint via its summary judgment motion prejudices Defendant in preparing a defense against such charges. In spite of this, Plaintiff has not demonstrated any violation of 26 U.S.C. § 6700 and § 6701.

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

Respectfully submitted on this 7th day of July, 2006.

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

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing "Memorandum in Support of Defendant Save-A-Patriot Fellowship's Opposition to United States' Motion for Summary Judgment," with attached affidavits and other exhibits, has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 8th day of July, 2006, to the following:

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Defendant
Pro se
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Westminster, MD 21158

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

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

INDEX OF EXHIBITS

Exhibit	Description
1.	Affidavit of John B. Kotmair
2.	Deposition of Agent Rowe (excerpt)
3.	Newman's faxed letter of June 28, 2006.
4.	United States Rule 26(a)(1) Initial Disclosures
5.	United States' Response to Defendant Save-A-Patriot's First Set of Interrogatories and Requests for Production of Documents
6.	United States' Response to Defendant Kotmair's First Set of Interrogatories and Requests for Production of Documents
7.	John B. Kotmair Deposition (excerpts) 161-173
8.	Save-A-Patriot Fellowship's Response to United States' First Set of Requests for Admissions
9.	Affidavit of Norman Lehnhart
10.	July 12, 1982, Senate Finance Committee report (excerpts)
11.	26 CFR 1.1441-5 (4-1-99 Edition)
12.	IRS Publication 515 (Rev. Dec. 1990)
13.	Paperwork Reduction Act Submission for Form SS-5 (Dec. 22, 1997)
14.	Deposition of Agent Metcalfe (excerpt)
15.	IRS' Publication 5, "Your Appeal Rights and How To Prepare a Protest If You Don't Agree."

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

AFFIDAVIT OF JOHN B. KOTMAIR, JR., IN SUPPORT OF DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S OPPOSITION TO THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT

I, John B. Kotmair, Jr., do hereby depose and state as follows:

1. I am a citizen of Maryland and a defendant in the above captioned action.

2. I have personal knowledge of the facts declared hereinafter.

3. The Save-A-Patriot Fellowship (SAPF) is an unincorporated First Amendment association, of which I am the Fiduciary of its day-to-day functions, as decided in *Save-A-Patriot Fellowship v. United States of America*, CV MJG-95-935, to wit:

> *For reasons stated herein, this Court concludes that the SAP Fellowship is an unincorporated [First Amendment] association and, as such, is legally capable of owning property.*

The First Amendment states in pertinent part:

> *Congress shall make no law respecting . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

4. The National Worker's Rights Committee (NWRC) is merely a department of the Save-A-Patriot Fellowship, and not a separate entity therefrom, having the sole function of serving the members of the Save-A-Patriot Fellowship.

Exhibit 1

5. I am not doing business as the Save-A-Patriot Fellowship, nor National Worker's Rights Committee, which this Court decided in *Save-A-Patriot Fellowship v. United States of America*, CV MJG-95-935, decided the 18th day of January, 1996, stating:

> *As noted above, the evidence established that there is an organization and not simply an operation by Kotmair personally. The SAP Fellowship, and not Kotmair personally, leased the Office. There are members, other than Kotmair, who engage in Fellowship activities. This Court observes, also, that the I.R.S. itself, quite appropriately, returned to the Office the operating assets seized from the Office (other than cash and numismatic items). These assets, at least some of which had more than nominal value, were simply (and correctly) assumed to be Fellowship property, as distinct from Kotmair's personal property.*

6. In paragraph 6 of her declaration, Joan Rowe, the Revenue Agent assigned to this instant action, states that:

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

In rebutting this allegation, I offer the established policies of SAPF, (as reflected in the three affidavits of Fellowship Independent Representatives), attached as Exhibit A. These policies have been in effect since the founding of the Fellowship in February 1984.

7. Rowe states in paragraph 7 of her declaration:

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

SAPF, not Kotmair, offers publications it generates under its First Amendment political speech rights stating *that U.S-source income* [of citizens] *is not taxable*[1], it does not market these materials, nor does it state that *U.S. citizens are not required to file income tax returns*, (see Exhibit A attached). It does, however, offer to its Fellowship members the Affidavit of Revocation and Rescission, which gives the facts and the authority within it for the revocation of Form SS-5, the

application for a social security number. Rowe does not offer this Court any material evidence to substantiate her claims in paragraph 7.

8. Rowe claims in paragraph 8 of her declaration:

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

SAPF does not operate *as a self-described "business,"* but rather as a non-business First Amendment association of citizens and resident aliens. In making its decision in *SAPF v. U.S.*, (1996), this Court rightly described the organization of the Fellowship, equating it to the Parent Teachers Association (PTA), which clearly is not a business, just as such organizations as the National Rifle Association (NRA), or the National Right to Work Committee (NRWC), etc:

> *There is little precedent in Maryland law or elsewhere regarding property ownership by unincorporated associations. Presumably, those organizations that have significant assets find it beneficial to formalize their status, as a corporation, trust or other entity. However, the Court can take judicial notice of the fact that there are a multitude of unincorporated associations that function in spite of their informality. For example, there are many PTA's and other* [First Amendment] *affiliations of persons with common interests that have not formalized their existence. Who would, sensibly, argue that a PTA treasury cannot be the property of the PTA?*
>
> *While the situation may be different in some other jurisdictions in Maryland the legislature has recognized that an unincorporated association can own property in its own right.*

Rowe seems to be inferring, by the first document in her Exhibit 2, that stating that the Fellowship's operation is "unlike a normal business," which is not generally subject to attack by state and federal bureaucracies, is an admission that SAPF is doing "business" in the normal meaning of that word. Nothing could be further from the truth. In context, this is part of a plea for donations from Fellowship members to cover a short-fall in its funds for operating expenses.

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[1] Title 26, USC §§ 1441, 1442, 1443, 1444, 1445, 1446 and 1461.

Asking for donations could not be further from the operation of a "normal business." The second document is nothing more that the announcement of the Fellowship's billing for membership fees and individual member services, with the attachment of two "RENEWAL REMINDER" notices. This cannot even remotely be material evidence of the operation of a "normal business."

Also in paragraph 8, Rowe alleges that SAPF is "*marketing services at the websites located at www.save-a-patriot.org, www.taxfreedom101.com, a copy of which is attached as Exhibit 3, and www.taxtruth4u.com, Exhibit 3A and through a newsletter called Reasonable Action.*" Exhibit 3 is taken from Tax Freedom 101's website, and Exhibit 3A is from Tax Truth 4U's website. Exhibits 3 and 3A do not belong to, nor are they under the control of, the Fellowship.

9. In paragraph 14 Rowe alleges:

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

The quoted information is dealing with Internal Revenue Code (IRC) § 6012(a), and the Internal Revenue Service's citing of implementation of that code section to the Office of Management and Budget (OMB). In the proper context, the full quote is merely stating a fact, and not giving any opinion.

10. Rowe alleges in paragraph 15 of her declaration:

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

The statement above misrepresents the quoted content from Treasury Decision 2313, dated March 21, 1916, See Exhibit B.

14. Rowe alleges in paragraph 16 of her declaration:

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

On or about January 8th, 1997, I received a request from a member of SAPF for my opinion on IRA withdrawals and reporting the penalty to IRS. There was no payment offered nor received from the member. Neither I, nor the Fellowship, benefited from this opinion letter in any way.

15. Rowe alleges in paragraph 17 of her declaration:

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

Neither I or SAPF has made has made such a statement in that context, see Exhibit A.

16. Rowe alleges in paragraph 18 of her declaration:

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

This statement from the *Reasonable Action* newsletter is based on Chapter 3 of the Internal Revenue Code.

17. Rowe alleges in paragraph 19 of her declaration:

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

The quote above, from Rowe's Exhibit 6B, is totally misrepresented by Rowe. In its proper context, it states that others are saying this, not Kotmair or SAPF, and it characterizes that statement as a ludicrous rumor.

18. Rowe alleges in paragraph 20 of her declaration:

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

The *Reasonable Action* newsletter is merely quoting verbatim from Title 42 USC § 410.

19. Rowe alleges in paragraph 21 of her declaration:

In defendants' 1999 Reasonable Action newsletter, issue 238, SAPF falsely states that the "Internal Revenue Code does NOT apply U.S. citizens who are living and working in the 50 states," which is attached as Exhibit 61).

The statement quoted above relies on Chapter 3 of the IRC, and the OMB control numbers found in Title 26 Part 602 of the Code of Federal Regulations (CFR) relating to § 6012 of the IRC.

20. Rowe alleges in paragraph 22 of her declaration:

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

The only statements found in this issue of the *Reasonable Action* newsletter regarding the withholding of tax are quoting from the code section within Chapter 3 of the IRC, and quoting those named within § 3401 of the IRC.

21. Rowe alleges in paragraph 23 of her declaration:

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

As shown supra, this Court has already decided that Kotmair is not doing business as SAPF, and SAPF is an unincorporated First Amendment organization with Fellowship "members," not "customers." Additionally, SAPF "letters" are forwarded on behalf of its members according to U.S. statutes and internal revenue regulations to the IRS. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond

showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

22. Rowe alleges in paragraph 24 of her declaration:

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

The USA Today advertisement was created, placed and paid for by others, not SAPF or me.

23. Rowe alleges in paragraph 25 of her declaration:

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

If these documents were sent to members by a particular SAPF staff caseworker, they were explaining what to expect regarding the casework service. They are not part of any sale of a scheme to illegally avoid federal taxes.

24. Rowe alleges in paragraph 26 of her declaration:

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

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

25. Rowe alleges in paragraph 27 of her declaration:

> *As part of the scheme, SAPF mails to the IRS written protests responding to second notices requesting the SAPF customer's income tax return, when none has*

been filed. These letters, prepared by SAPF, falsely state that the SAPF customer is not required to file an income tax return because they did not "receive any foreign earned income" and, therefore, "has no requirement to file an income tax return," a copy of which is attached as Exhibit 10.

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

26. Rowe alleges in paragraph 28 of her declaration:

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

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

27. Rowe alleges in paragraph 29 of her declaration:

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

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

28. Rowe alleges in paragraph 30 of her declaration:

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

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

29. Rowe alleges in paragraph 31 of her declaration:

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

The SAPF document identified by Rowe as Exhibit 13A, was not "sent to an SAPF 'customer'" (member), but rather to a particular IRS employee. The documents in question contain true statements from the law. The document in question contains true statements from the law. If this document contains false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question..

30. Rowe alleges in paragraph 32 of her declaration:

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

The documents in question contain true statements from the law. If these documents

contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

31. Rowe alleges in paragraph 33 of her declaration:

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

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

32. Rowe alleges in paragraph 34 of her declaration:

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

The documents in question contain true statements from the law. If these documents contain false statements about the law, according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

33. Rowe alleges in paragraph 35 of her declaration:

> *As part of the scheme, SAPF prepares the power-of-attorney forms which are sent to customers, a copy of which is attached as Exhibit 17. In the power-of-attorney forms, the SAPF customers provide "John B. Kotmair, Jr.," with authority to investigate their income taxes that the IRS "alleges [they] owe... including] income tax returns," and further state that the SAPF customer has a "material interest" in this matter.*

When a member requests that the Fellowship staff respond to their IRS communications,

they are supplied with the above described power-of-attorney.

34. Rowe alleges in paragraph 36 of her declaration:

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

The members requesting this service are sometimes asked to supply power-of-attorney forms ahead of time to prevent a delay in the response time. The IRS demands a new power-of-attorney for every response.

35. Rowe alleges in paragraph 37 of her declaration:

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

The IRS issued a representative number, and has never given the requested appeals hearing required by the IR regulations, thus denying due process

36. Rowe alleges in paragraph 38 of her declaration:

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

I admit to the quote from the book, and deny the representative number was revoked because of the denial of due process.

37. Rowe alleges in paragraph 39 of her declaration:

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

I requested an appeals hearing from the IRS; they never responded.

38. Rowe alleges in paragraphs 52 of her declaration:

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

I do not "*prepare documents purporting to revoke an individual's application for their Social Security number*," and at no time has SAPF or myself stated to anyone that such documents were for the purpose of " *discontinu[ing] the withholding of income and employment taxes."*

39. Rowe alleges in paragraphs 53 of her declaration:

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

The *"Affidavit of Revocation* [and Rescission]*"* is requested by members who have made a determination about the law, and it is their act in accordance with their belief about the law. The *"Statement of Citizenship"* is merely following the instructions that were outlined in Title 26 CFR § 1.1441-5, see Exhibit C attached.

40. Rowe alleges in paragraph 54 of her declaration:

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

Neither I nor SAPF advise anyone what they or anyone else can or cannot do, we merely cite what the written law says.

41. Rowe alleges in paragraph 55 of her declaration:

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

The SAPF staff may have generated the documents identified as Exhibit 22. But the correct

statement is, that if they do file the forms, they "will invalidate the affidavit."

42. Rowe alleges in paragraph 56 of her declaration:

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

Rowe's Exhibit 23 is a letter written to an employer citing the laws in question and asking for the employer's tax professional to contact NWRC to discuss the matter. Exhibit 24 is not an offer, but instructions to those members who have already requested that NWRC write their employer on their behalf.

43. Rowe alleges in paragraph 57 of her declaration:

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

The *"Statement of Citizenship"* is merely the instruction for citizens found in the internal revenue regulations, see Exhibit C attached. Rowe's Exhibit 25 is an article about a letter from a member, and the member's employer, who followed the law.

44. Rowe alleges in paragraph 58 of her declaration:

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

Neither I or SAPF staff advise anyone to do anything; it is not the policy of SAPF to advise anyone to do anything, as shown in the attached Exhibit A.

45. Regarding Rowe's allegations in paragraphs 59 through 61, and her reliance on Exhibits 28 and 29, this gives evidence of nothing more than that SAPF staff and members are using the laws and remedies given to American citizens by Congress.

46. Rowe alleges in paragraph 63 of her declaration:

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

The law and the facts in the case described in paragraph 63 have no relation to SAPF or me.

47. Rowe alleges in paragraph 64 of her declaration:

> *The arguments raised by SAPF. which state that U.S.-source income is not taxable and that individuals can revoke their Social Security numbers are addressed in a publication titled "The Truth About Frivolous Tax Arguments." This publication has been sent to SAPF customers as part of the letter 3175 (Exhibit 15), and is attached as Exhibit 33.*

I have examined the IRS publication "THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS" and found that the statements of fact SAPF has expressed under its First Amendment rights have not been addressed in full by that publication. All the statements made about the tax laws by SAPF, are either in publications under the First Amendment, or in briefs to the Courts, or the IRS using the laws made by Congress.

48. Rowe alleges in paragraph 65 of her declaration:

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

This Court recognized the lawful validity of the SAPF Membership Assistance Program in SAPF v. U.S., CV MJG-95-935.

49. Rowe alleges in paragraphs 66, 67 and 68 of her declaration:

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

SAPF "letters" are forwarded on behalf of its members according to U.S. statutes and internal revenue regulations to the IRS. If these documents contain false statements about the law,

according to the IRS's stated Mission, the IRS is obligated to respond showing in detail how this is a misstatement, or a misuse of the particular code section, or sections in question.

51. Rowe alleges in paragraph 69 of her declaration:

> *In addition to the cost associated with processing the correspondence, a total of 638 hours was spent on this investigation. This cost to the U.S. Treasury does not include the time spent by IRS counsel attorneys in providing legal advice regarding this investigation, the hours that IRS revenue agents throughout the country will have to devote to determining SAPF's customers' tax liability, or the hours IRS revenue officers who will have to devote to collecting from SAPF's customers who refuse to pay federal income taxes based on SAPF's, and Kotmair's, fraudulent advice and documents.*
>
> As shown in Exhibit A, SAPF does not give anyone advice on any tax related matter.

52. In Rowe's deposition, taken February 14, 2006, Rowe stated her job title description on page 4, lines 4 through 7:

> *I'm a revenue agent, and it's our job to* ***assist the tax payers with compliance, if they want us to assist, of the tax laws*** *in -- with integrity and applying fairness. (Emphasis added).*

53. On page 14, line 9 through page 15, line 20 of Rowe's deposition SAPF's attorney, George Harp, asked Rowe about the IRS referral[2] and the elements of § 6700, she and DOJ attorney, Thomas Newman answered:

> *Q Well, I mean obviously I mean 6700 does mention a few things in it that are required elements. So you know it refers to plans and arrangements and that kind of thing. I mean somebody at the IRS goes through it and makes sure that at least those minimal elements are present?*
> *A Well, yes, when we develop these penalty situations or any investigation under 6700 there are certain elements that we look for. We look for false statements, we look for knowledge of the false statements, and we look for their cause and effect. Are they causing a tax loss, so.*
> *Q Okay. And so obviously somebody at the IRS applied this to Save-A—Patriot Fellowship and/or Mr. Kotmair because a referral was done?*
> *A Correct.*
> *Q Okay. And one of the things that we wanted to do or are trying to do, and entitled to do before this thing goes to trial is to try to elicit and discover the evidence and testimony that the government intends to use against us when we go to trial. And so I guess my next question or two is sort of directed along those lines, with respect to Save-*

[2] Newman has refused to supply the IRS referral document through discovery after several requests, see Exhibit D attached.

A-Patriot Fellowship, what in particular were y'all claiming that they were, and it may have been several things, were doing that was illegal and in violation of 6700?
MR. NEWMAN: To be clear, there isn't anything that anyone is claiming is illegal, that this is a 6700 violation is a civil lawsuit.

54. On page 17, line 8 through page 18, line 23 of Rowe's deposition, SAPF's attorney, George Harp, asked Rowe more questions about the IRS referral:

Q Okay. Would it be your testimony that you would be in concurrence, after your review of the file would be in concurrence with the referral, the decision to refer?
A Based on what I saw, I don't know, I believe so.
Q Okay. And can you recall and do you have knowledge of anything from the file related to a particular instance of fraud or alleged fraud that you came across?
MR. NEWMAN: That question calls for a legal conclusion that she would have to determine what is fraud. And I don't think she's competent to testify as to that
MR. HARP: Okay.
MR. NEWMAN: She can testify as to what she reviewed and the procedures, but determining whether something is or isn't fraud, she can't make that determination.
MR. KOTMAIR: Well, how did she bring a referral if she couldn't determine a violation of the law? Well, I understand, but she said she agreed with the referral --
MR. NEWMAN: I'm not answering any questions --
MR. KOTMAIR: Well, you're the one --
MR. NEWMAN: If you want to ask her questions, that's fine, but she can't answer that kind of question --
MR. KOTMAIR: Sir, you're --
MR. NEWMAN: Testifying in court
MR. KOTMAIR: What you're saying is that IRS agents just arbitrarily without even looking at the statute, and saying the statute was violated here, just say that's a violation without understanding it. Is that what you're saying?
MR. NEWMAN: I'm not saying that.
MR. KOTMAIR: All right. Well, that's what it appears.

According to the government, Rowe can make conclusions that the exhibits in her *Declaration in Support of the United States' Motion for Summary Judgment* are fraudulent, but when being deposed during the discovery process she cannot testify about such conclusions.

55. In paragraph 2 of her declaration Rowe states:

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

56. On page 22, line 9 through page 23, line 19 of Rowe's deposition SAPF's attorney, George Harp, asked Rowe more questions about the IRS referral:

Q And you're referring to your copy of?
A Of the member handbook.
Q The member handbook from the Save-A-Patriot Fellowship?
A Correct. That's correct, page 10.
Q Okay. Can you read us what that line that you're talking about?
A Okay. Code section 7701 A(16) defines the withholding agent as one who is required to withhold income taxes from non-resident aliens under code section 1441. And I'm going to paraphrase the code sections, 1442, 43, 44, 1443 and 1446. But 1461 was left out, which includes residents.
Q Okay.
MR. KOTMAIR: 1461 includes residents?
THE DEPONENT: It's citizen, yeah, United States citizens.
MR. KOTMAIR: 1461 says citizens?
THE DEPONENT: Yes.
MR. KOTMAIR: I see.
BY MR. HARP:
Q Okay. Does anything else in there strike you as being misleading?
A Well, I mean I could --
Q Probably come up with --
A We could probably argue a good deal if I went through and checked every code section referenced, so.
Q Okay. But nothing else just leaps out, or comes to mind or anything like that?
A No, just from a review of, you know, the handbook.
Q Okay. We'll go off the record for a minute.

As shown above in paragraphs 52 and 55, Rowe states she is competent in determining non-compliance (or violations) of the federal tax laws. I submit to this Court that § 1461 states as follows:

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

57. The records of SAPF indicate that former member Joseph Nagy, a witness for the Plaintiff, joined SAPF on or about August 6, 2001. Said records also show (as does his declaration) that Joseph Nagy stopped filing federal tax returns in 1999.

58. The records of SAPF indicate that former member Camille Nagy, a witness for the Plaintiff, joined SAPF on or about June 6, 2003. Said records also show (as does her declaration) that Camille Nagy stopped filing federal tax returns in 2001.

59. I have never represented Joseph Nagy or Camille Nagy before a state taxing authority, nor had I ever claimed that I could or would do so.

60. Neither I nor SAPF staff has ever offered to provide services to Joseph or Camille Nagy, nor to any other person, to assist them in reducing the amount of taxes they were required to pay.

61. Neither I nor SAPF staff file lawsuits before the Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer ("OCAHO"), nor do we assist anyone in filing any such actions. Neither I nor SAPF have assisted anyone in over eight years in any such filings; nor do we have any intention to do so in the future.

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

Dated this 7th day of July, 2006.

John B. Kotmair, Jr.
P.O. Box 91
Westminster, Md. 21158
410-857-4441

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Carroll, this 7th day of July, 2006, that the above named person did appear before me and was identified to be the person executing this document.

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

Notary Public

My Commission Expires On: October 1st, 2009

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

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

AFFIDAVIT OF JOHN EDWIN DEATON

I, John Edwin Deaton, do hereby declare as follows:

1. I am a citizen of the State of Texas, and above legal age.

2. I am a member and Independent Representative of the Save-A-Patriot Fellowship an unincorporated organization domiciled in Westminster, Maryland.

3. That on the date shown thereon I executed the attached Independent Representative Policy Agreement.

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

Dated this 17 day of June, 2006

Exhibit A

John Edwin Deaton

Subscribed and sworn to before me, a Notary Public, of the State of Texas, County of Harris, this 17 day of June, 2006, that the above named person did appear before me and was identified to be the person executing this document.

Notary Public

My Commission Expires On:

MOHAMMAD AZHAR BAQA
MY COMMISSION EXPIRES
MARCH 31, 2008

The Save-A-Patriot Fellowship

Office of the National Representative • 12 Carroll Street, Suite 1787, Westminster MD 21157
Voice/Fax **(801) 715-0528** • *E-mail* **irsap@home.com**

Dear Fellow Member:

Congratulations on having passed the Independent Representative Preliminary Certifying Examination. May you experience the deepest rewards in joining with hundreds of other Independent Representatives nationwide, bearing the gift of truth to your friends and neighbors. To maintain the accuracy and integrity that are the hallmarks of the Save-A-Patriot Fellowship, this **IR Policy Agreement** contains policies, procedures, and provisions which it is imperative that every Independent Representative understand. Please read this **IR Policy Agreement** carefully and do not sign this agreement unless you fully understand and agree with all of the policies, procedures and provisions contained within.

NOTICE: Mail (do NOT fax) this original, signed **IR Policy Agreement** to:
Ed Akehurst, IR Services, 2633 Monkton Road, Suite B, Monkton, MD 21111.

IR Name, Address, Phone (initial in all indicated spaces and sign at end)

Full Name John Edwin Deaton

Mailing Address 16150 Kieth-Harrow Blvd Apt #2804

City / Town Houston State TX Zip 77084-5465

Day Phone 713-849-1900 Eve Phone (home) 281-858-0085

Important Notice --If you have any questions pertaining to any of the sections below, they are to be directed to your Mentor IR. If unable to answer your question(s), your Mentor IR is to forward your question(s) in writing to the Office of the National Representative via mail, fax or e-mail. The reply to your questions will then be returned to your Mentor IR for forwarding to you, thereby informing and enlightening both of you. If this person is no longer available, please send your questions to the Office of the National Representative yourself, stating who your Mentor IR was and why s/he is no longer available to you. If you enrolled yourself directly through Fellowship headquarters and have not been assigned a Mentor IR, please state so and you will be assigned a new Mentor IR. If you have a particular Mentor IR in mind, please also state so. Please remember that the more concise and informative you are in your communications, the better able we are to assist you.

* * *

1) Independent Representatives—Independent Representatives, henceforth referred to as IR's, are those members who have been recommended by another IR or by someone at SAPF HQ to hold that position. Furthermore, they have passed the IR Preliminary Certifying Examination administered by the Office of the National Representative. By signing this IR Policy Agreement, any potential IR acknowledges that s/he has met these requirements and is entitled to hold the position of Independent Representative. It is understood that the SOLE purpose of an IR is to assist a potential member in making an EDUCATED decision about joining the Fellowship. Technically, once a member has joined the Fellowship, the IR no longer has a reason to even communicate with that member. However, there are many reasons why a relationship may continue after a member has been enrolled. It is imperative, therefore, that any future communications between the member and the IR be restricted to the information set forth by the Fellowship, whenever and wherever possible, when discussing the tax laws. By his or her signature, an IR agrees to uphold this policy to the best of his or her ability. IR's are independent contractors, working in their own capacity, and are not employees, agents, partners, joint venturers or representatives of the Save-A-Patriot Fellowship headquarters staff or of their Mentor IR, nor are they authorized to act on behalf of or to legally bind the Save-A-Patriot Fellowship, its staff or members, or other persons, nor will the Fellowship be held responsible for any misrepresentations and/or criminal acts committed by any IR. The Fellowship will assist anyone damaged due to a criminal act committed by an IR in prosecuting that particular IR to the fullest extent of the law.

Initial JD

2) **Un-taxing? De-taxing?**—Under no circumstances are IR's or staff members permitted to refer to Fellowship assistance as "un-taxing" or "de-taxing" or any other similar phrase. The phrase itself carries with it the connotation that something is being done to cancel or nullify an existing legal requirement. Obviously, if the individual is contending they are not the subject of the law and have no legal requirement to file a return or pay a tax then there is no existing legal requirement to "un-do". More succinctly, it is the law that imposes a tax. If the law imposes a tax, then it is incumbent upon those who are subject to the law to comply with its provisions (i.e. file the return and pay the tax). If the law does not impose a tax on a specific object, subject, or activity then there is nothing to "un-tax". If an IR represents Fellowship services as a process of un-taxing, *then this could be construed to imply that the Fellowship is somehow able to cancel a statutory taxing provision. That* is not the case, therefore IR's must refrain from using the term. NOTE: previous signatures on tax returns do create a "presumption" that a statutory requirement exists, however presumptions are not statutes and may be rebutted - actual legal requirements cannot. Therefore, if anything is to be un-done it is the presumption and not a taxing statute! Semantics are the fine line between being correct and being incorrect. Any IR found in violation of this policy will be terminated immediately.

Initial _____ i.e. removed from IR and/or membership status

3) **The Fellowship Does Not Remove Liens Or Levies - Nor Does It Abate Assessments**—Since the Fellowship does not execute liens or levies or make assessments it is impossible for the Fellowship to remove them. Only the IRS can undo what the IRS has done. Fellowship caseworkers and paralegals assist members in developing cases and can provide the facts and the evidence that will allow a member to seek administrative and judicial remedy. It cannot guarantee that any given agency of government or court will adhere to or enforce the law, or that appeals will be unnecessary. IR's may explain that the Fellowship assists members in administrative and legal actions to remove liens and levies or to prepare a proper request for abatement, but under no circumstances will an IR suggest or imply that the Fellowship will remove liens or levies. Any IR found in violation of this policy will be terminated immediately.

Initial _____

4) **The Fellowship Cannot Stop IRS Collection Activity**—Only a Court can stay such action, and even then only under the bankruptcy laws. The Fellowship paralegal department is intimately familiar with the available remedies for accomplishing a stay of collection until such time as quiet title may be affected. IR's can explain that the Fellowship assists members in seeking such remedy, but under no circumstances will an IR suggest or imply that the Fellowship will stop the collection. *Any IR found in violation of this policy will be terminated immediately.*

Initial _____

5) **The Fellowship Does Not Determine Whether Any Given Person Has A Requirement To File A Return Or A Liability To Pay A Tax**—The individual in question is the only one who can make that decision. An IR can show the law and explain the limited application of the law but legal decisions must be left to the individual. Under no circumstances will IR's give legal advice or "consult" with members or prospective members. Any IR found in violation of this policy will be terminated immediately.

Initial _____

6) **Under No Circumstances Will An IR Answer A Member's Questions Pertaining To Specific Technical Procedures Of The Various Departments Of The Fellowship**—The procedures performed by the Fellowship on behalf of members are very technical and exact. They are also continually updated. The IR does not have the need, nor does the Fellowship have the time and ability to keep all IR's updated on these procedures and changes. Any IR found in violation of this policy will be terminated immediately.

Initial _____

7) **Under No Circumstances Will IR's Call Prospective Members "Collect" To Solicit Membership**—Most people consider such tactics rude. If an IR cannot exercise common sense it is doubtful that he or she is capable of accurately representing the Fellowship. Any IR found in violation of this policy will be terminated immediately.

Initial _____

I pity the fool who can't dial 1-800-collect to save a buck or two!

8) Submitting A W-4 "Exempt" Is Not The Proper Way For A U.S. Citizen Or Resident Alien To Claim That S/He Is "Not Subject To Withholding"—Under no circumstances will an IR tell a prospective member or any other member to file a W-4 "exempt" or a W-4 with a large number of deductions on it. *Any IR found in violation of this policy will be terminated immediately.*

Initial _____

9) The Fellowship Does Not Propagate Rumor Or Untested Theories About The Law—Such theories are damaging to effective legal action. All successful action centers around due process arguments and the assertion of legally sound and correct principles. Even more importantly, a successful action depends upon relevant facts. A list of the more prominent incorrect theories and/or irrelevant arguments follow. If, for any reason, an IR does not understand the Fellowship's position pertaining to the items listed, s/he is to call his or her mentor Independent Representative as soon as possible. Any IR found teaching or promoting any of the following unsubstantiated rumors, untested theories or erroneous arguments is subject to immediate termination:

Initial _____

9.1 Income tax is voluntary—Under no circumstance will an IR suggest or imply that the income tax is "voluntary". If the IR does not understand why the income tax is mandatory or the distinction as it would relate to the concept of limited application of the law, s/he should call the SAPF National Representative for an explanation. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.2 U.C.C. argument—Most of the misinformation surrounding the U.C.C. arguments stems from the erroneous belief that Social Security and/or the Form 1040 are a contract. These arguments are totally incorrect. Furthermore, for the purpose of the administration of the income tax laws this argument is irrelevant. Under no circumstance will an IR suggest or imply that the U.C.C. in any way imposes jurisdiction for the purpose of administering the internal revenue laws. If the IR does not understand why s/he should call the SAPF National Representative for an explanation. Any IR found to be in violation of this policy will immediately terminated.

Initial _____

9.3 The 16th Amendment was never ratified—The evidence is indeed overwhelming that the 16th Amendment to the Constitution was never ratified. However, the Supreme Court ruled in Brushaber v. Union Pacific Railroad and in 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. We do not discount the value of propagating such information. However, the non-ratification of the amendment has NO bearing on the actual application of the tax and whether or not someone is the subject of the law. The act of disseminating the information can actually serve to confuse partially educated individuals, and since we have no way of determining whether any given IR is able to articulate the information in terms that can be understood by the average prospective member, we strongly suggest that IR's refrain from advancing this information. Considering the level of understanding of the average person, and his or her ability to articulate what knowledge he or she has absorbed, we feel that, at the present time, it is in the best interest of the Fellowship to avoid making the ratification or non-ratification of the 16th Amendment a "factual" issue which may be misconstrued by any number of parties and which may incorrectly "encourage" or "justify" an individual's belief. Any IR found to be in violation of this policy will immediately terminated.

Initial _____

9.4 The IRS is a Delaware 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 that time the IRS was known as the "Bureau of Internal Revenue." There is no connection whatsoever between the two. The former was merely a business (similar to H & R Block) started by several certified public accountants for the purpose of selling

not puerto rico!

RUMOURS (Cont.) 4

assistance to taxpayers. Under no circumstance will an IR suggest or imply that the IRS is a Delaware corporation. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.5 Non-Resident Alien Status—If everyone understood the scheme of Federal taxation, this argument would NEVER have been raised. Any IR not understanding the issue of non-resident aliens and how Title 26 applies to them should contact SAPF HQ asap! Under no circumstance will an IR suggest or imply that someone should claim to be a non-resident alien in order to assert their rights under the law. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.6 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. Under no circumstance will an IR suggest or imply that using a zip code creates federal jurisdiction over the user. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.7 Fourteenth Amendment Citizens—Every person for whom the 14th Amendment was originally written is long since DEAD! However, the 14th still confirms "equal protection under the law" which means the citizens of Washington, D.C. and government enclaves have the same constitutionally protected rights as every other Citizen or resident alien in this country. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the 14th Amendment created any Federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.8 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. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Emergency War Powers Act gave the President any powers above and beyond that enumerated in the Constitution. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.9 The Buck Act—This Act did NOT create a "shadow government" or expand jurisdiction over the citizens and resident aliens of the United States of America. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Buck Act created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.10 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 this country and/or the U.S. Citizens in the country with which the treaty was written. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that treaties written between the United States of America and any foreign country created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be terminated immediately.

deluged Initial _____ w/ deprog delusions

9.11 Returns and Forms—Filing 1040x's, Ø Returns, W-8's, W-4's with large deductions, etc. are NOT proper methods for dealing with filing requirements. These methods have led many into situations where no one, not even the Fellowship, can help them. Any IR not understanding the problematic nature of filing any of these returns or forms is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest filing any government issued form in an improper manner. Any IR found in violation of this policy will be terminated immediately.

TRAPS ?

Initial _____

RUMOUR TV shows?

9.12 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 Constitution. Most everyone involved with these "courts" is attempting to bring State law into a Federal jurisdiction matter. IT DOESN'T WORK THAT WAY!!! The proponents of these "courts" are routinely going against the judicial structure that is one of the cornerstones of our country. The Fellowship understands the frustration the American public feels about the conduct in our Federal courts today, however, the so-called "Common Law Court" is NOT the proper arena to make the legal changes needed. Any IR not understanding the issues surrounding the so-called "Common Law" is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that "Common Law" or a "Common Law Court" has any bearing on Federal taxing issues whatsoever. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.13 Non-Statutory Abatements—This "silver-bullet" came about based on decisions in "Common Law Courts" (See item #9.11). The name of the process itself raises suspicions. Any IR not understanding the problematic nature of filing any of these returns or forms is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Non-Statutory Abatement is a proper method to abate an alleged tax liability. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.14 Executive Orders—Executive Orders apply to the executive branch of government only and DO NOT apply to citizens and/or resident-aliens! Any IR not understanding Executive Orders is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that Executive Orders incur any Federal jurisdiction above and beyond that enumerated in the Constitution. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.15 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 ludicrous. The fringe is decoration only. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR 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. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.16 "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 frustration that people are experiencing with regards to being deceived by our government over money issues. Once again, the only way this method "appears" to work is through a "Common Law Court" decision (see item #9.11). Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that "Common Law" Certified Money Orders and/or Treasury Warrants are proper methods for discharging debt. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.17 IMF "Silver Bullet"—Although the decoding of the Individual Master File can produce some significant information for a court case, it is not the "silver bullet" or "end-all" method for building a solid defense. Under no circumstance will an IR suggest or imply that decoding one's IMF is a "silver bullet" method for building a solid defense in Court. Any IR found in violation of this policy will be terminated immediately.

Initial _____

Besides the common misconceptions outlined above, IR's will not extend their membership marketing activities beyond the information contained within these resources. Any IR found in violation of this policy will be terminated immediately.

Initial _____

10) IR's May Not Reproduce Or Sell Fellowship Tapes, "Vehicles", Publications, Or Similar Items Competing With The Fellowship—

These items are costly to develop and the funds generated from the sale of these items support the Fellowship's activities and help cover expenses. The unauthorized reproduction or sale of any Fellowship publication, tape or vehicle deprives the Fellowship of needed funds. Furthermore, these items are updated and/or improved as needed. Outdated material may cause needless problems for everyone involved. This especially applies to any instructions for implementing Fellowship vehicles and any follow-up correspondence. Therefore, under no circumstances will an IR reproduce, sell or otherwise supply these items, or like items, in part or in whole, to anyone. Any IR found in violation of this policy will be terminated immediately.

Initial JD I was under the impression I could make copies. I assume it's okay to give them away as long as I buy them from SAPF.

11) IR's May Not Record National Conference Calls—

Due to the "live" nature of these calls, editing is usually required to ensure that these tapes, to the degree possible, meet with SAPF standards for accuracy and quality. An unedited tape in the hands of an uneducated or newly informed person could possibly be detrimental to our efforts. Any IR found in violation of this policy will be terminated immediately.

Initial JD

12) Use Of Logos And Fellowship Name—

IR's are required to use the title "Independent Representative" in any and all communications when marketing and/or *presenting SAPF material in their capacity as an IR. The minuteman logo in conjunction with the name "Save-A-Patriot" or "Save-A-Patriot Fellowship" alone is restricted for the use of SAPF HQ.* Any IR found in violation of this policy will be terminated immediately.

Initial JD

13) IR's In The Vicinity Of Our Westminster, Maryland Headquarters May Not "Spot Recruit" Attendees At Fellowship Meetings—

Enrolling is limited to prospective members who have been invited to the meeting by the IR. Any IR found in violation of this policy will be terminated immediately.

Initial JD

14) *IR's May Not Charge Any Fees Above And/or In Addition To Those Of The* Fellowship Fee Schedule—

An IR is prohibited from representing a fee for membership or adding fees for similar or additional services in excess of the present SAPF membership fee schedule. Only the current fees for membership and membership services will be discussed at the time of enrolling any new member. Any independent representative found in violation of this policy will be terminated immediately.

Initial JD

15) Membership Fees—

IR's will promote, advertise, and accept only 675 FRNs for "Full" Memberships and 350 FRNs for "Limited" Memberships pursuant to the SAPF Program Agreement. No discounts, "deals," or special incentives will be offered to potential members with the exception of the deferment of full payment under the SAPF Installment Agreement. No IR will attempt to *undercut or compete with another IR on the issue of price pertaining to membership. Any IR found in violation of these policies* will be terminated immediately.

Initial JD

16) IR's Must Forward All Membership Applications Themselves Via Certified Mail, Return Receipt Requested To—

Save-A-Patriot Fellowship, P.O. Box 91 Westminster, MD 21158-0091

The IR must personally process and sign the paperwork for the initial membership of a prospective member and send it directly to SAPF HQ via certified mail. By sending a new member application via certified mail the IR will know the exact day on which it is received at HQ and can estimate more accurately when processing will be complete for the benefit of the new member. Certified mail also ensures that the applicant's funds are received. Regardless of the commission withheld by the IR, the full fee for membership enrollment is to be printed on the application in the applicable space(s). Any IR who does not personally and correctly process the paperwork will be ineligible to receive commissions on that particular membership.

Initial _____

17) New Member's Application—

An IR will inform each newly enrolled Member that:

1. The Member's ORIGINAL application for membership with their Membership ID number inscribed will be returned to them via mail once it has been processed;
2. The Member does NOT have to wait for this Membership ID number and may immediately access any needed Fellowship service in the meantime.
3. The Member will be included in the monthly Member Assistance Payment assessments once their Membership ID number has been assigned.

Initial _____

18) Initial Contact With SAPF HQ For Member Services—IR's will inform new members that SAPF HQ does NOT initiate any service or process any orders without the express consent of the member. For example, IR's must explain that the Fellowship does NOT automatically send a new member an affidavit of revocation and rescission. Only the new member can initiate contact with SAPF HQ. Any IR found in violation of this policy will be terminated immediately.

Initial _____

19) Enrollment Commissions—When enrolling individual Full and Limited members into the Fellowship (exclusive of commissions available under the optional TAX FREEDOM 101 marketing system) the following IR commission structure is in effect as of November 5, 1997 and all previously existing commission structures are canceled. An IR must be current with all financial obligations both to the Fellowship and to his or her Mentor IR in order to remain eligible to receive enrollment commissions. No commission is paid on the enrollment of a Co-Membership.

Enrollment commissions will be paid as follows:
Enrollment of a Full Member—400 FRN's retained by the enrolling IR; 250 FRN's forwarded to SAPF HQ;
Enrollment of a Limited Member—200 FRN's retained by the enrolling IR; 125 FRN's forwarded to SAPF HQ.

Initial Mentoring Fees

Each IR is responsible to pay a total of 500 FRNs in mentorship fees to his or her Mentor IR out of initial enrollments obtained at the rate of 100 FRNs per Full Membership enrollment obtained and 50 FRNs per Limited membership enrollment obtained until the full 500 FRN total has been tendered to the Mentor IR.

If you do not know who your Mentor IR is, or if your enrolling IR is no longer a Member or an IR in good standing, or if you enrolled yourself through direct contact with HQ, call the National Representative and a Mentor IR will be assigned to you.

Initial _____

20) Non-Cancellation As An IR—Once as IR has distinguished him/herself as having achieved the status of certified Independent Representative for The Save-A-Patriot Fellowship and unless terminated as an IR for cause as outlined herein or no longer a Member in good standing, s/he will be considered to be an IR in good standing for life and can NEVER lose the status of IR for lack of "production" (enrollment of Members), however an IR who fails to obtain a single enrollment within any six (6) month period may be asked to re-certify.

Initial _____

21) Certificate Of Achievement—Each and every IR for SAPF will carry and display proudly! either the original or a copy of their Certificate Of Achievement when enrolling a new member. This certificate confirms that the enrolling IR is an IR in good standing with the Fellowship and is authorized to handle the initial processing of any paperwork and/or funds pertaining to that person's enrollment.

Initial _____

22) Policy Agreement Changes— IR's understand this Policy Agreement may change without notice. However, SAPF HQ will attempt to maintain the policies contained herein as long as possible and avoid changes for light and transient reasons.

Initial _____ e.g., prices; e.g. by the time you read this

23) Binding Agreement—Any IR who has questions pertaining to anything in this policy agreement is to call the National Representative or SAPF HQ for any further explanations and answers. It is very important to understand every provision in this agreement. Once signed, this agreement is binding.

Initial _____

24) IR Status Request—The National Representative reserves the right to refuse to certify any IR who has completed the Certifying Examination and fails to fill out and return this signed agreement within fourteen (14) days of receipt.

Initial _____

25) Membership Solicitation Via Marketing/Advertising In Print And Electronic Media And On The Internet—When conducting marketing and advertising activities directed towards either the enrollment of members or the sale of various materials - whether created by the Fellowship or by the individual IR - whether in the form of print media, including but not limited to commercial advertisements, personal correspondence, flyers, business cards, brochures and other marketing materials; or in the form of electronic media, including but not limited to facsimile transmissions of the above to include "fax broadcasting" and "fax-on-demand" services; or located on one or more sites on the Internet World Wide Web or linked to one or more web pages located on another site on the Internet World Wide Web, or in e-mail messages or files attached thereto and transmitted across the Internet, an IR is prohibited:

A.) From directly soliciting membership in the Save-A-Patriot Fellowship (the IR may explain that SAPF is membership based and may explain the benefits and services available to members, but may not overtly solicit membership -- when a prospective member inquires as to how s/he may become a member, the IR may then respond with suitable materials, including a Fellowship Main Program Agreement);

B.) From directly or indirectly promoting, selling or enrolling for other like associations, organizations or fellowships, and;

C.) From using provocative or sensational language which might entice a prospective member to join the Fellowship based upon false or unrealistic expectations.

Any questions pertaining to this policy are to be directed to the National Representative. Any IR found in violation of this policy will be terminated immediately.

Initial _____

Sign and enter your Member ID No. below. If none has yet been assigned, enter the date you applied for membership. (NOTE: When requested to enter your "IR ID No." in the space provided on the Fellowship Main Program Agreement (membership application) enter your Member ID No. There is no separate IR ID No.)

As evidenced by my initials above and by my signature below, I certify that I have carefully read and thoroughly understand this entire Independent Representative Policy Agreement and agree to faithfully abide by the policies, procedures, and provisions contained herein.

Signature John Deaton Date Signed 5/31/01

Member ID Number 9019

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

AFFIDAVIT OF GEORGE U. SCHAFFER

I, George U. Schaffer, do hereby declare as follows:

1. I am a citizen of the State of Maryland, and above legal age.

2. I am a member and Independent Representative of the Save-A-Patriot Fellowship an unincorporated organization domiciled in Westminster, Maryland.

3. That on the date shown thereon I executed the attached Independent Representative Policy Agreement.

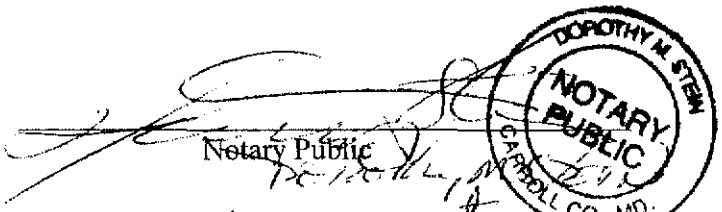
I hereby declare that the foregoing is correct and true to the best of my knowledge, information and belief.

Dated this 20 th day of June, 2006

George U. Schaffer

George U. Schaffer

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Carroll, this 20th day of June, 2006, that the above named person did appear before me and was identified to be the person executing this document.



Notary Public

My Commission Expires On: October 1, 2007

The Save-A-Patriot Fellowship

Office of the Examination Administrator • 12 Carroll Street, Westminster MD 21157
Fax **(877) 285-2104** • *E-mail* **nationalrep@save-a-patriot.org**

Dear Fellow Member:

Congratulations on having passed the Independent Representative Master Examination. May you experience the deepest rewards in joining with hundreds of other Independent Representatives nationwide, bearing the gift of truth to your friends and neighbors. To maintain the accuracy and integrity that are the hallmarks of the Save-A-Patriot Fellowship, this **IR Policy Agreement** contains policies, procedures, and provisions which it is imperative that every Independent Representative understand. Please read this **IR Policy Agreement** carefully and do not sign this agreement unless you fully understand and agree with all of the policies, procedures and provisions contained within.

NOTICE: Mail (do NOT fax) this original, signed **IR Policy Agreement** to:
SAPF, Office of the Examination Administrator, PO Box 91, Westminster, MD 21158.

IR Name, Address, Phone (initial in all indicated spaces and sign at end)

Full Name GEORGE W. SCHAFFER

Mailing Address 3600 GREGG RD

City / Town BROOKEVILLE State MD Zip 20833

Day Phone 301-924-4946 Eve Phone _____

Important Notice --If you have any questions pertaining to any of the sections below, they are to be directed in writing to the Office of the Examination Administrator via mail, fax or e-mail. Please remember that the more concise and informative you are in your communications, the better able we are to assist you.

* * *

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Initial _____

2) Un-taxing? De-taxing?—Under no circumstances are IR's or staff members permitted to refer to Fellowship assistance as "un-taxing" or "de-taxing" or any other similar phrase. The phrase itself carries with it the connotation that something is being done to cancel or nullify an existing legal requirement. Obviously, if the individual is contending they are not the subject of the law and have no legal requirement to file a return or pay a tax then there is no existing legal requirement to "un-do". More succinctly, it is the law that imposes a tax. If the law imposes a tax, then it is incumbent upon those who are

subject to the law to comply with its provisions (i.e. file the return and pay the tax). If the law does not impose a tax on a specific object, subject, or activity then there is nothing to "un-tax". If an IR represents Fellowship services as a process of un-taxing, then this could be construed to imply that the Fellowship is somehow able to cancel a statutory taxing provision. That is not the case, therefore IR's must refrain from using the term. NOTE: previous signatures on tax returns do create a "presumption" that a statutory requirement exists, however presumptions are not statutes and may be rebutted - actual legal requirements cannot. Therefore, if anything is to be un-done it is the presumption and not a taxing statute! Semantics are the fine line between being correct and being incorrect. Any IR found in violation of this policy will be terminated immediately.

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6) Under No Circumstances Will An IR Answer A Member's Questions Pertaining To Specific Technical Procedures Of The Various Departments Of The Fellowship—The procedures performed by the Fellowship on behalf of members are very technical and exact. They are also continually updated. The IR does not have the need, nor does the Fellowship have the time and ability to keep all IR's updated on these procedures and changes. Any IR found in violation of this policy will be terminated immediately.

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8) Submitting A W-4 "Exempt" Is Not The Proper Way For A U.S. Citizen Or Resident Alien To Claim That S/He Is "Not Subject To Withholding"—Under no circumstances will an IR tell a prospective member or any other member to file a W-4 "exempt" or a W-4 with a large number of deductions on it. Any IR found in violation of this policy will be terminated immediately.

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9) The Fellowship Does Not Propagate Rumor Or Untested Theories About The Law

—*Such theories are damaging to effective legal action. All successful action centers around due process arguments* and the assertion of legally sound and correct principles. Even more importantly, a successful action depends upon relevant facts. A list of the more prominent incorrect theories and/or irrelevant arguments follow. If, for any reason, an IR does not understand the Fellowship's position pertaining to the items listed, s/he is to call his or her mentor Independent Representative as soon as possible. Any IR found teaching or promoting any of the following unsubstantiated rumors, untested theories or erroneous arguments is subject to immediate termination:

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9.1 Income tax is voluntary—Under no circumstance will an IR suggest or imply that the income tax is "voluntary". If the IR does not understand why the income tax is mandatory or the distinction as it would relate to the concept of limited application of the law, s/he should call the SAPF Examination Administrator for an explanation. Any IR found in violation of this policy will be terminated immediately.

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9.2 U.C.C. argument—Most of the misinformation surrounding the U.C.C. arguments stems from the erroneous belief that Social Security and/or the Form 1040 are a contract. These arguments are totally incorrect. Furthermore, for the purpose of the administration of the income tax laws this argument is irrelevant. Under no circumstance will an IR suggest or imply that the U.C.C. in any way imposes jurisdiction for the purpose of administering the internal revenue laws. If the IR does not understand why s/he should call the SAPF Examination Administrator for an explanation. Any IR found to be in violation of this policy will immediately terminated.

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9.3 The 16th Amendment was never ratified—The evidence is indeed overwhelming that the 16th Amendment to the Constitution was never ratified. However, the Supreme Court ruled in Brushaber v. Union Pacific Railroad and in 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. We do not discount the value of propagating such information. However, the non-ratification of the amendment has NO bearing on the actual application of the tax and whether or not someone is the subject of the law. The act of disseminating the information can actually serve to confuse partially educated individuals, and since we have no way of determining whether any given IR is able to articulate the information in terms that can be understood by the average prospective member, we strongly suggest that IR's refrain from advancing this information. Considering the level of understanding of the average person, and his or her ability to articulate what knowledge he or she has absorbed, we feel that, at the present time, it is in the best interest of the Fellowship to avoid making the ratification or non-ratification of the 16th Amendment a "factual" issue which may be misconstrued by any number of parties and which may incorrectly "encourage" or "justify" an individual's belief. Any IR found to be in violation of this policy will immediately terminated.

Initial _____

9.4 The IRS is a Delaware 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* that time the IRS was known as the "Bureau of Internal Revenue." There is no connection whatsoever between the two. 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. Under no circumstance will an IR suggest or imply that the IRS is a Delaware corporation. Any IR found in violation of this policy will be terminated immediately.

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9.5 Non-Resident Alien Status—If everyone understood the scheme of Federal taxation, this argument would NEVER have been raised. Any IR not understanding the issue of non-resident aliens and how Title 26 applies to them should contact SAPF HQ asap! Under no circumstance will an IR suggest or imply that someone should claim to be a non-resident alien in order to assert their rights under the law. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.6 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. Under no circumstance will an IR suggest or imply that using a zip code creates federal jurisdiction over the user. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.7 Fourteenth Amendment Citizens—Every person for whom the 14th Amendment was originally written is long since DEAD! However, the 14th still confirms "equal protection under the law" which means the citizens of Washington, D.C. and government enclaves have the same constitutionally protected rights as every other Citizen or resident alien in this country. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the 14th Amendment created any Federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.8 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. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Emergency War Powers Act gave the President any powers above and beyond that enumerated in the Constitution. Any IR found in violation of this policy will be terminated immediately.

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9.9 The Buck Act—This Act did NOT create a "shadow government" or expand jurisdiction over the citizens and resident aliens of the United States of America. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Buck Act created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.10 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 this country and/or the U.S. Citizens in the country with which the treaty was written. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that treaties written between the United States of America and any foreign country created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.11 Returns and Forms—Filing 1040x's, Ø Returns, W-8's, W-4's with large deductions, etc. are NOT proper methods for dealing with filing requirements. These methods have led many into situations where no one, not even the Fellowship, can help them. Any IR not understanding the problematic nature of filing any of these returns or forms is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest filing any government issued form in an improper manner. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.12 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 Constitution. Most everyone involved with these "courts" is attempting to bring State law into a Federal jurisdiction matter. IT DOESN'T WORK THAT WAY!!! The proponents of these "courts" are routinely going against the judicial structure that is one of the cornerstones of our country. The Fellowship understands the frustration the American public feels about the conduct in our Federal courts today, however, the so-called "Common Law Court" is NOT the proper arena to make the legal changes needed. Any IR not understanding the issues surrounding the so-called "Common Law" is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that "Common Law" or a "Common Law Court" has any bearing on Federal taxing issues whatsoever. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.13 Non-Statutory Abatements—This "silver-bullet" came about based on decisions in "Common Law Courts" (See item #9.11). The name of the process itself raises suspicions. Any IR not understanding the problematic nature of filing any of these returns or forms is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Non-Statutory Abatement is a proper method to abate an alleged tax liability. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.14 Executive Orders—Executive Orders apply to the executive branch of government only and DO NOT apply to citizens and/or resident-aliens! Any IR not understanding Executive Orders is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that Executive Orders incur any Federal jurisdiction above and beyond that enumerated in the Constitution. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.15 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 ludicrous. The fringe is decoration only. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR 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. Any IR found in violation of this policy will be terminated immediately.

Initial _____

9.16 "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 frustration that people are experiencing with regards to being deceived by our government over money issues. Once again, the only way this method "appears" to work is through a "Common Law Court" decision (see item #9.11). Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that "Common Law" Certified Money Orders and/or Treasury Warrants are proper methods for discharging debt. Any IR found in violation of this policy will be terminated immediately.

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9.17 IMF "Silver Bullet"—Although the decoding of the Individual Master File can produce some significant information for a court case, it is not the "silver bullet" or "end-all" method for building a solid defense. Under no circumstance will an IR suggest or imply that decoding one's IMF is a "silver bullet" method for building a solid defense in Court. Any IR found in violation of this policy will be terminated immediately.

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Besides the common misconceptions outlined above, IR's will not extend their membership marketing activities beyond the information contained within these resources. Any IR found in violation of this policy will be terminated immediately.

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10) IR's May Not Reproduce Or Sell Fellowship Tapes, "Vehicles", Publications, Or Similar Items Competing With The Fellowship—

These items are costly to develop and the funds generated from the sale of these items support the Fellowship's activities and help cover expenses. The unauthorized reproduction or sale of any Fellowship publication, tape or vehicle deprives the Fellowship of needed funds. Furthermore, these items are updated and/or improved as needed. Outdated material may cause needless problems for everyone involved. This especially applies to any instructions for implementing Fellowship vehicles and any follow-up correspondence. Therefore, under no circumstances will an IR reproduce, sell or otherwise supply these items, or like items, in part or in whole, to anyone. Any IR found in violation of this policy will be terminated immediately.

Initial _____

11) IR's May Not Record National Conference Calls—

Due to the "live" nature of these calls, editing is usually required to ensure that these tapes, to the degree possible, meet with SAPF standards for accuracy and quality. An unedited tape in the hands of an uneducated or newly informed person could possibly be detrimental to our efforts. Any IR found in violation of this policy will be terminated immediately.

Initial _____

12) Use Of Logos And Fellowship Name—

IR's are required to use the title "Independent Representative" in any and all communications when marketing and/or presenting SAPF material in their capacity as an IR. The minuteman logo in conjunction with the name "Save-A-Patriot" or "Save-A-Patriot Fellowship" alone is restricted for the use of SAPF HQ. Any IR found in violation of this policy will be terminated immediately.

Initial _____

13) IR's In The Vicinity Of Our Westminster, Maryland Headquarters May Not "Spot Recruit" Attendees At Fellowship Meetings—

Enrolling is limited to prospective members who have been invited to the meeting by the IR. Any IR found in violation of this policy will be terminated immediately.

Initial _____

14) IR's May Not Charge Any Fees Above And/or In Addition To Those Of The Fellowship Fee Schedule—

An IR is prohibited from representing a fee for membership or adding fees for similar or additional services in excess of the present SAPF membership fee schedule. Only the current fees for membership and membership services will be discussed at the time of enrolling any new member. Any independent representative found in violation of this policy will be terminated immediately.

Initial _____

15) Membership Fees—

IR's will promote, advertise, and accept only 925 FRNs for Memberships pursuant to the SAPF Program Agreement. No discounts, "deals," or special incentives will be offered to potential members with the exception of the deferment of full payment under the SAPF Installment Agreement. No IR will attempt to undercut or compete with another IR on the issue of price pertaining to membership. Any IR found in violation of these policies will be terminated immediately.

Initial _____

16) IR's Must Forward All Membership Applications Themselves Via Certified Mail, Return Receipt Requested To—

Save-A-Patriot Fellowship, P.O. Box 91 Westminster, MD 21158-0091

The IR must personally process and sign the paperwork for the initial membership of a prospective member and send it directly to SAPF HQ via certified mail. By sending a new member application via certified mail the IR will know the exact day on which it is received at HQ and can estimate more accurately when processing will be complete for the benefit of the new member. Certified mail also ensures that the applicant's funds are received. Regardless of the commission withheld by the IR, the full fee for membership enrollment is to be printed on the application in the applicable space(s). Any IR who does not personally and correctly process the paperwork will be ineligible to receive commissions on that particular membership.

Initial _____

17) New Member's Application—

An IR will inform each newly enrolled Member that:

1. The Member's ORIGINAL application for membership with their Membership ID number inscribed will be returned to them via mail once it has been processed;
2. The Member does NOT have to wait for this Membership ID number and may immediately access any needed Fellowship service in the meantime.
3. The Member will be included in the monthly Member Assistance Payment assessments once their Membership ID number has been assigned.

Initial _____

18) Initial Contact With SAPF HQ For Member Services—

IR's will inform new members that SAPF HQ does NOT initiate any service or process any orders without the express consent of the member. For example, IR's must explain that the Fellowship does NOT automatically send a new member an affidavit of revocation and rescission. Only the new member can initiate contact with SAPF HQ. Any IR found in violation of this policy will be terminated immediately.

Initial _____

19) Enrollment Commissions—

When enrolling individual members into the Fellowship, the following IR commission structure is in effect as of May 29th, 2001 and all previously existing commission structures are canceled. An IR must be current with all financial obligations both to the Fellowship and to his or her Mentor IR in order to remain eligible to receive enrollment commissions. No commission is paid on the enrollment of a Co-Membership.

Enrollment commissions will be paid as follows:
Enrollment of a Full Member — 279 FRNs retained by the enrolling IR; 418 FRNs forwarded to SAPF HQ;
Enrollment of a Associate Member — 40 FRNs retained by the enrolling IR; 59FRNs forwarded to SAPF HQ;

Initial _____

20) Non-Cancellation As An IR—

Once as IR has distinguished him/herself as having achieved the status of certified Independent Representative for The Save-A-Patriot Fellowship and unless terminated as an IR for cause as outlined herein or no longer a Member in good standing, s/he will be considered to be an IR in good standing for life and can NEVER lose the status of IR for lack of "production" (enrollment of Members), however an IR who fails to obtain a single enrollment within any six (6) month period may be asked to re-certify.

Initial _____

21) Certificate Of Achievement—

Each and every IR for SAPF will carry and display either the original or a copy of their Certificate Of Achievement when enrolling a new member. This certificate confirms that the enrolling IR is an IR in good standing with the Fellowship and is authorized to handle the initial processing of any paperwork and/or funds pertaining to that person's enrollment.

Initial _____

22) Policy Agreement Changes—

IR's understand this Policy Agreement may change without notice. However, SAPF HQ will attempt to maintain the policies contained herein as long as possible and avoid changes for light and transient reasons.

Initial _____

23) Binding Agreement—

Any IR who has questions pertaining to anything in this policy agreement is to call the Examination Administrator or SAPF HQ for any further explanations and answers. It is very important to understand every provision in this agreement. Once signed, this agreement is binding.

Initial _____

24) IR Status Request—The Examination Administrator reserves the right to refuse to certify any IR who has completed the Certifying Examination and fails to fill out and return this signed agreement within fourteen (14) days of receipt.

Initial _____

25) Membership Solicitation Via Marketing/Advertising In Print And Electronic Media And On The Internet—When conducting marketing and advertising activities directed towards either the enrollment of members or the sale of various materials - whether created by the Fellowship or by the individual IR - whether in the form of print media, including but not limited to commercial advertisements, personal correspondence, flyers, business cards, brochures and other marketing materials; or in the form of electronic media, including but not limited to facsimile transmissions of the above to include "fax broadcasting" and "fax-on-demand" services; or located on one or more sites on the Internet World Wide Web or linked to one or more web pages located on another site on the Internet World Wide Web, or in e-mail messages or files attached thereto and transmitted across the Internet, an IR is prohibited:

A.) From directly soliciting membership in the Save-A-Patriot Fellowship (the IR may explain that SAPF is membership based and may explain the benefits and services available to members, but may not overtly solicit membership -- when a prospective member inquires as to how s/he may become a member, the IR may then respond with suitable materials, including a Fellowship Main Program Agreement);

B.) From directly or indirectly promoting, selling or enrolling for other like associations, organizations or fellowships, and;

C.) *From using provocative or sensational language which might entice a prospective member to join the Fellowship* based upon false or unrealistic expectations.

Any questions pertaining to this policy are to be directed to the Examination Administrator. Any IR found in violation of this policy will be terminated immediately.

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Sign and enter your Member ID No. below. If none has yet been assigned, enter the date you applied for membership. (NOTE: When requested to enter your "IR ID No." in the space provided on the Fellowship Main Program Agreement (membership application) enter your Member ID No. There is no separate IR ID No.)

As evidenced by my initials above and by my signature below, I certify that I have carefully read and thoroughly understand this entire Independent Representative Policy Agreement and agree to faithfully abide by the policies, procedures, and provisions contained herein.

Signature George U. Schaffer Date Signed Jan 13, 2004

Member ID Number 6586

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

AFFIDAVIT OF LARRY CLAYBORNE

I, Larry Clayborne, do hereby declare as follows:

1. I am a citizen of the State of Virginia, and above legal age.

2. I am a member and Independent Representative of the Save-A-Patriot Fellowship an unincorporated organization domiciled in Westminster, Maryland.

3. That on the date shown thereon I executed the attached Independent Representative Policy Agreement.

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

Dated this 20th day of June, 2006

Larry Clayborne

Larry Clayborne

Subscribed and sworn to before me, a Notary Public, of the State of Virginia, County of Orange, this 20th day of June, 2006, that the above named person did appear before me and was identified to be the person executing this document.

Notary Public

My Commission Expires On: 2/28/2007

old - New in Notebook.

The Save-A-Patriot Fellowship

- Independent Representative Policy Agreement -

Dear Fellow Member,

Congratulations on passing the *Independent Representative Certifying Examination.* May you experience the deepest rewards in joining with hundreds of Independent Representatives nationwide, bearing the gift of *truth* to your friends and neighbors. To maintain the accuracy and integrity that are the hallmarks of the *Save-A-Patriot Fellowship,* this *Policy Agreement* contains policies, procedures, and provisions which are imperative for every Independent Representative to understand. Please read this *Policy Agreement* carefully and do not sign this agreement unless you fully understand and agree with all of the policies, procedures and provisions contained within.

Mail (do NOT fax) this original, signed *Policy Agreement* to:
Gordon Phillips, National Representative, P.O. Box 104, Medfield, Massachusetts (MA) 02052.

IR Name, Address, Phone *(initial in all indicated spaces and sign at end of Page 9)*

Full Name W. LARRY CLAYBORNE

Mailing Address P. O. Box 952

City / Town LOCUST GROVE State VA Zip 22508

Day Phone (540) 972-0357 Eve Phone (540) 972-0357

1) Independent Representatives

Independent Representatives, henceforth referred to as IR's, are those who have been recommended by another IR or by someone at SAPF HQ to hold that position. Furthermore, they have passed the *Certifying Examination* administered by the National Representative. By signing this *Policy Agreement*, any potential IR acknowledges that he/she has met these requirements and is entitled to hold the position of Independent Representative. **It is understood that the SOLE purpose of an IR is to assist a potential member in making an EDUCATED decision about joining the Fellowship.** Technically, once someone has joined the Fellowship, the IR no longer has a reason to even communicate with that member. However, there are many reasons why a *relationship may continue after a person has been enrolled.* It is imperative, therefore, that any future communications between the member and the IR be restricted to the information set forth by the Fellowship, whenever and wherever possible, when discussing the tax laws. By their signature, IR's agree to uphold this policy to the best of their ability. IR's are independent contractors, working in their own capacity, and are not employees, agents, partners, joint venturers or representatives of the *Save-A-Patriot Fellowship* headquarters staff or of their mentor. They are not authorized to act on behalf of or to legally bind the *Save-A-Patriot Fellowship*, its staff or members, or other persons, nor will the Fellowship be held responsible for any misrepresentations and/or criminal acts committed by any IR. The Fellowship will assist anyone damaged due to a criminal act committed by an IR *in prosecuting that particular IR to the fullest extent of the law.*

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2) Un-taxing? De-taxing?

Under no circumstances are IR's or staff members permitted to refer to Fellowship assistance as *"un-taxing"* or *"de-taxing"* or any other similar phrase. The phrase itself carries with it the connotation that something is being done to cancel or *nullify* an *existing legal requirement.* Obviously, if the individual is contending they are not the subject of the law and have no legal requirement to file a return or pay a tax then there is no *existing legal requirement* to *"un-do"*. More succinctly, it is the law that imposes a tax. If the law imposes a tax, then it is incumbent upon those who are subject to the law to comply with its provisions *(i.e. file the return and pay the tax).* If the law does not impose a tax on a specific object, subject, or activity then there is nothing to *"un-tax"*. If an IR represents Fellowship services as a process of *un-taxing,* then this could be construed to imply that the Fellowship is somehow able to cancel a statutory taxing provision. That is not the case, therefore IR's must refrain from using

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The procedures performed by the Fellowship on behalf of members are very technical and exact. They are also continually updated. The IR does not have the need, nor does the Fellowship have the time and ability to keep all IR's updated on these procedures and changes. Any IR found in violation of this policy will be immediately terminated.

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Most people consider such tactics rude. If an IR cannot exercise common sense it is doubtful that he or she is capable of accurately representing the Fellowship and will be immediately terminated.

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9.1 ***Income tax is voluntary*** - Under no circumstance will an IR suggest or imply that the income tax is "voluntary". If the IR does not understand why the income tax is *mandatory* or the distinction as it would relate to the concept of *limited application* of the law, s/he should call the SAPF National Representative for an explanation. Any IR found in violation of this policy will be immediately terminated.

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9.2 ***U.C.C. argument*** - Most of the misinformation surrounding the U.C.C. arguments stems from the erroneous belief that Social Security and/or the Form 1040 are a contract. These arguments are totally incorrect. Furthermore, for the purpose of the administration of the income tax laws this argument is *irrelevant*. Under no circumstance will an IR suggest or imply that the U.C.C. in any way imposes jurisdiction for the purpose of administering the internal revenue laws. If the IR does not understand why s/he should call the SAPF National Representative for an explanation. Any IR found to be in violation of this policy will immediately terminated.

Initial _____

9.3 ***The 16th Amendment was never ratified*** - The evidence is indeed overwhelming that the 16th Amendment to the Constitution was never ratified. However, the Supreme Court ruled in *Brushaber v. Union Pacific Railroad* and in *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. We do not discount the value of propagating such information. However, the non-ratification of the amendment has NO bearing on the *actual application* of the tax and whether or not someone is *the subject of* the law. The act of disseminating the information can actually serve to confuse partially educated individuals, and since we have no way of determining whether any given IR is able to articulate the information in terms that can be understood by the average prospective member, we strongly suggest that IR's refrain from advancing this information. Considering the level of understanding of the average person, and his or her ability to articulate what knowledge he or she has absorbed, we feel that, at the present time, it is in the best interest of the Fellowship to avoid making the ratification or non-ratification of the 16th Amendment a "factual" issue which may be misconstrued by any number of parties and which may incorrectly "encourage" or "justify" an individual's belief. Any IR found to be in violation of this policy will immediately terminated.

Initial _____

9.4 ***The IRS is a Delaware 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 that time the IRS was known as the "Bureau of Internal Revenue." There is no connection whatsoever between the two. 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. Under no circumstance will an IR suggest or imply that the IRS is a Delaware corporation. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.5 ***Non-resident Alien Status*** - If everyone understood the scheme of Federal taxation, this argument would NEVER have been raised. Any IR not understanding the issue of non-resident aliens and how Title 26 applies to them should contact SAPF HQ *asap!* Under no circumstance will an IR suggest or imply that someone should claim to be a non-resident alien in order to assert their rights under the law. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.6 ***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. Under no circumstance will an IR suggest or imply that using a zip code creates federal jurisdiction over the user. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.7 ***Fourteenth Amendment Citizens*** - Every person for whom the 14th Amendment was originally written *is long since DEAD!* However, the 14th still confirms "equal protection under the law" which means the citizens of Washington, D.C. and government enclaves have the same constitutionally protected rights as every other Citizen or resident alien in this country. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the 14th Amendment created any Federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.8 ***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. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Emergency War Powers Act gave the President any powers above and beyond that enumerated in the Constitution. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.9 ***The Buck Act*** - This Act did NOT create a "shadow government" or expand jurisdiction over the citizens and resident aliens of the United States of America. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Buck Act created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.10 ***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 this country and/or the U.S. Citizens in the country with which the treaty was written. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that treaties written between the United States of America and any foreign country created any "shadow government" or federal jurisdiction above and beyond that enumerated in the Constitution itself. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.11 ***Returns and Forms*** - Filing 1040x's, Ø Returns, W-8's, W-4's with large deductions, etc. are NOT proper methods for dealing with filing requirements. These methods have led many into situations where no one, not even the Fellowship, can help them. Any IR not understanding the problematic nature of filing any of these returns or forms is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest filing any government issued form in an improper manner. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.12 ***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 Constitution. Most everyone involved with these "courts" is attempting to bring State law into a Federal jurisdiction matter. IT DOESN'T WORK THAT WAY!!! The proponents of these "courts" are routinely going against the judicial structure that is one of the cornerstones of our country. The Fellowship understands the frustration the American public feels about the conduct in our Federal courts today, however, the so-called "Common Law Court" is NOT the proper arena to make the legal changes needed. Any IR not understanding the issues surrounding the so-called "Common Law" is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that "Common Law" or a "Common Law Court" has any bearing on Federal taxing issues whatsoever. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.13 ***Non-Statutory Abatements*** - This "silver-bullet" came about based on decisions in "Common Law Courts" (See item #9.11). The name of the process itself raises suspicions. Any IR not understanding the problematic nature of filing any of these returns or forms is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that the Non-Statutory Abatement is a proper method to abate an alleged tax liability. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.14 ***Executive Orders*** - Executive Orders apply to the executive branch of government only and DO NOT apply to citizens and/or resident-aliens! Any IR not understanding Executive Orders is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that Executive Orders incur any Federal jurisdiction above and beyond that enumerated in the Constitution. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.15 ***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 ludicrous. The fringe is decoration only. Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR 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. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.16 ***"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 frustration that people are experiencing with regards to being deceived by our government over money issues. Once again, the only way this method "appears" to work is through a "Common Law Court" decision (see item #9.11). Any IR not understanding this issue is to contact SAPF HQ for an explanation. Under no circumstance will an IR suggest or imply that "Common Law" Certified Money Orders and/or Treasury Warrants are proper methods for discharging debt. Any IR found in violation of this policy will be immediately terminated.

Initial _____

9.17 ***IMF "Silver Bullet"*** - Although the decoding of the Individual Master File can produce some significant information for a court case, it is not the "silver bullet" or "end-all" method for building a solid defense. Under no circumstance will an IR suggest or imply that decoding one's IMF is a "silver bullet" method for building a solid defense in Court. Any IR found in violation of this policy will be immediately terminated.

Initial _____

Besides the common misconceptions outlined above, IR's will not extend their membership marketing activities beyond the information contained within these resources. Any IR found in violation of this policy will be immediately terminated.

Initial _____

10) IR's May Not Reproduce Or Sell Fellowship Tapes, "Vehicles", Or Publications

These items are costly to develop and the funds generated from the sale of these items support the Fellowship's activities and help cover expenses. The unauthorized reproduction or sale of any Fellowship publication, tape or vehicle deprives the Fellowship of needed funds. Furthermore, these items are updated and/or improved as needed. Outdated material may cause needless problems for everyone involved. This especially applies to any instructions for implementing Fellowship vehicles and any follow-up correspondence. Therefore, under no circumstances will an IR reproduce, sell or otherwise supply these items, in part or whole, to anyone. Any IR found in violation of this policy will be immediately terminated.

Initial _____

11) IR's May Not Record National Conference Calls

Due to the "live" nature of these calls, editing is usually required to ensure that these tapes, to the degree possible, meet with SAPF standards for accuracy and quality. An unedited tape in the hands of an uneducated or newly informed person could possibly be detrimental to our efforts. Any IR found in violation of this policy will be immediately terminated.

Initial _____

12) Use Of Logos And Fellowship Name

IR's are required to use the title "Independent Representative" in any and all communications when marketing and/or presenting SAPF material in their capacity as an IR. The minuteman logo in conjunction with the name "Save-A-Patriot" or "Save-A-Patriot Fellowship" alone is restricted for the use of SAPF HQ. Any IR found in violation of this policy will be immediately terminated.

Initial _____

13) IR's In The Vicinity Of Our Westminster, Maryland Headquarters May Not "Spot Recruit" Attendees At Fellowship Meetings

Enrolling is limited to prospective members who have been invited to the meeting by the IR. Any IR found in violation of this policy will be immediately terminated.

Initial _____

14) IR's May Not Enroll For Other Organizations

An IR is prohibited from selling or enrolling for any other similar association, organization or fellowship. Any questions pertaining to this policy are to be directed to the National Representative. Any IR found in violation of this policy will be immediately terminated.

Initial _____

15) IR's May Not Charge Any Fees Above And/or In Addition To Those Of The Fellowship Fee Schedule

An IR is prohibited from representing a fee for membership or adding fees for similar or additional services in excess of the present SAPF membership fee schedule. Only the current fees for membership and membership services will be discussed at the time of enrolling any new member. Any independent representative found in violation of this policy will be immediately terminated.

Initial _____

16) Membership Fees

IR's will promote, advertise, and accept only 650 FRNs for "Full" Memberships and 325 FRNs for "Limited" Memberships pursuant to the SAPF Program Agreement. No discounts, "deals," or special incentives will be offered to potential members with the exception of the deferment of full payment under the SAPF Installment Agreement. No IR will attempt to undercut or compete with another IR on the issue of price pertaining to membership. Any IR found in violation of these policies will be immediately terminated.

Initial _____

17) IR's Must Forward All Membership Applications Themselves Via Certified Mail, Return Receipt Requested To:

***Save-A-Patriot Fellowship*, P.O. Box 91 Westminster, MD 21158**

The IR must **personally process** and **sign** the paperwork for the initial membership of a prospective member and **send it directly to SAPF HQ** via **certified mail.** By sending a new member application via certified mail the IR will know the exact day on which it is received at HQ and can estimate more accurately when processing will be complete for the benefit of the new member. Certified mail also ensures that the applicant's funds are received. Regardless of the commission withheld by the IR, the **full fee** for membership enrollment is to be printed on the application in the applicable space(s). **Any IR who does not personally and correctly process the paperwork will be ineligible to receive commissions on that particular membership.**

Initial _____

18) New Member's Application.

An IR will inform each newly enrolled Member that:

1. The Member's ORIGINAL application for membership with their Membership ID number inscribed will be returned to them via mail once it has been processed;

2. The Member does NOT have to wait for this Membership ID number and may immediately access any needed Fellowship service in the meantime.

3. The Member will be included in the monthly *Member Assistance Payment* assessments once their Membership ID number has been assigned.

Initial _____

19) Initial Contact With SAPF HQ For Member Services.

IR's will inform new members that SAPF HQ does NOT initiate any service or process any orders without the express consent of the member. For example, IR's must explain that the Fellowship does NOT automatically send a new member an affidavit of revocation and rescission. **Only the new member can initiate contact with SAPF HQ.** Any IR found in violation of this policy will be immediately terminated.

Initial _____

20) Enrollment Commissions

The following commission structure is in effect as of November 5, 1997. All previously existing commission structures are canceled. An IR's must be current with all financial obligations both to the Fellowship and to his or her mentor IR in order to remain eligible to receive enrollment commissions. No commission is paid on the enrollment of a Co-Membership.

Enrollment commissions will be paid as follows:

Enrollment of a Full Member: 400 FRN's retained by the enrolling IR; 250 FRN's forwarded to SAPF HQ.

Enrollment of a Limited Member: 200 FRN's retained by the enrolling IR; 125 FRN's forwarded to SAPF HQ

Initial Mentoring Fees

Each IR is responsible to pay a total of 500 FRNs in mentorship fees to his or her mentor IR out of initial enrollments obtained at the rate of 100 FRNs per Full Membership enrollment obtained and 50 FRNs per Limited membership enrollment obtained until the full 500 FRN total has been tendered to the mentor IR.

If you do not know who your mentor IR is, or if your enrolling IR is no longer a Member or an IR in good standing, or if you enrolled yourself through direct contact with HQ, call the National Representative and a mentor IR will be assigned to you.

21) Non-Cancellation As An IR

Once you have distinguished yourself as having achieved the status of certified Independent Representative for *The Save-A-Patriot Fellowship* and unless terminated as an IR for cause as outlined above or no longer a Member in good standing, you will be considered to be an IR for life and can NEVER lose the status of IR for lack of "production" (enrollment of Members), however an IR who is inactive for 12 months may be asked to recertify.

22) Certificate Of Achievement

Each and every IR for SAPF will carry and display either the original or a copy of their *Certificate Of Achievement* when enrolling a new member. This certificate confirms that the enrolling IR is an IR in good standing with the Fellowship and is authorized to handle the initial processing of any paperwork and/or funds pertaining to that person's enrollment.

Initial _____

23) Policy Agreement Changes

IR's understand this *Policy Agreement* may change without notice. However, SAPF HQ will attempt to maintain the policies contained herein as long as possible and avoid changes for light and transient reasons.

Initial _____

24) Binding Agreement

Any IR who has questions pertaining to anything in this policy agreement is to call the National Representative or SAPF HQ for any further explanations and answers. It is very important to understand every provision in this agreement. Once signed, this agreement is binding.

Initial _____

25) IR Status Request

The National Representative reserves the right to refuse to certify any IR who has completed the Certifying Examination and fails to fill out and return this signed agreement within fourteen (14) days of receipt.

Initial _____

As evidenced by my initials above and by my signature below, I certify that I have carefully read and thoroughly understand this entire *Independent Representative Policy Agreement* and agree to faithfully abide by the policies, procedures, and provisions contained herein. Sign and enter your Member ID No. below. If none has yet been assigned, enter the date you applied for membership. When enrolling new members, the **IR ID No.** you will enter in the space requested on the Main Program Agreement (membership application) is your Member ID No. There is no other number.

Signature W. Larry Cuyhrne ***Date Signed*** 12/12/97 ***ID Number*** 4836

(T. D. 2312.)

Modifying T. D. 2246 of October 1, 1915.

Central denaturing bonded warehouse not required by manufacturers using Formula 2-b in the manufacture of sulphuric ether to be used in connection with the production of smokeless powder.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 22, 1916.

To collectors of internal revenue:

So much of T. D. 2246 as requires the establishment of central denaturing warehouses at manufacturing plants where sulphuric ether prepared from alcohol, denatured under Formula 2-b, is used in the manufacture of smokeless powder, is hereby revoked.

Hereafter manufacturers using such denatured alcohol for the purpose stated may procure the same from a distillery or central denaturing warehouse wherever located.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
BYRON R. NEWTON,
Acting Secretary of the Treasury.

(T. D. 2313.)

Income tax.

Taxability of interest from bonds and dividends on stock of domestic corporations owned by nonresident aliens, and the liabilities of nonresident aliens under section 2 of the act of October 3, 1913.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 21, 1916.

To collectors of internal revenue:

Under the decision of the Supreme Court of the United States in the case of Brushaber *v.* Union Pacific Railway Co., decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913.

Nonresident aliens are not entitled to the specific exemption designated in paragraph C of the income-tax law, but are liable for the normal and additional tax upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States," computed upon the basis prescribed in the law.

The responsible heads, agents, or representatives of nonresident aliens, who are in charge of the *property owned or business* carried on

within the United States, shall make a full and complete return of the income therefrom on Form 1040, revised, and shall pay any and all tax, normal and additional, assessed upon the income received by them in behalf of their nonresident alien principals.

The person, firm, company, copartnership, corporation, joint-stock company, or association, and insurance company in the United States, citizen or resident alien, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodic gains, profits, and income of whatever kind, to a nonresident alien, under any contract or otherwise, which payment shall represent income of a nonresident alien from the exercise of any *trade* or *profession* within the United States, shall deduct and withhold from such annual or periodic gains, profits, and income, regardless of amount, and pay to the officer of the United States Government authorized to receive the same such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall make an annual return on Form 1042.

The normal tax shall be withheld at the source from income accrued to nonresident aliens from corporate obligations and shall be returned and paid to the Government by debtor corporations and withholding agents as in the case of citizens and resident aliens, but without benefit of the specific exemption designated in paragraph C of the law.

Form 1008, revised, claiming the benefit of such deductions as may be applicable to income arising within the United States and for refund of excess tax withheld, as provided by paragraphs B and P of the income-tax law, may be filed by nonresident aliens, their agents or representatives, with the debtor corporation, withholding agent, or collector of internal revenue for the district in which the withholding return is required to be made.

That part of paragraph E of the law which provides that "if such person * * * is absent from the United States, * * * the return and application may be made for him or her by the person required to withhold and pay the tax * * *" is held to be applicable to the return and application on Form 1008, revised, of nonresident aliens.

A fiduciary acting in the capacity of trustee, executor, or administrator, when there is only one beneficiary and that beneficiary a nonresident alien, shall render a return on Form 1040, revised; but when there are two or more beneficiaries, one or all of whom are nonresident aliens, the fiduciary shall render a return on Form 1041, revised, and a personal return on Form 1040, revised, for each nonresident alien beneficiary.

The liability, under the provisions of the law, to render personal returns, on or before March 1 next succeeding the tax year, of annual

net income accrued to them from sources within the United States during the preceding calendar year, attaches to nonresident aliens as in the case of returns required from citizens and resident aliens. Therefore, a return on Form 1040, revised, is required except in cases where the total tax liability has been or is to be satisfied at the source by withholding or has been or is to be satisfied by personal return on Form 1040, revised, rendered in their behalf. Returns should be rendered to the collector of internal revenue for the district in which a nonresident alien carries on his principal business within the United States or, in the absence of a principal business within the United States and in all cases of doubt, to the collector of internal revenue at Baltimore, Md., in whose district Washington is situated.

Nonresident aliens are held to be subject to the liabilities and requirements of all administrative, special, and general provisions of law in relation to the assessment, remission, collection, and refund of the income tax imposed by the act of October 3, 1913, and collectors of internal revenue will make collection of the tax by distraint, garnishment, execution, or other appropriate process provided by law.

So much of T. D. 1976 as relates to ownership certificate 1004, T. D. 1977 (certificate Form 1060), T. D. 1988 (certificate Form 1060), T. D. 2017 (nontaxability of interest from bonds and dividends on stock), T. D. 2030 (certificate Form 1071), T. D. 2162 (nontaxability of interest from bonds and dividends on stock) and all rulings heretofore made which are in conflict herewith are hereby superseded and repealed.

This decision will be held effective as of January 1, 1916.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved, March 30, 1916:

BYRON R. NEWTON,
Acting Secretary of the Treasury.

(T. D. 2314.)

Emergency revenue law—Theaters.

Revoking T. D. 2297 of February 11, 1916, relating to tax on proprietors of theaters.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 25, 1916.

To collectors of internal revenue, revenue agents, and others concerned:

This office, after due deliberation and full consideration, has decided to revoke T. D. 2297, relating to tax imposed on proprietors of theaters. Revenue officers in determining the tax to be due from such parties will apply the general rules applicable to all internal-revenue special-tax payers.

specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 8734, 62 FR 53452, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72185, 72188, Dec. 31, 1998]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53452, Oct. 14, 1997, §1.1441–5 was revised, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effectiveness of §1.1441–5 was delayed until Jan. 1, 2000. For the convenience of the user, the superseded text is set forth as follows:

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

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

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

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

(d) *Definitions.* For determining whether an alien individual is a resident of the United States see §§301.7701(b)–1 through 301.7701(b)–9 of this chapter. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with §1.1441–1, a resident for purposes of this section. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a) (4) and (5) and §301.7701–5 of this chapter. For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and §1.638–1.

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

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6500, 25 FR 12076, Nov. 26, 1960, as amended by T.D. 6908, 31 FR 16773, Dec. 31, 1966; T.D. 7277, 38 FR 12742, May 15, 1973; T.D. 7842, 47 FR 49842, Nov. 3, 1982; T.D. 7977, 49 FR 36834, Sept. 20, 1984; T.D. 8160, 52 FR 33933, Sept. 9, 1987; T.D. 8411, 57 FR 15241, Apr. 27, 1992]

§1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country.

See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also §1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) (not including 1.1441–1(e)(1)(ii)(A)(*2*) relating to documentary evidence). Except as otherwise provided in paragraph (b)(2) or (3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) is valid only if it includes the beneficial owner's taxpayer identifying number and certifies that the taxpayer

Exhibit C

Post Office Box 91
Westminster, Maryland 21158
May 10, 2006

Mr. Thomas M. Newman
Trial Attorney
United States Department of Justice
Post Office Box 7238 Ben Franklin Station
Washington, D.C. 20044

Dear Mr. Newman:

On March 16, 2006 retired Internal Revenue Service Revenue Agent Metcalfe admitted that he made an official referral to prosecute for alleged violations 26 USC 6700 and 6701 to his superiors, page 10 of the deposition transcript. After the deposition was over I asked you, as I had done several times before during the course of this action, for a copy of that referral. You replied, as you had previously, that you would forward it as soon as you located it. That was fifty-five days ago.

It would seem that the document initiating this prosecution would be at the beginning of the government's case file, and therefore easy to find. Have you made a diligent search? Did you find it? If so, when might Mr. George Harp and I expect to receive the promised copies? Please respond to this request.

Sincerely,

John B. Kotmair Jr.

John B. Kotmair, Jr.
Defendant

Copy to:

George Harp Esq.
610 Marshall Street, Suite 619
Shreveport, Louisiana 71101

Exhibit D

Post Office Box 91
Westminster, Maryland 21158

June 7, 2006 Certified Mail Receipt No.: 7006 0100 0005 6272 7584

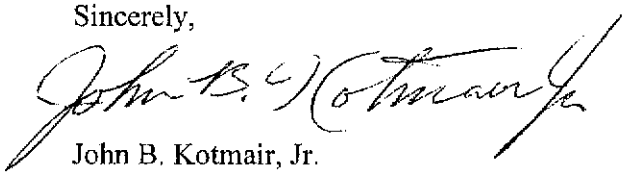
Mr. Thomas M. Newman
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 7238
Washington, D.C. 20044

Dear Mr. Newman:

On May 10, 2006, I wrote you about your promise to forward a copy of Mr. Gary Metcalfe's official referral. As of this date, twenty-eight days later, I have not received any response from you. Does your non-response mean that you have no intention of forwarding that discovery document?

If I do not receive any response within ten days, it will be presumed that you are not going to forward the official referral.

Sincerely,



John B. Kotmair, Jr.

Copy to: George Harp, Esq.
610 Marshall Street, Suite 619
Shreveport, Louisiana 71101

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

DJ5-35-10644
CMN 2004106494

June 13, 2006

VIA FIRST CLASS MAIL
John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158

VIA FIRST CLASS MAIL
George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Messrs. Kotmair and Harp:

I am writing in response to your June 7, 2006 letter regarding the Revenue Agent's referral of this case. First, I did not "promise" to provide any referral letter as you state in your letters. In addition, I fully responded to this request during Mr. Metcalfe's deposition when I told you that a request of this report was never made during discovery.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Post Office Box 91
Westminster, Maryland 21158

June 15, 2006 Certified Mail Receipt No.: 7006 0100 0005 6272 7577

Mr. Thomas M. Newman
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 7238
Washington, D.C. 20044

Dear Mr. Newman:

I received your letter, dated June 13, 2006, regarding my request for Mr. Metcalfe's referral. Your denial of having promised to provide that document does not alter the fact that it is among those requested by Save-A-Patriot Fellowship in January 2006, to wit:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3
Please provide copies of all of the documents listed in Answer to Interrogatory No. 9.

INTERROGATORY NO. 9
Please list and identify all documents reviewed by or relied upon by persons in No. 6 above who participated in the decision making process to prosecute this lawsuit.

INTERROGATORY NO. 6
Please identify all persons who investigated defendants, including their names, addresses, job titles and descriptions.

Please forward the requested referral without delay. If I do not receive any response within ten days, I must presume that you are not going to forward the official referral.

Sincerely,

John B. Kotmair, Jr.

Copy to:

George Harp, Esq.
610 Marshall Street, Suite 619
Shreveport, Louisiana 71101

To file.

IN THE UNITED STATES DISTRICT COURT FOR

FOR THE DISTRICT OF MARYLAND

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

* * * * *

DEPOSITION OF:

Joan Rowe

The deposition of Joan Rowe was taken on behalf of the Defendants on Tuesday, February 14, 2006, commencing at 2:06 p.m. at the U.S. Attorney's Office, 32 South Charles Street, Baltimore, Maryland before Lynne Livingston, a Notary Public.

APPEARANCES:

George Harp, Esq.
610 Marshall Street
Suite 619
Shreveport, LA 71101
On Behalf of the Defendants

Thomas M. Newman, Esq.
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
On Behalf of the Plaintiff

John Baptist Kotmair, Jr., Pro Se
12 Carroll Street
Westminster, MD 21157

Also Present: Daniel Greenstein

INDEX

PROCEEDINGS

WHEREUPON,

Joan Rowe

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

EXAMINATION

BY MR. HARP:

Q Would you state your name and address, please? And you can use your office address.

A Okay. My name is Joan Rowe, R-O-W-E, and my Internal Revenue Service address is 31 Hopkins Plaza, Room 1010, Baltimore, Maryland 21201.

Q Okay. Miss Rowe, for the record here, I'm George Harp. I'm the attorney for Sav-A Patriot Fellowship. We have Thomas Newman here, who you know is representing the government. John Kotmair is here in his own capacity pro se in this matter, and Mr. Daniel Greenstein, who you know, is also here present at the deposition.

Okay. Obviously, you work for the IRS. How long have you been employed?

transaction, yeah. I mean they range from -- of course now I can't think of a good example.

Q Well, there's got to be some guidance in the manual or something that y'all go by on that, isn't there?

MR. NEWMAN: I think she answered that.

BY MR. HARP: Okay.

Q Well, I mean obviously I mean 6700 does mention a few things in it that are required elements. So you know it refers to plans and arrangements and that kind of thing. I mean somebody at the IRS goes through it and makes sure that at least those minimal elements are present?

A Well, yes, when we develop these penalty situations or any investigation under 6700 there are certain elements that we look for. We look for false statements, we look for knowledge of the false statements, and we look for their cause and effect. Are they causing a tax loss, so.

Q Okay. And so obviously somebody at the IRS applied this to Sav-A-Patriot

Fellowship and/or Mr. Kotmair because a referral was done?

A Correct.

Q Okay. And one of the things that we wanted to do or are trying to do, and entitled to do before this thing goes to trial is to try to elicit and discover the evidence and testimony that the government intends to use against us when we go to trial.

And so I guess my next question or two is sort of directed along those lines, with respect to Sav-A-Patriot Fellowship, what in particular were y'all claiming that they were, and it may have been several things, were doing that was illegal and in violation of 6700?

MR. NEWMAN: To be clear, there isn't anything that anyone is claiming is illegal, that this is a 6700 violation is a civil lawsuit.

MR. HARP: Right. Okay. But the violation from a 6700 that's, I just, and she may not know. I don't know, but --

MR. NEWMAN: To be clear, you're just

asking what documents she reviewed?

MR. HARP: I'm not asking her for a legal opinion here, either.

MR. NEWMAN: Right.

MR. HARP: But I would like to get some input from her on that.

MR. NEWMAN: Of what documents were reviewed?

MR. HARP: Yeah, and what in particular so that we can kind of narrow the focus on our defense.

THE DEPONENT: Well, mainly I looked through the membership, what did you call it? It has a name. Membership --

MR. HARP: Handbook.

THE DEPONENT: Handbook. That's correct.

BY MR. HARP:

Q Okay. And that was the main thing you looked through?

A That's correct.

Q Okay. And do you recall whether you reviewed any of the other documents that were from SAP?

A I saw some of the newsletters. And I did glance at the website but just the first page. So I didn't get into that.

Q Well, I mean with all due respect and all, I mean basically the decision had been made on it before you got hold of it so --

A Correct.

Q Okay. Would it be your testimony that you would be in concurrence, after your review of the file would be in concurrence with the referral, the decision to refer?

A Based on what I saw, I don't know, I believe so.

Q Okay. And can you recall and do you have knowledge of anything from the file related to a particular instance of fraud or alleged fraud that you came across?

MR. NEWMAN: That question calls for a legal conclusion that she would have to determine what is fraud. And I don't think she's competent to testify as to that.

MR. HARP: Okay.

MR. NEWMAN: She can testify as to what she reviewed and the procedures, but

determining whether something is or isn't fraud, she can't make that determination.

MR. KOTMAIR: Well, how did she bring a referral if she couldn't determine a violation of the law? Well, I understand, but she said she agreed with the referral --

MR. NEWMAN: I'm not answering any questions --

MR. KOTMAIR: Well, you're the one --

MR. NEWMAN: If you want to ask her questions, that's fine, but she can't answer that kind of question --

MR. KOTMAIR: Sir, you're --

MR. NEWMAN: Testifying in court --

MR. KOTMAIR: What you're saying is that IRS agents just arbitrarily without even looking at the statute, and saying the statute was violated here, just say that's a violation without understanding it. Is that what you're saying?

MR. NEWMAN: I'm not saying that.

MR. KOTMAIR: All right. Well, that's what it appears.

COURT REPORTER: Is that on that

record?

MR. KOTMAIR: Yeah, leave it on the record. Yeah, everything's on the record. Nothing's hidden.

BY MR. HARP: Okay.

Q Well, somebody at the IRS, I mean there are lots of people that work there and they have experts down there. Somebody had to make a determination of whether something is fraudulent or not to make the referral.

A I'm not sure fraudulent is the right word, I don't think.

MR. KOTMAIR: No fraud, no crime.

BY MR. HARP:

Q Well, one of the allegations is in paragraph five of the complaint, that SAPF an unincorporated association also organizes and sells tax fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws.

I mean all we're trying to find out is, I mean that's pretty nebulous --

A Is that from our complaint?

Q Yes. Yes. We're just trying to narrow it down so that we can focus on what we need to defend on this, so.

A Well, the things that I've read from the handbook that pertain to that seem to be the employment. Is it a leasing sector or another portion of SAP that takes over the employment, I don't want to call it tax, but the employment, the payroll duties of companies.

Q Employee leasing? I think I --

A Let's talk --

Q There are employee leasing companies, but I don't think, I haven't run across anybody doing any of that kind of thing here. So I don't know. If it is, this is the first I've heard of that, so. But I mean that may be but --

I mean are you aware that, I mean there were three websites that were involved originally in the complaint. There was Tax Freedom 101.com, Tax Truth For You.com and then the Sav-A-Patriot.org. We don't have any, we've never had anything to do with

anything other than Sav-A-Patriot.org.

A That's the only website I happened to look at.

Q The Sav-A-Patriot?

A This morning, right.

Q Okay.

MR. KOTMAIR: Is that the first time you looked at it was this morning?

THE DEPONENT: Yes, sir.

BY MR. HARP:

Q Okay. So I was wondering if maybe you picked up the employee leasing thing off of one of the other websites?

A No, I don't know.

Q Okay.

A Maybe -- I don't know. ASC, is it called?

MR. KOTMAIR: I don't know.

THE DEPONENT: I thought that was from the handbook. No, it wasn't. It was -- it was from some of the other items. Okay.

I did notice some misleading statements with regard to 3121 employment tax where mention was made of the aliens, that it

applied only to aliens or foreign persons. And I thought that was misleading because of other sections were left out.

BY MR. HARP:

Q Okay. Can you maybe locate that in here right now?

A On page 10, if it's the same copy that we all have.

Q And you're referring to your copy of?

A Of the member handbook.

Q The member handbook from the Sav-A-Patriot Fellowship?

A Correct. That's correct, page 10.

Q Okay. Can you read us what that line that you're talking about?

A Okay. Code section 7701 A(16) defines the withholding agent as one who is required to withhold income taxes from non-resident aliens under code section 1441. And I'm going to paraphrase the code sections, 1442, 43, 44, 1445 and 1446. But 1461 was left out, which includes residents.

Q Okay.

MR. KOTMAIR: 1461 includes residents?

THE DEPONENT: It's citizen, yeah, United States citizens.

MR. KOTMAIR: 1461 says citizens?

THE DEPONENT: Yes.

MR. KOTMAIR: I see.

BY MR. HARP:

Q *Okay. Does anything else in there* strike you as being misleading?

A Well, I mean I could --

Q Probably come up with --

A We could probably argue a good deal if I went through and checked every code section referenced, so.

Q Okay. But nothing else just leaps out, or comes to mind or anything like that?

A No, just from a review of, you know, the handbook.

Q Okay. We'll go off the record for a minute.

(Off the record)

MR. HARP: Okay. Well, I'll tender this witness on behalf of SAP.

MR. NEWMAN: Sorry?

MR. HARP: I'll tender the witness on

behalf of SAP, so I guess --

MR. NEWMAN: Okay.

MR. HARP: Mr. Kotmair, do you have --

BY MR. KOTMAIR:

Q Yeah, I would like to ask you, do you recall anything else in the handbook that comes to mind that you thought was a false statement?

MR. NEWMAN: She can't -- she can't testify as to a false statement because what you're asking her to do is draw a conclusion that the statement is false.

MR. KOTMAIR: So she has to --

MR. NEWMAN: She can testify as to the document --

MR. KOTMAIR: She has to bring this or she has to come forward with the charge. In order to charge you've got to determine if something's false or not to bring it for referral.

MR. NEWMAN: The lawsuit brings forward the charges and that's it. She cannot make a legal determination --

MR. KOTMAIR: When she makes the

referral she has already --

MR. NEWMAN: No, she has not.

MR. KOTMAIR: Concluded that something is wrong.

MR. NEWMAN: No, she --

MR. KOTMAIR: In other words, why did she make a referral if nothing was wrong?

MR. NEWMAN: She reviews documents and that's it.

MR. KOTMAIR: And she makes a decision within that document if it's a false statement or not.

MR. NEWMAN: It's not a legal conclusion. She cannot --

MR. KOTMAIR: Well, I don't --

MR. NEWMAN: She cannot testify as to legal conclusions.

BY MR. KOTMAIR: All right, let me put it.

Q In your mind it was a false statement?

MR. NEWMAN: You can't answer that because that, what happens in your mind is privileged. It's a deliberative process.

BY MT. KOTMAIR: All right.

U.S. Department of Justice

Tax Division

Please reply to: *Civil Trial Section, Central Region*
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

DJ5-35-10644
CMN 2004106494

June 28, 2006

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101
Fax: (318) 424-2060

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Harp:

I am writing to provide the addresses of those customers of SAPF who have provided declarations in support of the United States' motion for summary judgment. I had previously mailed these declarations to you with a hard copy of the motion.

Mr. Joseph & Mrs. Camille Nagy
14544 Ryan St.
Sylmar, California 91342

Mr. Nicholas Taflan
55951 Key-Bellaire Road
Bellaire, Ohio 43906

In addition, I am also addressing the contention raised in your response in opposition to the United States' motion for discovery violations that the identity of these individuals was withheld. I spoke with these individuals prior to filing the motion after calling numerous customers of SAPF. Moreover, I have not discussed with these individuals, or the other SAPF customers that I have contacted, whether they would be witnesses in this case.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Exhibit 3

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

UNITED STATES' RULE 26(a)(1) INITIAL DISCLOSURES

Pursuant to Federal Rule of Civil Procedure 26(a)(1), the United States makes the following initial disclosures:

(A). The following individuals have information that the United States may rely on in support of its claims:

- Defendant John Kotmair. Kotmair has knowledge of defendants' tax-fraud schemes.
- Defendants' customers. Their names and contact information are in defendants' possession, and have been requested by the United States in its discovery requests. Defendants' customers have knowledge of defendants' tax-fraud schemes.

(B). The United States may rely on the following documents in support of its claims:

- Correspondence the IRS has received from defendant John Baptist Kotmair, Jr., on behalf of third-parties.
- Printouts of the www.save-a-patriot.org website.
- Printouts of the www.taxfreedom101.com website.
- Printouts of the www.taxtruth4u.com website.

Exhibit 4

- *The Tax Freedom 101 Report*
- *Reasonable Action*

(C)-(D) These categories of information are inapplicable to this action.

ROD J. ROSENSTEIN
United States Attorney

ANNE NORRIS GRAHAM
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 353-4384
Fax: (202) 514-6770
anne.n.graham@usdoj.gov

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' RULE 26(a)(1) INITIAL DISCLOSURES has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 4th day of November, 2005.

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

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

ANNE NORRIS GRAHAM
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 353-4384
Fax: (202) 514-6770
anne.n.graham@usdoj.gov

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

UNITED STATES' RESPONSE TO DEFENDANT SAVE-A-PATRIOT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiff, the United States of America, responds as follows to defendant Kotmair's First Set of Interrogatories and Production of Documents:

Interrogatory No. 1. Please identify each person participating or assisting in the formulation of the answers to these interrogatories.

Response to Interrogatory No. 1.

Thomas M. Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Ben Franklin Station, Washington, D.C. 20044.

Interrogatory No. 2. Please identify persons you intend to use as a witness at trial and a brief summary of their testimony.

Response to Interrogatory No. 2. The United States objects that Interrogatory No. 2 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

Exhibit 5

Interrogatory No. 3. Please identify persons you may call as a witness at trial and a brief summary of their expected testimony or possible testimony from each.

Response to Interrogatory No. 3. The United States objects that Interrogatory No. 3 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

Interrogatory No. 4. Please identify all documents you intend to introduce at trial.

Response to Interrogatory No. 4. The United States objects that Interrogatory No. 4 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pre-trial order, which is due five days before the pre-trial conference. As no pre-trial conference has been set, this request is premature. Notwithstanding this objection, the United States' Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims.

Request for Production No. 1. Please provide a copy of any items referred to in your response to interrogatory No. 4.

***Response to* Request for Production No. 1.** The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent the request is for materials in preparation for trial, the United States objects that

Request for Production No. 1 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order).

Interrogatory No. 5. Please list and identify all tangible evidence, other than documents, that you intend to introduce at trial.

Response to Interrogatory No. 5. The United States objects that Interrogatory No. 5 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pre-trial order, which is due five days before the pre-trial conference. As no pre-trial conference has been set, this request is premature. Notwithstanding this objection, the United States' Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims.

Request for Production No. 2. Please provide copies or photographs of all of the above tangible evidence listed in Answer to Interrogatory No. 5.

Response to Request for Production No. 2. The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent the request is for materials in preparation for trial, the United States objects that Request for Production No. 2 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order).

Interrogatory No. 6. Please identify all persons who investigated defendants, including their names, addresses, job titles and descriptions.

Response to Interrogatory No. 6. The United States objects to this Interrogatory No. 6 as overly broad and unduly burdensome inasmuch as the request is not limited to the

investigation of this case. Notwithstanding this objection, the individuals who participated in the investigation of this case are as follows:

Joan Rowe, Revenue Agent, 31 Hopkins Plaza, Room 1010, Baltimore, MD 21201. Job Description:

> Conducts independent examinations and related investigations of the most complex income tax returns filed by individuals, small businesses, organizations and other entities. May include those with diversified activities, multiple partners and national scope and operations. Assignments require an integrated analysis of intricate and complex accounting systems, business activities and financing. Confers with taxpayer or their representatives to explain the accounting and other issues involved and the applicability of pertinent tax laws and regulations and explains proposed adjustments. Considers the collectibility of potential tax deficiencies at all stages of the examination. Prepares workpapers and reports documenting findings and conclusions.

Gary Metcalf, Revenue Agent (retired). Mr. Metcalf resides in Westminster, Maryland. Job Description: same as stated above.

Interrogatory No. 7. Please identify all persons who participated in the decision making process to prosecute this lawsuit, including in the identification, their names, addresses, job titles, and description.

Response to Request for Production No. 7. The United States objects to Interrogatory No. 7 based on relevance as the requested information is not reasonably calculated to lead to discoverable information.

Interrogatory No. 8. Please list all documents reviewed by or relied upon by the persons in No. 6 above who investigated or conducted an investigation in order to prosecute this lawsuit.

Response to Interrogatory No. 8. The information contained in defendants' websites, correspondence sent by defendants to the IRS, and defendants' membership handbook.

Interrogatory No. 9. Please list all documents reviewed by or relied upon by the persons in No. 6 above who participated in the decision making process to prosecute this lawsuit.

Response to Interrogatory No. 9. The information contained in defendants' websites, correspondence sent by defendants to the IRS, and defendants' membership handbook.

Interrogatory No. 10. Please list and identify all documents and other tangible evidence you are relying upon to determine I.R.C. § 6700 fraud.

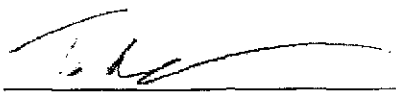
Response to Interrogatory No. 10. The United States objects to the use of the term "fraud" as stated in this request. I.R.C. § 6700 provides for penalties if an individual makes "false or fraudulent" statements regarding a material matter. Any false or fraudulent statements made by defendants are contained in their websites, correspondence sent by defendants to the IRS, defendants' membership handbook, petitions that defendants filed on behalf of employees before the Executive Office for Immigration Review and the U.S. Equal Employment Opportunity Commission, and any bankruptcy petitions filed by defendants on behalf of SAPF members.

Request for Production No. 3. Please provide a copy of any items referred to in your response to Interrogatory No. 9.

Response to Request for Production No. 3. The United States provided all documentation responsive to Interrogatory No. 9, with the exception of bankruptcy petitions and

petitions to the Executive Office for Immigration Review and the U.S. Equal Employment Opportunity Commission prepared by defendants, which are in defendants' possession.

ROD J. ROSENSTEIN
United States Attorney



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 UNITED STATES' RESPONSE TO DEFENDANT SAPF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 28th day of February, 2006.

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

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

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

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

UNITED STATES' RESPONSE TO DEFENDANT KOTMAIR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiff, the United States of America, responds as follows to defendant Kotmair's First Set of Interrogatories and Production of Documents:

Interrogatory No. 1. Please identify all prospective witnesses the government intends to call to testify in any trial or hearing in this matter, and please furnish a summary of the anticipated testimony of each witness.

Response to Interrogatory No. 1. The United States objects that Interrogatory No. 1 is premature. The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals whom may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

Interrogatory No. 2. Please identify all witnesses known to the government who could supply exculpatory evidence, or evidence which might tend to be favorable to the defendants in this matter.

Response to Interrogatory No. 2. The United States objects to the use of the term "exculpatory," as this is not a criminal case. The United States has not identified any witness who has evidence that might tend to be favorable to the defendants.

Exhibit 6

Interrogatory No. 3. Please identify all affidavits, documents, recordings, and other tangible items which the government intends to introduce into evidence in this matter.

Response to Interrogatory No. 3. The United States objects that this interrogatory is premature. The United States has not yet identified its trial exhibits. The United States' Rule 26(a)(1) Initial Disclosures include a list of documents that the United States may use in support of its claims.

Request for Production No. 1. Please provide a copy of any items referred to in your response to interrogatory #3.

Response to Request for Production No. 1. The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

Interrogatory No. 4. Please identify all affidavits, documents, recordings, and other tangible items that government has knowledge of which may be exculpatory or favorable to defendants in this matter.

Response to Interrogatory No. 4. The United States objects to the use of the term "exculpatory," as this is not a criminal case. The United States does not have knowledge of any affidavits, documents, recordings, or other tangible item that the may be favorable to defendants in this matter.

Request for Production No. 2. Please provide a copy of any items referred to in your response to interrogatory #4.

Response to Request for Production No. 2. The United States did not refer to any documents in response to Interrogatory No. 4.

Interrogatory No. 5. Paragraph 11 of the Complaint states:

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

Please identify any member or members of Save A Patriot Fellowship who the government claims to have been motivated to commit a crime subsequent to, and on account of, payment or promise of a "financial incentive" of the Membership Assistance Program and/or the Victory Express Program.

Response to Interrogatory No. 5. The United States objects that this request calls for information protected from disclosure by I.R.C. § 6103 and the Government deliberative-process privilege. Subject to and without waiving this objection, the United States responds that it does not have the identities of members of the Membership Assistance Program or the Victory Express Program.

Interrogatory No. 6. Paragraph 17 of the Complaint states:

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

Please identify the particular letters or documents that he government claims to contain the "frivolous arguments about the internal revenue laws" referred to in Paragraph 17 of the original complaint.

Response to Interrogatory No. 6. The United States objects that, given the volume of letters defendants have sent to the IRS, this request is overly broad and unduly burdensome. The United States will produce copies of the frivolous letters that it has identified thus far as having been drafted by defendants. Included within these copies are lists of the customers to whom the letters relate.

Request for Production No. 3. *Please provide a copy of any items referred to in your* response to interrogatory #6.

Response to Request for Production No. 3. The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

Request for Production No. 4. Paragraph 18 of the Complaint states:

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

Please provide copies of the particular freedom of information requests that the government claims to contain "*frivolous Freedom of Information Act*" requests.

Response to Request for Production No. 4. The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

Interrogatory No. 7.

A. List the specific "advice" given with respect to federal taxes alleged in paragraph 43 of the complaint.

B. Identify the person or persons giving, or any document conveying, advice alleged in paragraph 43 of the complaint.

C. Identify the person or persons to whom such advice was given alleged in paragraph 43 of the complaint.

Response to Interrogatory No. 7A. According to defendants' websites, this advice is to not withhold federal taxes from wages, to stop filing federal income tax returns, to stop paying federal income tax, and to not cooperate with IRS investigations.

Response to Interrogatory No. 7B. According to defendants' websites, this advice is given by defendant Kotmair and his staff, and is contained in the documents defendants provide their customers as well as defendants' videotapes, audiotapes, and books.

Response to Interrogatory No. 7C. The United States objects that this request is overly broad and unduly burdensome. Defendants have given such advice to their customers and to visitors to defendants' websites, as evidenced in defendants' websites and in defendants' letters to the IRS on behalf of their customers.

Request for Production No. 5. Please provide a copy of any documents referred to in your response to interrogatory #7.

Response to Request for Production No. 5. The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

Interrogatory No. 8. Paragraph 15 of the Complaint has several subparts consisting of quotations from various sources. Please identify each of the quotes, including, but not by way of limitation, the person who authored each quote and/or the source of each quote.

Response to Interrogatory No. 8. These quotes come from defendants' websites.

Request for Production No. 6. Please provide a copy of any items referred to in your response to Interrogatory #8.

Response to Request for Production No. 6. The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

Request for Production No. 7. Paragraph 29 of the Complaint makes reference to the preparation of "documents understating their customers' tax liabilities." Please identify each of these documents and provide copies of any and every such documents [sic] that are referred to in your response to this paragraph.

Response to Request for Production No. 7. The United States objects to this request as vague and ambiguous. Paragraph 29 does of the Complaint does not make such a reference. Paragraph 30 of the Complaint states:

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

It does not reference documents that understate customers' tax liabilities but to documents that may *result* in the understatement of another person's tax liability. The United States is in the process of copying the documents it has identified as having been drafted by defendants and will produce such documents during the week of November 7, 2005.

Interrogatory No. 9. With respect to Paragraph 22 of the complaint: Please identify the items that you are claiming contain "false commercial speech," and what you are claiming in each item, to be false commercial speech.

Response to Interrogatory No. 9. As stated in paragraph 22, the United States is referring to the videotapes, audiotapes, and books defendants sell. The book "Piercing the Illusion" is advertised on defendants' websites as "piercing the illusion . . . that citizens are subject to an 'income' tax on their wages and other domestic income." The videotape series "Just the Facts" is advertised on defendants' websites as explaining that "[p]articipation in Social Security is voluntary for the citizen who lives and works within the 50 states," that IRS "computers must be 'tricked'" to make assessments, and that the income tax is unconstitutional. The "Tax Freedom 101 Home Study Programs" is advertised as explaining how "thousand of Americans have stopped filing returns 100% lawfully with no fear of reprisal from the IRS." The United States is requesting copies of the videotapes, audiotapes, and books that defendants sell.

Request for Production No. 8. Please provide a copy of any items referred to in your response to Interrogatory No. 9.

Response to Request for Production No. 8. The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

Interrogatory No. 10. With respect to the above cited paragraph 22 of the original Complaint: please identify THE [sic] individuals you are claiming that were "directed" or "incited" to violate internal revenue laws; as the result of the speech referred to.

Response to Interrogatory No. 10. The United States does not have the identities of defendants' customers, other than those identified in the letters the IRS has identified as having been drafted by defendants.

Request for Production No. 9. Please provide a copy of any items referred to in your response to Interrogatory #10.

Response to Request for Production No. 9. The United States is in the process of copying such documents and will produce them to defendants during the week of November 7, 2005.

Interrogatory No. 11. Paragraphs 29 and 32 of the complaint refer to the term, "tax benefit." Please explain or define what is meant by the term "tax benefit" in the cited paragraphs.

Response to Interrogatory No. 11. Paragraphs 29 and 32 are paraphrased from I.R.C. § 6700(a)(2)(A), which states "a statement with respect to the allowability of any deduction or credit, the excludibility of any income, or the securing of any other tax benefit." This phrasing is broad and would include any conceivable tax benefit.

ROD J. ROSENSTEIN
United States Attorney

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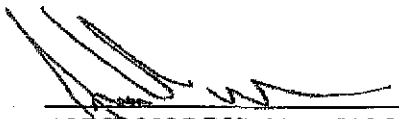
CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' RESPONSE TO DEFENDANT KOTMAIR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been made upon the following by *depositing a copy in the United States mail, postage prepaid, this 4th day of November, 2005.*

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

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



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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.) Civil No.

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

et al.,)

Defendants.)

- - - - -

VOLUME 2

- - - - -

The deposition of JOHN BAPTIST KOTMAIR, JR. was resumed on Tuesday, February 14, 2006, reconvening at 10:20 a.m., at the Office of the United States Attorney, District of Maryland, 36 South Charles Street, Baltimore, Maryland, before Josett F. Whalen, Registered Merit Reporter and Notary Public.

- - - - -

Exhibit 7

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

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

ON BEHALF OF THE DEFENDANTS:

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

ALSO PRESENT:

DANIEL GREENSTEIN

P R O C E E D I N G S

- - - - -

Whereupon --

JOHN BAPTIST KOTMAIR, JR.

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

EXAMINATION

BY MR. NEWMAN:

Q. You just acknowledged that you're still under oath.

A. Yes.

Q. And I'm just going to ask you this again, that you're not taking any medication or drugs today that would prevent you from understanding or answering my questions?

A. I don't like the side effects. No.

Q. Okay.

A. That I see on TV, diagnosing the problem.

Q. I think you were given a copy of all of the exhibits.

out.

Q. So it's just printing it out?

A. Yes.

Q. And the person, it's up to them to deal with it in any way that they can?

A. Right.

Q. But I'll ask you explain that.

That's revoking your own --

A. No. It doesn't revoke anything.

Q. Explain it to me then so it's in your words.

A. In other words --

Q. And can I ask you first --

A. You watched Just the Facts. We address it in Just the Facts.

Q. I didn't watch the whole thing.

A. Oh, now you confess.

Q. No. I told you I didn't watch the whole thing.

A. That's all right. I'm kidding you.

Q. What you're referring to is the social security number. I just want to make it

clear -- or if you could just explain if you're referring to the social security number?

A. Well, first off, there's no requirement for any citizen to make an application for a social security number. Right? You're familiar with the Alton case.

Q. Yeah.

A. Right? Which has never been overturned.

And if you go to section -- Title 42 section 405, it says right in there that the secretary of social security shall issue a social security number to all aliens when entering the country and to all their applicants, because they can't force citizens to get a social security number.

The Social Security Administration will tell you that. If you write them, they'll write back and tell you. If you don't use a social security number, then you can't build credits towards benefits to retire on.

So anyway, because when I became 18 --

right? -- and I wanted to get a job, I go to the grocery store and the grocer says, Well, before I can hire you, you've got to have a social security number. Well, to an 18-year-old kid, I'm thinking, well, I guess I have to have this number to go to work. So I get it, bring it back to him. Right? But that's not the law at all.

So you know, you know it's a settled fact of law that if you do something as a minor -- right? -- and you -- and it's in error, you're not bound by that as a minor. You've got to be an adult.

So any act that's committed like that, according to the courts, which we cite in the affidavit, that act can be revoked, so you're actually revoking the application and rescinding your signature from it.

Q. So you're revoking your application for a social security number?

A. Your act that you committed in error as a minor.

Q. Is getting and applying for a social security number?

A. The application. Right. And they don't want to have that number, so they revoke their act and rescind their signature from that application. That's all -- that's it.

Q. Okay. And then following through on that, then revoking your application for a social security number then would --

A. No. It revokes -- yeah. Okay. Go ahead. You're right.

Q. Then that would allow you to --

A. Allow you to what?

Q. I want to put it in a way that we're both on the same page as far as what you're requesting.

Is that --

A. I'm not -- it's not requesting anything.

Q. Not you. The individual --

A. He wouldn't request anything.

Q. Well, if he was revoking his

application for a social security number --

A. He's giving notice of that.

Q. Okay. Then his social security tax would not be required to be withheld by his employer; is that right?

A. Well, I guess if he doesn't have a number -- did you ever look on the application for a W-7 for a TIN?

Q. Yes. I'm just asking you what the effect of this is. I don't want to take too long --

A. Well, the effect of it is he's telling the government, the secretary of the treasury and whomever else that he's revoking that and he's no longer going to use that social security number.

Q. And the effect of that would be that he wouldn't have to have social security tax withheld at any point?

A. Well, anything in subtitle C requires the number.

Q. So the revocation --

A. The fact that -- as I went over before, right here it tells you employment taxes are social security taxes and everything in employment is in there.

Q. So the revocation would also apply to income tax that was withheld by the employer?

A. Well, there's no income tax withheld in subtitle C.

It's titled that, but if you go to 7806, it says the titles are not the law.

Q. I just want to ask you --

A. You're talking about 3402.

Q. No, I'm not. I'm asking you about the revocation, because you -- you have argued before employers that --

A. Argued before employers?

Q. In disputes between an employee and an employer that may have been --

A. We have -- we have shown the employer the law.

Q. Where they may have terminated the individual because they have not provided a

social security number?

A. Well, I guess some employers will do that.

Q. Okay.

A. Right.

Q. So this revocation, it would apply to the income tax that is withheld, whether it's correctly or incorrectly withheld in your position --

A. Well, in subtitle -- every tax in subtitle C requires a W-4 and a number.

Q. That's what I'm asking.

It's just that the result of the revocation would also apply to the wage taxes that are withheld by the employer; is that right?

A. What is generally called the income tax, but that's just in the heading, which is not law, because if you go to section 7806, it says headings are not law, not to be considered as law.

Q. I understand that. I'm just asking the

effect of the --

A. When it says "wages." If you go to here and you see the -- you want to hear what wages are?

Q. No, no, Mr. Kotmair.

A. Let me give you the definition of "wages" because that's what you're getting to.

Q. It isn't.

A. Here it is.

The term "wages" means remuneration paid to you as an employee for employment, which is social security, unless specifically excluded. Wages are counted in determining your entitlement to retirement survivors and disability insurance benefits.

That's the wages in 3402 that you're talking about.

Q. It is --

A. Which is for social security.

Q. No. My question isn't just specifically related to the revocation form or rescission form.

A. That's talking about nothing else but what I told you it did.

Q. So -- but it would relate to what is commonly referred to as the income tax withholding by the employer. It would eliminate that.

A. If the employer requires a number that the citizen is not required to have, then it's obvious. The answer is obvious. It speaks for itself.

Q. I don't know if that responds to my question.

I'm just asking, it would eliminate the obligation to withhold social security tax and any employment tax; that's right?

A. Well, the employment tax is the social security tax. It tells you right here.

Q. Right.

And in addition, the revocation or rescission would also eliminate the obligation --

A. No. That doesn't eliminate anything.

How can it eliminate?

Q. Not having a social security number and this rescission document --

A. If you're not required to have a social security number, you're not required to have it.

Q. But this rescission document --

A. That speaks for itself.

Q. Let me just ask my question.

A. The rescission document, all it does is what I just told you it does. It revokes the application, rescinds your signature from it.

If you're required to have one, then the secretary should issue one to you.

Q. No. I understand that.

My question now relates to the income tax that is withheld on --

A. What income tax? Income tax is not withheld. What I read you said the income tax is withheld through sections 41, 42, 43, 44, 45 and 46. That's the withholding of income tax.

Q. Okay.

A. Now --

Q. The taxes that are generally withheld by an employer --

A. -- under subtitle C --

Q. Mr. Kotmair, I want to stop you because I just want to ask this question and I think it's a very simple one and I don't want to take too much time because the more time that we take now, the less time we're going to have this afternoon.

It only relates to the other taxes other than FICA and FUTA that are withheld by an employer when wages --

A. If someone doesn't -- the affidavit of revocation and rescission does nothing more than what I said it does. That's it.

Q. But applying it --

A. It doesn't apply. It does nothing more than what I said it did.

Q. So what you're saying, though, is if you don't have a social security number, you

don't need social security taxes or employment taxes withheld; is that right?

A. What I'm saying is the Supreme Court held that citizens are not subject to those taxes (indicating).

Q. Okay.

A. And that the law reflects that because you're not required to have a number. The number is only issued to an alien.

That's where that -- and I'm saying is all of -- they -- they don't have the number anymore. If they have to have the number to pay the tax, then the number should be issued to them, and they probably would have a requirement for the tax.

Q. Okay. And you --

A. I mean, that speaks for itself. There's nothing else to it. We're not saying anything other than they don't want the number.

Q. No. I understand that. I was just asking you what --

A. And whatever the consequences are are

by law.

Q. I understand, Mr. Kotmair.

A. Okay. Well, I mean, I can't answer it any other way.

Q. No.

A. That's it.

I mean, if the law required them to have the number, then quite possibly they would have to have the number given to an employer. But evidently the law doesn't require that. Nobody can show me anywhere where it does, and the court said it can't (indicating).

MR. NEWMAN: Okay. I'm going to suggest now that we take a break for lunch now.

THE WITNESS: Okay.

(Whereupon, at 12:00 p.m., a lunch recess was taken.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. **WMN05CV1297**
	)	
JOHN BAPTIST KOTMAIR, JR., and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S RESPONSE TO UNITED STATES FIRST SET OF REQUESTS FOR ADMISSIONS

Defendant Save-A-Patriot Fellowship, through undersigned counsel, responds to the UNITED STATES OF AMERICA'S Requests for Admissions as follows:

1. Admit that defendants have conducted business through a website located at www.save-a-patriot.org.

Response: Denied. Save-A-Patriot Fellowship publishes a website, but does not conduct business over the internet. No commercial transactions occur on the SAPF website.

2. Admit that Defendants are responsible for the content of the website located at www.save-a-patriot.org.

Response: Defendant admits that the Save-A-Patriot Fellowship is responsible for the content of the website www.save-a-patriot.org.

3. Admit that Defendants market their tax promotion at the websites located at

Exhibit 8

www.taxfreedom101.com and www.taxtruth4u.com.

Response: Save-A-Patriot Fellowship denies this in its entirety.

4. Admit that the website published by Defendants, located at www.save-a-patriot.org, states that Defendants' staff includes paralegals and caseworkers that provide members with answers to questions regarding federal income tax laws.

Response: Save-A-Patriot Fellowship denies that www.save-a-patriot.org states that staff provide members with answers to questions regarding federal income tax laws. There are only three places on the website where any offer to hear and/or answer questions is mentioned:

a. On the home page, in the ad for the book "Piercing the Illusion," the website states:

> "For ordering questions or further information on *Piercing the Illusion*, please contact the Fellowship at 410-857-4441, or email us at book@save-a-patriot.org. ***(Call or write for quantity pricing!)***"

b. Near the bottom of the home page, it states, in a general manner, that SAPF encourages comments and questions regarding the website:

> **"We encourage feedback and inquiries... Please email us with any comments or questions!"**

c. Finally, on the page www.save-a-patriot.org/video/trc4.html, visitors to the website are directed to contact the person who compiles the Tax Research Compendium for questions regarding the TRC itself:

> "Questions? Contact Mike Maddox, Mktng. Dir., TRC -<dlr@safe-mail.net>"

None of the above make any offer to answer questions in the context of Request for Admission #4.

5. Admit that Defendants state in their Membership Handbook that the federal income tax is only imposed on foreign activities.

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context.

6. Admit that Defendants state in their Membership Handbook that "taxable income" is limited to income earned while living and working in foreign countries.

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The actual, relevant statement in context, bolded and italicized, is noted in attachment #1, as referenced in Request for Admission #5.

"Further, the 'underlying regulations' referred to in the Membership Handbook for section 6012(a), at 26 CFR § 602.101(c) (1988 edition), lists the OMB Control number designated for § 1.1-1 of the Regulations (that is, then, the OMB control number designated for Section 1 of the Internal Revenue Code) as 1545-0067, identifying the form to be used for Section 1 as form 2555, entitled 'Foreign Earned Income.' Subsequently, for § 1.6012-0, the same form and OMB number are listed as to be used for section 6012(a)."

7. Admit that Defendants state in their Membership Handbook that a citizen or resident alien working within one of the 50 "union States" is not legally required to file a Form 1040.

Response: Denied. The handbook a) restates only what is found in the Internal Revenue

Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The entire quote -- which is a summary of the facts outlined in the response to Request for Admission #6.

8. Admit that Defendants state in their printed material or website that: "The tax on wages has absolutely nothing to do with the tax on income."

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The entire quote from the handbook and on the website at www.save-a-patriot.org/basics/basics.html is noted as follows:

> "The W-2 and 1099 'wage' information commonly reported by employers is a function of the tax on wages under subtitle C (not income tax) for the purpose of building credits towards social security. ***The tax on wages has absolutely nothing to do with the tax on income under subtitle A.***"

9. Admit that Defendants state in their printed material or website that: "The 'income tax' ... is an 'indirect' tax in the form of an 'excise' imposed on certain 'activities' or 'occupations' ..."

Response: Save-A-Patriot Fellowship denies, in that the handbook and website (and other printed material, insofar as it exists) merely restate what the Supreme Court has said in various decisions. The entire quote from the handbook and on the website at *www.save-a-patriot.org/basics/basics.html* is noted as follows:

> "The 'income tax' under subtitle A is an 'indirect' tax in the form of an 'excise' imposed on certain 'activities' or 'occupations' and a liability to pay the tax must arise from statute."

10. Admit that Defendants state in their printed material or website that: The "wage tax ... may ... be considered mandatory, but only for the payor of the wages (the employer)

and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program ... [N]either can be compelled to participate."

Response: Denied. The handbook a) restates only what is found in the Internal Revenue Code, various decisions by the courts, and other legal authorities, and b) that Plaintiff has taken the statements out of context. The entire quote from the handbook and on the website at www.save-a-patriot.org/basics/basics.html is noted as follows:

> "Certain legal requirements with regard to the ***wage tax*** under subtitle C ***may*** also ***be considered mandatory, but only for the payor of the wages (the employer) and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program***. Since ***neither can be compelled to participate,*** compliance is said to be voluntary.
>
> "The foregoing statements are NOT legal advice. They are merely factual statements about the law."

11. Admit that Defendants state in their printed material or website that: "the internal Revenue Code is limited in application. It cannot (per constitutional restriction) ... does not ... and never has been ... applied against the United Sates citizen who is living and working within the 50 states of the union. That individual is neither the subject nor the object of the tax - and neither is his income."

Response: Denied. The entire quote is a) taken out of context, and b) only appears on the website at www.save-a-patriot.org/files/view/agentdoc.html and at www.save-a-patriot.org/articles/confess.html as part of a reproduced article, "IRS Agent Confesses," from an edition of the Reasonable Action newsletter, which was originally printed in 1992. Said article contains political speech and opinion.

12. Admit that Defendants' statements with regard to federal income tax laws stated in paragraphs 5-11 is disseminated to members in the Membership Handbook, to the public at the website located at wwww.save-a-patriot.org and in the "Reasonable Action" newsletter published by Defendants.

Response: Save-A-Patriot Fellowship denies, in that the statements mentioned are misquoted, and, as clarified in responses to Requests for Admissions #5 through #11, appear sometimes in the *Reasonable Action* newsletter, sometimes on the website, OR sometimes in the membership handbook. None of the statements appear in all published documents.

13. Admit that Defendants publish a document titled Save-A-Patriot Fellowship "Program Agreement."

Response: Save-A-Patriot Fellowship admits that it publishes a "Program Agreement."

14. Admit that the "Program Agreement" published by Defendants includes the "Patriot Defense Fellowship," which provides monetary compensation, paid in federal reserve notes (dollars), to SAPF members that are criminally prosecuted for violating state or federal tax laws.

Response: Denied. The Patriot Defense Fellowship is a <u>separate</u> fellowship available to SAPF members. Further, Defendants <u>do not</u> offer any payments and the Patriot Defense Fellowship is not a fund, as the Request for Admission #14 implies. Rather, the Patriot Defense Fellowship members agree to help one another directly in recouping the legal expenses of defending themselves against criminal prosecution <u>in tax cases only</u>.

15. Admit that Defendants offer payments up to 15,000 federal reserve notes (dollars) if a

member is convicted in a criminal tax case as part of the "Patriot Defense Fellowship."

Response: Denied. The Defendants do not offer any payments. Rather, Patriot Defense Fellowship members agree to reimburse one another directly up to 10,000 federal reserve notes for costs related to defending themselves against prosecution and up to 5,000 federal reserve notes for costs related to filing an appeal for any conviction.

16. Admit that the reimbursement payments to members through the "Patriot Defense Fellowship" offered by Defendants is conditioned on the member's resistance to the criminal investigation, court proceedings, or any other government agency throughout the process.

Response: Save-A-Patriot Fellowship denies, in so far as Defendants do not offer any reimbursement payments. Rather, the Patriot Defense Fellowship members assist one another. The condition for this assistance is that "said member, to the best of his/her ability, resisted at every step throughout the criminal investigation, and all other agency and court proceedings, according to the terms of the PDF Program Agreement." In the context of that agreement, a vigorous legal defense is the "resistance" required.

17. Admit that Defendants provide a program called the "Victory Express" which reimburses SAPF members filing a claim for losses of property, cash, and incarceration resulting from the confiscation of the member's property by the IRS or prosecution of the SAPF member for a federal tax crime.

Response: Denied. The Defendants do not provide a program which reimburses members. Rather, Save A Patriot Fellowship members pledge to reimburse one another directly for the losses of property "incurred from illegal confiscation by the

IRS" and to help one another when incarcerated. "Victory Express" is a "what if" program and has never been in effect.

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

Response: Denied. The Defendants do not reimburse members, and that Save-A-Patriot Fellowship "promise[s]" nothing, other than a pro rata claim will be mailed to each and every member. It is admitted that SAPF describes the contributions members make directly to each other to compensate for losses of property to the IRS as "insurance-like protection." Deny, in that "above and beyond" represents speculation and hope, rather than promises of fact. The phrase, "above and beyond" only occurs in a ***fictional*** article in the "Special Edition" of the Reasonable Action Newsletter and is qualified, furthermore, by the following footnote to the article: "The "press release" above is a fictional depiction only. It shows what could actually occur once the Save-A-Patriot Fellowship reaches its goal of 100,000 members." See attachment #4.

19. Admit that Defendants advertise that a SAPF member making a claim under the "Victory Express" would be entitled to 10 federal reserve notes (dollars) from every member of SAPF.

Response: Denied. Save-A-Patriot Fellowship members making an approved request are entitled only to having the claim mailed to each and every member.

20. Admit that Defendants advertise that a SAPF member making a claim under the "Victory Express" for property confiscated by the IRS would be entitled to a profit if the value of the property is less than the payments to the member for the claim.

Response: Denied.

21. Admit that Defendants make payments to members filing claims under the "Victory Express" following a determination by Defendants that the claimant resisted and delayed the investigation by the taxing agency or the criminal investigation.

Response: Denied. The Defendants do not offer any reimbursement payments. Rather, Save-A-Patriot Fellowship members assist one another directly. The condition for this assistance, if in pursuance of a "civil" claim, is that "said member, to the best of his/her ability, has taken advantage of every agency appeal procedure and court proceeding lawfully possible ...." These appeal and court procedures are provided for all Americans by presently existing statutes and regulations. The language of Request for Admission #21, "resisted and delayed the investigation of the taxing agency" is found nowhere within the Program Agreement.

The condition for membership assistance, if in pursuance of a "criminal" claim, is that "said member, to the best of his/her ability, resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings feasible." In the context of the agreement, a vigorous legal defense is the "resistance" required.

22. Admit that Defendants request that members retain physical proof detailing their resistance to the state or federal taxing agency for both the "Patriot Defense Fellowship" and the "Victory Express."

Response: Save-A-Patriot Fellowship admits, in so far as the word "resistance," as explained in the response to Request for Admission #21, refers to a member's vigorous legal defense.

23. Admit that Defendants provide a service called "Court Litigation Service" which provides documents and assistance to members for challenging a notice of lien/levy action sent by the IRS, filing suits for refund of taxes, and preparing bankruptcy petitions to stop IRS collection.

Response: Denied.

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

Response: Save-A-Patriot Fellowship admits that an "Affidavit of Revocation and Rescission" is made available to SAPF members. It denies, however, that the "Affidavit" "consist[s] of letters to the Secretary of the United States Treasury purporting to revoke the member's application for a Social Security Number." The only letter sent to the Secretary of the United States Treasury states:

> "Would you please be so kind as to forward the enclosed asseveration to the appropriate governmental office(s) so that proper notice can be taken thereof its content, and suitable action to comply with its mandate therewith. If I do not hear from you, or any of your delegates, within ninety days (90), I will presume that my statements are correct and that you do not have any rebuttal."

25. Admit that Defendants inform SAPF members that laws regarding the withholding of income tax from American citizens working in the 50 United States cannot be found in the Internal Revenue Code.

Response: It is denied that Save-A-Patriot Fellowship informs SAPF members that such

laws "cannot be found in the Internal Revenue Code." This statement appears in statements made by Mr. Kotmair in a radio interview with Mr. Alvin Brown (formerly with the IRS Chief Counsel), and printed in *Reasonable Action* #239 (1999), and has been taken out of context by Plaintiff and completely misrepresented. In that interview, a public debate between two persons having different opinions, Mr. Kotmair asked Mr. Brown "Where do you find in Chapter 3 withholding from citizens, Alvin, can you find it?" Mr. Brown refused to answer. In the same edition of *Reasonable Action*, Mr. Jim Kerr authored a story about his conversation with an IRS agent:

> "Now, back to agent Klyzer. He said that withholding was required against all people working for a living in this country. What statute creates this requirement to withhold against citizens working for a living in the 50 states of the Union? I inquired. He stated that section 3402 (of Chapter 24 of the Internal Revenue Code) did. But it only requires withholding from an officer, employee , elected official, or the officer of a corporation, I replied. It says so right in Section 3401 ..."

Finally, Save-A-Patriot Fellowship admits only that the Fellowship informs members and the general public about the law by showing them the law, and the law speaks for itself.

26. Admit that Defendants inform SAPF members that the income of most United States citizens and residents living and working within the 50 United States is not taxable and that taxpayers are not required to file IRS Forms 1040.

Response: Denied. The Defendant has never informed anyone that "taxpayers are not required to file IRS Forms 1040." Admit, in that Save-A-Patriot Fellowship informs members and the general public that the law shows that the income of most United States citizen and residents living and working within the 50 United States is not taxable.

27. *Admit that Defendants inform SAPF members that employers have no statutory* authority to withhold payroll taxes.

Response: Denied.

28. Admit Defendants represent that John B. Kotmair is an expert in Internal Revenue Service codes and procedures.

Response: Denied.

29. Admit that the IRS has audited some SAPF members for failing to pay income tax.

Response: Denied. Save-A-Patriot Fellowship has no idea of the reason IRS audits anybody.

30. Admit that some SAPF members have been prosecuted for criminal violations of the Internal Revenue Code.

Response: Save-A-Patriot Fellowship admits that some SAPF members have been prosecuted for alleged violations of the Internal Revenue Code.

31. Admit that the SAPF provides a service where SAPF staff write letters for members responding to communications from the IRS, which is called "Power-of-Attorney Work."

Response: Admitted.

32. Admit that Defendants charge a fee of 45 federal reserve notes (dollars) for each letter written for an SAPF member to the IRS.

Response: Denied, in so far as Save-A-Patriot Fellowship's fee per letter is 40 federal reserve notes, with 5 federal reserve notes to cover certified mailing costs.

33. Admit that Defendant's purpose for the "Power-Of-Attorney Work" is to prolong the dispute between the member requesting the service and the IRS.

Response: Denied.

34. Admit that Defendants provide a service to members called "Paralegal Work" which is advertised in the Member Handbook published by the SAPF.

Response: Admitted.

35. Admit that Defendants' "Paralegal Work" provided to members includes the preparation of court complaints, briefs, and motions, among other things.

Response: Admitted.

36. Admit that the SAPF estimates that it would charge members ten times more for "Paralegal Work" as compared to writing responsive letters to the IRS, or about 400 federal reserve notes (dollars) per document.

Response: Denied, in that Save-A-Patriot Fellowship does not anywhere state that it *"would" charge members ten times more, but that paralegal work "can be" ten times as* much, due to the nature of the work involved, and that estimates are available directly from the paralegal. The exact quote from the Membership Handbook is reproduced below, with relevant statements bolded and italicized:

> "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."***

37. Admit that Defendants' staff offer to prepare bankruptcy petitions for members in order to help them stay IRS collection actions.

Response: Denied.

38. Admit that Defendant's staff offer to prepare other court filings for members to use to obstruct IRS collection efforts.

Response: Denied.

39. Admit that Defendants advertise that they can prepare documents for members that Defendants claim will prevent the member's employer from withholding federal taxes from the member's wages.

Response: Denied.

40. Admit that Defendants request that membership fees and all payments to SAPF be made by blank postal money orders or cash.

Response: Admitted.

41. Admit that Defendant John B. Kotmair, Jr. was convicted of willful failure to file an income tax return for 1975 and 1976.

Response: This Request for Admission is objected to as irrelevant.

42. Admit that Defendant John B. Kotmair has failed to file an income tax return since 1973.

Response: This Request for Admission is objected to as irrelevant.

43. Admit that following release from incarceration for will failure to file an income tax return for 1975 and 1976, John B. Kotmair began the Save-A-Patriot Fellowship in 1984.

Response: This Request for Admission is objected to as irrelevant.

44. Admit that SAPF has not filed an income tax return for the 1984 through 2004, inclusive.

Response: This Request for Admission is objected to as irrelevant.

45. Admit that Defendants employ a staff that includes receptionists, paralegals, and caseworkers.

Response: Admitted.

46. Admit that Defendants compensate the SAPF staff for their services with payments in either cash or money order.

Response: This Request for Admission is objected to as irrelevant.

47. Admit that Defendants do not withhold federal income taxes from the payments to the SAPF staff for their services.

Response: This Request for Admission is objected to as irrelevant.

48. Admit that Defendants do not file informational tax returns with the IRS reporting the payments to the SAPF staff for their services.

Response: This Request for Admission is objected to as irrelevant.

49. Admit that Defendants' failure to file income tax returns, or information returns with the IRS, is based on the fact that Defendants believe that they are exempt from income tax filing requirements as the income received is not taxable because it has a source within the 50 United States.

Response: Denied.

50. Admit that Defendant John B. Kotmair, Jr., was the taxpayer that petitioned the Tax Court in the decision cited at 86 T.C. 1253.

Response: This Request for Admission is objected to as irrelevant.

51. Admit that Defendants' website located at www.save-a-patriot.org states that the son of John B. Kotmair, Jr., Edward Kotmair, was convicted of three counts of failure to file federal income tax returns in 1999.

Response: This Request for Admission is objected to as irrelevant.

Dated this 13th day of February, 2006.

/s/George E. Harp
George E. Harp, Bar #22429

610 Marshall St., Ste. 619
Shreveport, Louisiana 71101
318 424 2003

Attorney for Respondent,
SAVE-A-PATRIOT FELLOWSHIP

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing Response to the United States First Set of Requests for Admissions has been sent to John Baptist Kotmair, Jr., pro se, P. O. Box 91, 2911 Groves Mill Road, Westminster, Maryland 21158, and Thomas M. Newman, Trial Attorney, Tax Division, U. S. Department of Justice, P. O. Box 7238, Washington, D.C. 20044, by United States Mail with sufficient postage attached thereto, and by e-mail to thomas.m.newman @ usdoj.gov. this 13th day of February, 2006.

/s/George E. Harp
Of Counsel

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

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

AFFIDAVIT OF NORMAN LEHNHARDT

I, Norman Lehnhardt, do hereby declare as follows:

1. I am a citizen of the United States of America.

2. Though I am essentially retired as a paralegal, and have been for several years, I have, from time to time, assisted several members of the Save-A-Patriot Fellowship for the purpose of preparing documents and discussing certain legal matters. I never give advice on legal matters to anybody.

3. I do not maintain an office at Save-A-Patriot Headquarters, and only rarely visit there.

4. I have read and understand the affidavit Mr. Taflan submitted to the Department of Justice, regarding the above captioned action. With respect to

Exhibit 9

Mr. Taflan's bankruptcy, I did assist him, but only as a favor. Mr. Taflan and I have been on very friendly terms for years.

5. I did not inform Save-A-Patriot Fellowship headquarters that I was assisting Mr. Taflan with his bankruptcy.

6. I did not require that Mr. Taflan pay me in order for any assistance I provided him in said bankruptcy petition.

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

Dated this 7th day of July, 2006.

Norman Lehnhardt

Subscribed and sworn to before me, a Notary Public, of the State of North Carolina, County of Rockingham, this 7th day of July, 2006, that the above named person did appear before me and was identified to be the person executing this document.

ROBIN C. PEGRAM NOTARY PUBLIC ROCKINGHAM COUNTY, NC

Notary Public Robin C Pegram

My Commission Expires On: May 6, 2007

Calendar No. 706

97TH CONGRESS
2d Session

SENATE

REPT. 97-494
Vol. 1

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ON

H.R. 4961

together with

ADDITIONAL SUPPLEMENTAL AND MINORITY VIEWS

JULY 12, 1982.--Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1982

96-028 O

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Exhibit 10

4. Abusive Tax Shelters

a. Penalty for promoting abusive tax shelters, etc. (sec. 331 of the bill and new sec. 6700 of the Code)

Present Law

Present law contains no penalty provision specifically directed toward promoters of abusive tax shelters and other abusive tax avoidance schemes. When a promoter organizes or sells a tax shelter that is premised on misrepresentations of the tax law, the existence of the investment assets, or the value of property or services, the promoter may, in the appropriate case, be subject to (1) civil penalties for the preparation or presentation of a false or fraudulent return or other document as a return preparer, or (2) the criminal penalties for aiding, assisting in, procuring, counseling or advising the preparation or presentation of a false or fraudulent return or other document under the internal revenue laws or for willfully attempting to evade or defeat a tax imposed under the internal revenue laws.

Reasons for Change

As of September 30, 1981, 248,828 returns with tax shelter issues were in the examination process, according to the 1981 Annual Report of the Commissioner of Internal Revenue. This represents an increase of 74,584 returns of this type over the prior fiscal year. The widespread marketing and use of tax shelters undermines public confidence in the fairness of the tax system and in the effectiveness of existing enforcement provisions. These tax schemes place a disproportionate burden on the Internal Revenue Service resources.

The committee believes that the penalty provisions of present law are ineffective to deal with the growing phenomenon of abusive tax shelters. Abusive tax shelters must be attacked at their source: the organizer and salesman. The committee recognizes that the Securities Exchange Commission has powers that may be directed toward some tax shelter promoters but believes Internal Revenue Service enforcement in this area will materially contribute to a solution of this problem in a number of ways. For example, the Internal Revenue Service can be expected to approach the problem with vigor since prevention of abusive shelter promotions will require less manpower than enforcement actions against numerous investor-taxpayers. In addition, if the Internal Revenue Service establishes fraud by a promoter, the investors may be materially aided in their efforts to seek rescission of the contracts under which they invested. Finally, the promoter penalty is particularly equitable because the promoter, professional advisor or salesman of a tax shelter is generally more culpable than the purchaser who may have relied on their representatives as to the tax consequences of the investment.

Explanation of Provision

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

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

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

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

Effective Date

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

b. Action to enjoin promoters of abusive tax shelters etc. (sec. 332 of the bill and new sec. 7408 of the Code)

Present Law

Present law provides that a civil action may be brought by the United States to enjoin any person who is an income tax return preparer from (1) engaging in any conduct subject to penalty under the income tax return preparer provisions or under the criminal tax laws, (2) misrepresenting his qualifications, (3) guaranteeing a refund or credit, or (4) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws. Venue for such an action lies in the district in which the income tax return preparer resides or has his principal place of residence, or the taxpayer with respect to whose income tax return the action is brought resides. Injunctive relief may be granted by the district court if the court finds that such relief is appropriate to prevent recurrence of the prohibited conduct.

In addition to its power to seek injunctions against persons violating the return preparer provision, the United States is empowered to seek, and the district court of the United States to grant, such decrees or orders, and processes (including injunctions) as may be necessary to enforce the internal revenue laws (sec. 7402(a)).

Reasons for Change

The bill provides for a penalty on promoters of investments with abusive positions (see sec. 331 of the bill described, above). The committee believes that the most effective way in which this new penalty can be enforced is through injunctions against violators to prevent recurrence of the offense. The ability to seek injunctive relief will insure that the Internal Revenue Service can attack tax shelter schemes years before such challenges would prove possible if the Internal Revenue Service were required to await the filing and examinations of tax returns by investors. Thus, injunctive relief will better enable the Internal Revenue Service to protect the integrity of the tax laws and to protect potentially innocent investors against widespread marketing of such tax schemes.

Explanation of Provision

The committee bill permits the United States to seek injunctive relief against any person who is engaging in conduct subject to the penalty for organizing or selling abusive tax investments (sec. 331 of the bill and new Code sec. 6700). Under the bill, these actions may be brought in the United States District Court for the district in which the promoter resides, has his principal place of business, or has engaged in the conduct subject to penalty under section 6700. If a citizen or

resident of the United States does not reside in or have a principal place of business in any U.S. judicial district, such citizen or resident is treated as a resident of the District of Columbia.

The Court may grant injunctive relief against any person if it finds (1) that the person has engaged in any conduct subject to the penalty for organizing or selling abusive tax investments, and (2) that injunctive relief is appropriate to prevent recurrence of such conduct.

An injunction granted under this provision may prohibit the person enjoined from engaging in any activity subject to penalty under new section 6700. Of course, the court will continue to have full authority to act under its general jurisdiction (section 7402) and will continue to possess the great latitude inherent in equity jurisdiction to fashion appropriate equitable relief. For example, a court could enjoin particular conduct or enjoin all conduct violative of new section 6700. In addition, the court could enjoin any action to impede proper administration of the tax law or any action which violates criminal statutes. See, e.g., *United States v. Landsberger*, 534 Fed. Supp. 534 (D. Minn., Dec. 14, 1981).

The commencement of any action under this provision does not in any way restrict the right of the United States to commence or carry on any other action against the organizer or seller.

Effective Date

The amendment would take effect on the day after the date of enactment.

96-028 O - 82 - 18

c. Procedural rules applicable to penalties under sections 6700, 6701, and 6702 (sec. 333 of the bill and new sec. 6703 of the Code)

Present Law

Under present law, the burden of proof is on the Secretary in any proceeding in which the issue is whether an income tax return preparer has willfully attempted to understate the liability for tax of any person (*i.e*, violated section 6694(b)). Similarly, the burden of proof is generally on the Secretary to prove fraud. Under present law, the deficiency procedures generally apply to the collection of additions to tax, additional amounts, and nonassessable penalties. Thus, jurisdiction is generally in the Tax Court to redetermine such additions to tax, additional amounts, and nonaccessable penalties prior to their assessment and collection.

Generally, except in the case of certain return preparer penalties (sec. 6694(c)), district court review of additions to tax, additional amounts or penalties (whether or not assessable), is not available before such amounts are fully paid. Exceptions to the rule exist when an assessment is desirable or when the statute specifically provides for district court review. In the case of a penalty imposed under the income tax preparer provisions, no levy or proceeding in court may be prosecuted to collect such penalty if, within 30 days after notice and demand the income tax return preparer pays 15 percent of such penalty and files a claim for refund of the amount paid. If the claim is denied or ignored, the income tax return preparer may file a suit in the district court to determine his liability for the penalty. During the pendency of such action, the statute of limitations on collection of such amount is suspended.

Reasons for Change

The committee believes that the new penalties on (1) promoters of abusive tax investments, (2) persons assisting in the presentation of false or fraudulent documents under the Internal Revenue laws, and (3) persons filing frivolous returns should be subject to the same procedural safeguards as the existing penalties on income tax return preparers.

Explanation of Provision

The bill provides for district court review of the Secretary's assessment and notice and demand of (1) the abusive tax investments promoter penalty (sec. 331 of the bill), (2) the civil aiding and assisting penalty (sec. 342 of the bill), or (3) the frivolous return penalty (sec. 343 of the bill), before the full amount of such penalties may be collected when certain procedural requirements are met. The review procedures are generally similar to those now provided with respect to the income tax return preparer penalties.

Thus, while the deficiency procedures do not apply to these penalties, and the penalties are immediately assessable, provision is made for review of the Secretary's assessment and notice and demand of such penalties if within 30 days after notice and demand of the penalty is made, the taxpayer pays 15 percent of the demanded amount and files a claim for refund. If the claim for refund is denied or ignored, the taxpayer may file suit in the district court to determine his liability for the amount claimed. No levy or proceeding to collect such penalty may be made during such 30-day period or if the taxpayer pays the 15 percent and files a claim for refund, until the claim is finally disposed of, either administratively or by final resolution of any district court review proceeding instituted by the taxpayer. For purposes of this provision, the final resolution of any proceeding will generally occur when the decision of the district court is final. If the taxpayer fails to bring a timely action in the district court, the Secretary may proceed to collect the full amount of the penalty.

In any proceeding involving the issue of whether any taxpayer is liable for the tax shelter promoter penalty, the civil aiding or assisting penalty, or the frivolous return penalty, the burden is on the Secretary to prove the conduct giving rise to the penalty.

As in the case of the income tax return preparer penalties, the statute of limitations for collection of the amount assessed is suspended during the time the Secretary is prohibited from collecting the penalty under this provision.

Effective Date

Amendments made by this provision take effect on the day after the date of enactment.

5. Substantial Underpayments; False Documents; Frivolous Returns

a. Penalty for substantial understatement (sec. — of the bill and new sec. 6701 of the Code)

Present Law

Under present law, a penalty is imposed on the failure to pay certain taxes shown on a return (or if not paid within 10 days of notice and demand, any amount of tax required to be shown on a return) unless it is shown that such a failure to pay is due to reasonable cause and not willful neglect. If any portion of an underpayment of tax is due to negligence or intentional disregard of rules and regulations (negligence) but without intent to defraud, the addition to tax is equal to 5 percent of the entire underpayment. In addition, if the negligence penalty applies, an additional amount equal to 50 percent of the interest payable on that portion of the underpayment due to negligence, for the period running from the last date prescribed for payment of the tax (determined without regard to extensions) to the date the tax is paid, is imposed.

If any portion of an underpayment is due to fraud, then an addition to tax equal to 50 percent of the underpayment is imposed and (in the case of the income and gift taxes) the negligence penalty cannot be imposed. Further, if the fraud penalty is imposed, no penalty for failure to timely file a return may be imposed. Reasonable reliance on the advice of a tax advisor generally will prevent application of the fraud and negligence penalties.

In 1981, the Congress enacted a "no-fault" penalty on valuation overstatements. Under that penalty, if a taxpayer makes a large error in placing too high a value on property which results in an understatement of tax, then a penalty measured as a percentage of the underpayment resulting from the valuation overstatement is imposed. Although the penalty is imposed without regard to fault, the Secretary may waive all or part of the penalty if there was a reasonable basis for the valuation and it was claimed in good faith. This penalty does not apply in the case of an undervaluation of services.

Reasons for Change

The committee believes that an increasing part of the compliance gap is attributable to the "audit lottery." The audit lottery is played by taxpayers who take questionable (although non-negligent) positions not amounting to fraud or negligence on their returns in the hope that they will not be audited. If a taxpayer is audited and the questionable position is challenged, then he or she pays the additional tax owing plus interest. Importantly, however, taxpayers are not ex-

posed to any downside risk in taking highly questionable positions on their tax returns since even resolution of the issue against the taxpayer will require only payment of the tax that should have been paid in the first instance with interest to reflect the cost of the "borrowing." Taxpayers rely on opinions of tax advisors to avoid the possibility of fraud or negligence penalties in taking these highly questionable positions, even though the advisor's opinion may clearly indicate that if the issue is challenged by the Internal Revenue Service, the taxpayer will probably lose the contest. Thus, in the event that the questionable position is not detected, the taxpayer will have achieved an absolute reduction in tax without cost or risk. The committee believes, therefore, that taxpayers should be subject to a penalty designed to deter the use of undisclosed questionable reporting positions. On the other hand, the committee recognizes that taxpayers and the Government may reasonably differ over the sometimes complex Federal tax laws, and that a penalty is not appropriate for in many cases in which there is a large underpayment. Finally, the committee believes that taxpayers investing in substantial tax shelters should be held to a higher standard of reporting or risk a significant penalty.

Explanation of Provision

In general, under the committee bill, when there is a substantial understatement in income tax for any taxable year attributable to an aggressive filing position not disclosed by the taxpayer in the return, or taken by the taxpayer with respect to a tax shelter, an addition to tax equal to 10 percent of such understatement will be imposed.

For this purpose, an understatement is the excess of the amount of income tax imposed on the taxpayer for the taxable year, over the amount of tax shown on the return. A substantial understatement of income tax exists if the understatement for the taxable year exceeds 10 percent of the tax required to be shown on the return for the taxable year; and $5,000 ($10,000 for corporations other than subchapter S corporations and personal holding companies). Thus, for example, in 1982, married couple filing jointly would not be subject to the penalty unless they have taxable income in excess of approximately $27,900 and report no tax liability whatever. Similarly, a corporation would need an income of approximately $30,300 (in 1982) before it could be subject to the penalty. The committee believes it is appropriate to thus exclude low and moderate income taxpayers from the scope of the penalty both because of the greater access of higher income taxpayers to sophisticated tax advice and because these taxpayers appear more often to play the audit lottery.

The amount of any understatement must be reduced, however, by any portion of the understatement attributable to the treatment of any item (1) with respect to which the taxpayer had a subjective belief that such treatment was more likely than not to be sustained if the issue were challenged and litigated; or (2) which is adequately disclosed in the return or an attachment thereto. A taxpayer could establish such belief by showing good faith reliance on a professional opinion that the taxpayer was more likely than not ultimately to prevail in any contest with the Internal Revenue Service. An item is dis-

closed if it is disclosed in such a way as to apprise the Secretary of the nature of the controversy surrounding the item and amount of such item. The committee bill provides broad regulatory authority to permit the Secretary to prescribe the form of disclosure. However, the committee intends that the Secretary shall in no event require disclosure of accountant's work papers. Instead, disclosure will be made if the taxpayer discloses facts sufficient to enable the Internal Revenue Service to identify the potential controversy, if it analysed that information. For example, if a taxpayer has only a reasonable basis that an amount received was a business gift and therefore not includable in income, he may avoid a penalty by attaching a readily identifiable statement to his tax return disclosing the amounts received and the name and business relationship of the payor. Also, a taxpayer taking a bad debt deduction in a particular year, when there is a question as to the correct year in which the loss is allowable, could avoid the penalty by disclosing the issue to the Secretary. However, the disclosure exception to the understatement definition does not apply to any item derived from a tax shelter. A tax shelter is any partnership or other entity, an investment plan or arrangement, or any other plan or arrangement the principal purpose of which (based on the objective evidence) is the avoidance or evasion of the Federal income tax. The committee determined that a disclosure defense was inappropriate for tax shelter items because a higher standard of reporting for such items should be imposed. Also, committee received substantial testimoney that additional disclosure is not necessary for tax shelters.

In determining the amount of the addition to tax under this provision, that portion of the understatement which would be subject to the penalty on valuation overstatements is not taken into account. The Secretary can waive all or part of the penalty if the taxpayer shows that there was a reasonable basis for the understatement and that he acted in good faith. A waiver would be appropriate, for example, if the taxpayer made a good faith mistake in deciding the proper timing of a deduction.

Effective Date

This penalty would apply to returns due after December 31, 1982 (without regard to extensions).

b. Penalties for aiding and abetting the understatement of tax liability (sec. 342 of the bill and new sec. 6701 of the Code)

Present Law

Present law provides a criminal penalty for willfully aiding, assisting in, procuring, counseling, or advising the preparation or presentation of a false or fraudulent return, affidavit, claim, or other document under the internal revenue laws. The criminal penalty is punishable by a fine of up to $5,000 or 3 years imprisonment, or both, together with costs. The term "document" has been broadly interpreted in other contexts to include such items as matchbook covers submitted to the Tax Court (*Stein* v. *United States*, 363 F.2d 587 (5th Cir. 1966), and affidavits supplied to the Internal Revenue Service during a criminal investigation (*United States* v. *Johnson*, 530 F.2d 52 (5th Cir. 1976), cert, denied, 429 U.S. 833).

The criminal penalty has been interpreted to apply to a variety of cases, including a race-track "10 percenter" who was convicted of filing a false Form 1099 even though the taxpayer's own name, address, and taxpayer identification number appeared on the return (*United States* v. *Snyder*, 549 F.2d 171 (10th Cir. 1977)), the preparer of false information returns for exempt organizations (*Beck* v. *United States*, 298 F2d 622 (9th Cir. 1962))), and floor brokers in foreign exchange operations who provided false information to a taxpayer and, therefore, participated in the preparation of a fraudulent tax return (*United States* v. *Siegel*, No. 79 CR 606, N.D. Ill. (June 27, 1979), 79–2 U.S.T.C.¶9698).

There is no comparable civil penalty on persons who aid or assist in the preparation or presentation of false or fraudulent documents. However, income tax return preparers who willfully attempt to understate the liability for tax of any person are subject to a penalty of $500 per return.

Reasons for Change

The committee believes that a new civil penalty analogous to the criminal penalty for aiding and abetting in the preparation of presentation of a false return or document is necessary for the four reasons. First, the peualty will permit more effective enforcement of the tax laws by discouraging those who would aid others in the fraudulent underpayment of their tax. Second, it is inappropriate to impose sizeable civil fraud penalties on taxpayers but to allow the advisors who aid or assist in the underpayment of tax to escape civil sanctions. Third, the committee recognizes that certain types of conduct should be penalized but are not so abhorent as to suggest criminal prosecution. Finally, the committee believes the new penalty will help protect taxpayers from advisors who seek to profit by leading innocent taxpayers into fraudulent conduct. It is anticipated that the Internal Revenue

Service and Justice Department will continue to vigorously pursue the prosecution of criminal violations of the tax laws, including conduct subject to this new penalty.

Explanation of Provision

The bill provides for a new civil penalty on any person who aids, assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document under the internal revenue laws which portion the person knows will be used in connection with any material matter arising under the tax laws, and which portion the person knows will (if used) result in any understatement of the tax liability of another person.

No person will be subject to this penalty unless that person is directly involved in aiding or assisting in the preparation or presentation of a false or fraudulent document under the tax laws, or directly procures a subordinate to do any act punishable under this provision. Thus, for example, if a person prepares a schedule or other portion of a return which portion was, in all respects, correct, that person will not be subject to this penalty even if he or she knows that other portions of the return he or she does not help prepare and over which he does not have any control is fraudulent. The penalty does not apply to any person who merely furnishes typing, reproducing or other mechanical assistance in the preparation of the return, etc.

The term "procures" includes ordering or otherwise causing a subordinate to do an act subject to this penalty, or knowing of and not attempting to prevent participation of a subordinate in an act subject to this penalty. The term "advises" includes acts of independent contractors such as attorneys and accountants in counseling a particular course of action. A "subordinate" is any person, including an agent, over which the taxpayer has direction, supervision, or control. Direction, supervision, or control for this purpose includes only direct and immediate direction, supervision, and control.

The burden of proof in imposing the penalty is on the Secretary. In addition, all the other procedural rules described in section 333 of the bill apply to this penalty.

In general, this penalty is in addition to all other penalties provided by law. However, if any of the return preparer penalties may apply with respect to any document, the penalty does not apply with respect to such document.

This penalty, which is $1,000 for each return or other document ($5,000 in the case of returns and documents relating to the tax of a corporation) can be imposed whether or not the taxpayer knows of the understatements. The penalty can, however, be imposed only once for any taxable period (or taxable event) with respect to the taxpayer's actions in assisting any one person. Thus, someone who assists two individuals in preparing false documents would be liable for a $2,000 penalty whereas the penalty would be only $1,000 if he had advised in the preparation of two false documents for the same taxpayer.

Effective Date

This provision is effective on the day after the date of enactment.

specified in §1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

[T.D. 8734, 62 FR 53452, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72185, 72188, Dec. 31, 1998]

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53452, Oct. 14, 1997, §1.1441–5 was revised, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effectiveness of §1.1441–5 was delayed until Jan. 1, 2000. For the convenience of the user, the superseded text is set forth as follows:

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

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

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

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

(d) *Definitions.* For determining whether an alien individual is a resident of the United States see §§301.7701(b)–1 through 301.7701(b)–9 of this chapter. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with §1.1441–1, a resident for purposes of this section. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a) (4) and (5) and §301.7701–5 of this chapter. For definition of the term "United States" and for other geographical definitions relating to the Continental Shelf see section 638 and §1.638–1.

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

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

[T.D. 6500, 25 FR 12076, Nov. 26, 1960, as amended by T.D. 6908, 31 FR 16773, Dec. 31, 1966; T.D. 7277, 38 FR 12742, May 15, 1973; T.D. 7842, 47 FR 49842, Nov. 3, 1982; T.D. 7977, 49 FR 36834, Sept. 20, 1984; T.D. 8160, 52 FR 33933, Sept. 9, 1987; T.D. 8411, 57 FR 15241, Apr. 27, 1992]

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

(a) *In general.* The rate of withholding on a payment of income subject to withholding may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. Most benefits under income tax treaties are to foreign persons who reside in the treaty country. In some cases, benefits are available under an income tax treaty to U.S. citizens or U.S. residents or to residents of a third country.

See paragraph (b)(5) of this section for claims of benefits by U.S. persons. If the requirements of this section are met, the amount withheld from the payment may be reduced at source to account for the treaty benefit. See also §1.1441–4(b)(2) for rules regarding claims of reduced rate of withholding under an income tax treaty in the case of compensation from personal services.

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a foreign beneficial owner in accordance with §1.1441–1(e)(1)(ii) (not including 1.1441–1(e)(1)(ii)(A)(*2*) relating to documentary evidence). Except as otherwise provided in paragraph (b)(2) or (3) of this section, for purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in §1.1441–1(e)(2)(i) is valid only if it includes the beneficial owner's taxpayer identifying number and certifies that the taxpayer

Exhibit 11

Department of the Treasury
Internal Revenue Service
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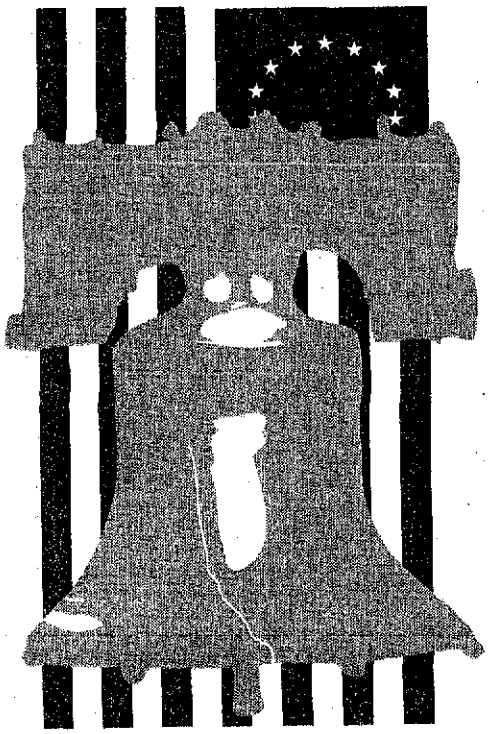
Publication 515
(Rev. Dec. 1990)

Withholding of Tax on Nonresident Aliens and Foreign Corporations

This publication is a reprint of the 1989 revision. However, an *Addendum to Publication 515* has been added to the end of this publication. The addendum updates this publication through September 1990.



Introduction

If you control, or are responsible for, the receipt, disposal, custody, or payment of the items of income discussed in this publication, you must withhold income tax on them. If you are required to withhold the tax, you become the taxpayer liable for its payment, especially if the alien who receives the income fails to satisfy the U.S. tax liability. You may be a tenant, manager, broker, agent, fiduciary, or spouse, but if you meet the withholding requirements, you are a withholding agent liable for the tax discussed here.

If you need information on a subject not covered in this publication, check our other free publications or write to: Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024. To order publications and *forms, call our toll-free number* 1-800-829-FORM(3676).

Withholding of Tax

Most income that is ***effectively connected*** with the conduct of a trade or business in the United States by a nonresident alien or a foreign corporation is subject to the same income tax rates that apply to U.S. citizens, residents, and domestic corporations. *For an explanation of effectively connected income,* see *Definition of effectively connected income* discussed under *Withholding Exemptions and Reductions,* later.

Investment and other fixed or determinable annual or periodic income from sources within the United States, such as wages, rents, dividends, and interest, that is ***not effectively connected*** with the conduct of a trade or business in the United States is subject to a 30% tax rate, or lower treaty rate, whether or not the taxpayer also engages in a trade or business in the United States.

For example, you must withhold at 30%, or lower treaty rate, on payment of rents, dividends, interest, and other fixed or determinable annual or periodic income from sources within the United States. If this income is effectively connected with the conduct of a trade or business in the United States, the person entitled to the income may claim exemption from withholding by filing a statement to that effect with you. See *Form 4224,* discussed later.

Different withholding rules apply to a partnership's payments of effectively connected income *to foreign partners, and to dispositions of U.S. real* property interests by foreign persons. See *Partnership Withholding on Effectively Connected Income,* and *U.S. Real Property Interest,* later.

Withholding Agent

Any person required to withhold the tax is a withholding agent. A withholding agent may be an individual, a trust, estate, partnership, corporation, government agency, association, or tax-exempt *foundation, whether domestic or foreign. Withhold*ing agents include U.S. citizens and residents, and also foreign nominees and fiduciaries that are residents of treaty countries that require their nationals to withhold additional U.S. tax according to tax treaty provisions. Generally, the person who pays or conveys the item of U.S. source income to an alien entity or individual, or to the entity or individual's foreign or domestic agent, is liable for the tax and must withhold.

It does not matter on whose behalf the withholding agent makes the payments. An agent may *be making payments on the agent's own behalf as* a lessee or mortgagor of property, or other obligor, or an agent may be paying on behalf of another fiduciary, etc. If the withholding agent appoints a duly authorized agent to act on its behalf, the withholding agent is required to file a notice of the appointment with the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024. The notice must be filed before the first payment with respect to which the authorized *agent is to act. If the duly authorized agent* becomes insolvent or fails to deposit the withheld tax, the withholding agent is still liable.

For example, the local U.S. promoter of an entertainment event featuring a nonresident alien performer is usually the withholding agent. However, in the case of an extensive tour of the United States, a corporation or agency representing the performer may become the withholding agent for the entire tour if notice of the appointment is filed with the Internal Revenue Service.

Resident or domestic fiduciaries of trusts or *estates are withholding agents on payments to* beneficiaries who are nonresident alien individuals, foreign partnerships, or foreign corporations. Since the total amounts allocable to a beneficiary cannot be determined until the end of the tax year, the fiduciary must withhold tax on all distributions during the tax year. If tax is withheld before the income is actually distributed, withholding is not required when that income is later distributed.

The spouse of a nonresident alien, if the spouses are domiciled in a community property state, is required to act as a withholding agent for the nonresident alien's interest in the spouse's community income arising from within the United States.

A former spouse must withhold tax on alimony or other payments to the other former spouse, if the spouse receiving the payments is a nonresident alien at the time the payments are made.

Foreign nominees and fiduciaries. Under certain tax treaties, a foreign nominee or fiduciary in a treaty country may have to withhold additional U.S. tax from U.S. source dividends, interest, and other income.

For example, a Swiss nominee is required under Swiss law to withhold 30% of the gross dividend minus the 15% that has been withheld by the withholding agent in the United States.

Except for Canada, foreign nominees and fiduciaries must send the additional U.S. tax withheld to their own tax authorities, accompanied by whatever form may be prescribed by their national tax agencies. In turn, treaty tax authorities send the additional tax to the Internal Revenue Service Center, Philadelphia, PA 19255.

Canadian nominees and fiduciaries send the *additional U.S. tax withheld, in U.S. currency,* directly to the Internal Revenue Service Center in Philadelphia, accompanied by an annual Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.* The U.S. deposit rules, discussed later, do not apply to these foreign withholding agents.

For specific details on the procedures and types of U.S. source income on which additional withholding is required, foreign nominees and fiduciaries should contact the taxing authority of their country.

Persons Subject to Withholding

An individual who is not a U.S. citizen or resident is a nonresident alien. The term includes a nonresident alien fiduciary. Nonresident aliens are subject to the withholding provisions discussed in this publication.

Resident alien. An alien is considered a U.S. *resident and not subject to the withholding provi*sions discussed in this publication if the alien meets either the green card test or the substantial presence test for the calendar year.

Exhibit 12

Green card test. An alien is a resident if the individual was a lawful permanent resident of the United States at any time during the calendar year. This is known as the "green card" test because these aliens hold immigrant visas ("green cards").

Substantial presence test. An alien is also considered a U.S. resident if the individual meets the substantial presence test for the calendar year. Under this test, the individual must be physically present in the United States on at least:

1) 31 days during the current calendar year, and
2) 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only ⅙ the number of days of presence in the first preceding year, and only ⅓ the number of days in the second preceding year.

You generally do not count days the alien is in the United States as a teacher, student, or trainee on an "F," "J," or "M" visa.

For more information on resident and nonresident status, the tests for residence, and the exceptions to them, see Publication 519, *U.S. Tax Guide for Aliens.*

Nonresident alien individuals married to U.S. citizens or resident aliens may choose to be treated as resident aliens for income tax purposes. However, these individuals are considered nonresidents for purposes of withholding taxes on nonresident aliens.

A foreign corporation or partnership is one that does not fit the definition of a domestic corporation or partnership. A ***domestic corporation or partnership*** is one that was created or organized in the United States, or under the laws of the United States or of any state.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
2) At least 65% of the corporation's gross income is effectively connected with the conduct of a trade or business in the Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and
3) No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Note: The provisions discussed above for *Virgin Islands and American Samoa corporations* are extended to Guam and CNMI corporations when an implementing agreement is in effect between the United States and each of those possessions. For further information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Resident of Puerto Rico. Even if an alien is a bona fide resident of Puerto Rico for the entire year and is required to pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. This alien will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

A nonresident alien trustee, administrator, or executor of a trust or an estate is treated as a nonresident alien, even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to withholding of a 4% excise tax rather than the ordinary statutory 30% income tax. For more information on foreign private foundations, see Publication 578, *Tax Information for Private Foundations and Foundation Managers.*

Other foreign organizations, associations, and charitable institutions. An organization is not precluded from being exempt from income tax under section 501(a) of the Internal Revenue Code merely because it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to such foreign tax-exempt organizations if the Internal Revenue Service has determined that they are not foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding,* even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, *Tax on Unrelated Business Income of Exempt Organizations*) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

Withholding Exemptions and Reductions

You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. If you fail to withhold tax, you are still liable for payment of the tax, especially if the alien fails to satisfy the U.S. tax liability. However, the alien may be allowed an exemption from withholding or a reduced rate of withholding as explained here.

Evidence of residence. If an individual gives you a written statement, in duplicate, stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you may accept this statement and are relieved from the duty of withholding the tax. Or, an alien may claim U.S. residence by filing with you, in duplicate, Form 1078, *Certificate of Alien Claiming Residence in the United States.* Holders of visas that do ***not*** permit permanent residence in the United States should write to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice about filing a Form 1078 and, if filing Form 1078 is proper, about the need to make estimated tax payments.

A U.S. bank that is a payer of income subject to withholding may decide whether to accept an individual's proof of U.S. citizenship or residence given through a foreign bank to which income is paid. If the U.S. bank accepts this proof, it will not be liable for payment of tax if later it is shown that the individual was in fact a nonresident alien. If it accepts the proof, however, the U.S. bank must file an information return on Form 1042S showing the name, address, identifying number, and the particular securities of the actual owner, and indicating that it is relying on proof submitted by the foreign bank as its basis for not withholding.

Partnerships and corporations. You may rely on a written statement from a partnership or corporation claiming that it is not foreign as proof that the partnership or corporation is domestic and thus not subject to withholding tax. The statement must be given to you in duplicate. It must contain the taxpayer's employer identification number, the address of the taxpayer's U.S. office or place of business, and it must be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer also must be given.

Where to send statements and Form 1078. You must forward the duplicate copy of each statement or form, together with a letter of transmittal, to the Internal Revenue Service Center, Philadelphia, PA 19255. You must keep the original statement or form for your records.

Withholding exemption for undue administrative burden. No withholding is required from fixed or determinable annual or periodic income paid to a foreign partnership or corporation engaged in trade or business in the United States if the foreign partnership or corporation establishes, to the satisfaction of the district director in whose district the related books and records are kept, that withholding would impose an undue administrative burden for the tax year and that the collection of the tax will not be jeopardized by not withholding.

The withholding exemption is available to a foreign partnership or corporation only if it receives a determination from the district director stating that the exemption applies and provides you with a copy of the determination.

Generally, withholding will impose an undue administrative burden only if:

1) The person entitled to the income, such as a foreign insurance company, receives income from you on securities issued by a single corporation, some of which is, and some of which is not, effectively connected with the conduct of a trade or business within the United States, and
2) It is unduly difficult to determine the effective connection because of the circumstances under which the securities are held.

Withholding requirements for inhabitants of the Virgin Islands. You need not withhold tax on payments to a person who at the time of payment reasonably expects to meet the income tax obligations for that particular income under section 28(a) of the Revised Organic Act of the Virgin Islands. That section provides that all persons who are permanent residents of the Virgin Islands will meet their U.S. tax obligations by paying to the Virgin Islands their tax on income from all sources both within and outside the Virgin Islands. For this purpose the term "person" includes an individual, partnership, or corporation.

To avoid withholding, a payee must notify you by letter, in duplicate (a separate letter is required each year), that the payee expects to meet U.S. income tax obligations on all income to be paid by you during the calendar year under section 28(a) of the Revised Organic Act of the Virgin Islands. This letter of notification authorizes you to pay the income for the calendar year without deducting the tax. You must forward the duplicate copy of

each letter of notification, with a letter of transmittal, to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Withholding on income effectively connected with a trade or business in the United States. Other than effectively connected taxable income *of a partnership that is allocable to its foreign partners*, or income from the disposition of a U.S. real property interest, you do not need to withhold tax on income if:

1) The income is effectively connected with the conduct of a trade or business in the United States (see definition, later) by the person entitled to the income,
2) The income is includible in the recipient's gross income, and
3) A statement claiming exemption, such as Form 4224, has been filed by the person entitled to the income, as discussed later.

This ***no withholding*** rule applies to income for services performed by a foreign partnership or foreign corporation (other than a corporation described in the following discussion), but does ***not*** apply to compensation for personal services performed by an individual.

Despite the no withholding rule, you must withhold tax from payments to a foreign corporation for services if all of the following apply:

1) The foreign corporation otherwise qualifies as a personal holding company for income tax purposes,
2) The foreign corporation receives amounts under a contract for personal services of an individual whom the corporation has ***no*** right to designate, and
3) 25% or more in value of the outstanding stock of the foreign corporation at some time during the tax year is owned, directly or indirectly, by or for an individual who has performed, is to perform or may be designated as the one to perform, the services called for under the contract.

Definition of effectively connected income. Generally, when a nonresident alien individual or foreign corporation engages in a trade or business in the United States, all income from sources within the United States other than fixed or determinable annual or periodic income (such as wages, interest, dividends, and rent) and certain similar amounts is considered effectively connected with a U.S. business. Fixed or determinable annual or periodic income and similar amounts may or may not be effectively connected with a *U.S. business*.

The factors to be considered in establishing whether fixed or determinable annual or periodic income and similar amounts from U.S. sources are effectively connected with a U.S. trade or business include:

1) Whether the income is from assets used in or held for use in the conduct of that trade or business, or
2) Whether the activities of that trade or business were a material factor in the realization of the income.

Form 4224. Nonresident alien individuals, fiduciaries, foreign partnerships, or foreign corporations engaged in trade or business in the United States *at any time during their tax year must notify* you as withholding agent as to the items of income for the tax year that will be effectively connected with a trade or business in the United States. They can do this by using Form 4224, *Exemption from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States.*

Withholding on certain gambling winnings. Winnings of a nonresident alien from wagers on blackjack, baccarat, craps, roulette, or big-6 wheel are not subject to income tax or 30% withholding tax.

Investment Income of Foreign Governments and International Organizations

Investment income earned by a foreign government in the United States, subject to certain exceptions, is not included in the gross income of the foreign government and is not subject to U.S. withholding tax. Investment income means income from investments in the United States in stocks, bonds, or other domestic securities; financial instruments held in the execution of governmental financial or monetary policy; and interest on money deposited by a foreign government in banks in the United States.

Income received by a foreign government from the conduct of a commercial activity or from sources other than those stated above, is subject to withholding. In addition, income received from a controlled commercial entity (including gain from the disposition of any interest in a controlled commercial entity) and income received by a controlled commercial entity is subject to withholding.

International organizations are also exempt from withholding tax on income from investments in the United States in stocks, bonds, or other domestic securities, and from interest on money deposited in the United States.

Form 8709. Foreign governments and international organizations may file Form 8709, *Exemption From Withholding on Investment Income of Foreign Governments*, with you to claim exemption from withholding on investment income. Form 8709 is not required by the Internal Revenue Service, and there is no obligation on the foreign government or international organization to file the form with you, or on you to ask for the form to be filed. However, as the withholding agent, you must determine if the exemption from withholding is allowable. If you fail to obtain Form 8709 and fail to establish otherwise that the income was exempt from withholding, you will be liable for the tax.

You may request Form 8709 from the government or organization before you pay the income. If you do not receive a completed Form 8709, you may withhold. If you obtain Form 8709, you will be protected from liability except if either of the following applies:

1) You know or have reason to know that the government or organization is not eligible for the exemption from taxation under Internal Revenue Code section 892 either because it does not qualify as a foreign government or international organization, or the income does not qualify for the exemption, or
2) You know or have reason to know that any of the facts or assertions on Form 8709 may be false.

If you accept Form 8709 and later determine that one of the above situations applies, you must promptly notify, in writing, the Director, Office of Compliance, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024, *and must withhold on any* amounts not yet paid. You must also withhold if the office shown above notifies you that the government or organization or the income may not be eligible for exemption from taxation.

Do not send Form 8709 to the IRS. Keep the form for at least 4 years after the end of the year in which the income to which it applies is paid.

Treaty Benefits

Residents of certain foreign countries may be entitled to reduced rates of, or exemption from, tax under an applicable tax treaty between the country of which they are residents and the United States. These foreign residents, generally, must notify you as withholding agent that they are residents of a country with which the United States has an income tax treaty and that they, therefore, qualify for reduced rates of, or exemption from, income tax withholding.

The exemptions from, or reduced rates of, U.S. tax vary between countries and as to specific items of income. As a result, before disbursing this income, you must consult the provisions of the tax treaty that apply to the country of the nonresident taxpayer to whom you are making the payment.

If an applicable treaty does not cover a particular type of income, or if no treaty exists with the country of which the alien is a resident, you must withhold on the income at the statutory rates shown in this publication. If the payment of income is covered by a treaty, however, you must follow the provisions of that treaty.

If a nonresident alien individual has made an election with his or her U.S. citizen or resident spouse to be treated as a U.S. resident for income tax purposes, the nonresident alien may not claim to be a foreign resident to obtain the benefits of a reduced rate of, or exemption from, U.S. income tax under an income tax treaty.

Tables at the end of this publication show the countries with which the United States has income tax treaties and the rates of withholding applicable in cases where all conditions of the particular treaty articles are satisfied.

Foreign payee's status. If, as a withholding agent, you are not able to easily determine the relationship between yourself and a foreign payee or the relationship of a foreign payee and a foreign corporation, you should withhold at a rate of 30%. The 30% rate also applies if you are unable to determine whether the alien is a nonresident or a resident of the United States.

Form 1001. A foreign payee may claim an exemption or reduced tax rate by filing Form 1001, *Ownership, Exemption, or Reduced Rate Certificate*. In the case of income (other than dividends and compensation for personal services) that is subject to a reduced rate of tax or exemption from withholding under an income tax treaty, the payee should file Form 1001 as soon as practicable for any period of 3 successive calendar years during which such income is expected to be received. For interest on coupon bonds, the payee should file the form each time a coupon is presented for payment.

The payee must use a separate Form 1001 for each type of income, except for income received from a trust, estate, or investment account. A payee who receives income from a trust, estate, or investment account uses a separate Form 1001 for each different trust, estate, or investment account, regardless of how many types of income are received.

If, after filing Form 1001, an owner ceases to be eligible for the benefits of the treaty for such income, the owner must promptly notify you as the withholding agent by letter. When any change occurs in the ownership of the income as recorded on the books of the payer, the exemption from, or reduction in the rate of, withholding of U.S. tax no longer applies unless the *new owner of record also is entitled to a reduced* or exempt rate of tax under a treaty and properly files Form 1001 with you.

If you have reason to know that an owner of income is not eligible for treaty benefits claimed on a Form 1001, you should disregard the form and withhold tax at the statutory rate. However, prior to the time when you have reason to have

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For Additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW Washington, DC 20503.**

1. Agency/Subagency originating request
SOCIAL SECURITY ADMINISTRATION

2. OMB control number b. ☐ None
a. 0960– 0066

3. Type of information collection *(check one)*
a. ☐ New collection
b. ☒ Revision of a currently approved collection
c. ☐ Extension of a currently approved collection
d. ☐ Reinstatement, without change, of a previously approved collection for which approval has expired
e. ☐ Reinstatement, with change, of a previously approved collection for which approval has expired
f. ☐ Existing collection in use without an OMB control number
For b–f, note Item A2 of Supporting Statement instructions

4. Type of review requested *(check one)*
a. ☒ Regular
b. ☐ Emergency-Approval requested by:
c. ☐ Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? Yes ☐ No ☒

6. Requested expiration date
a. ☒ Three years from approval date
b. ☐ Other Specify

7. Title
Application for a Social Security Card

8. Agency form number(s) *(if applicable)*
SS-5

9. Keywords
Social Security Benefits, Identification Card

10. Abstract
The information collected on Form SS-5 is used by the Social Security Administration to assign Social Security Numbers so that individuals may obtain employment, report earnings, open bank accounts, pay taxes, apply for benefits and for other purposes. The affected public consists of individuals who apply for Social Security Numbers.

11. Affected public (Mark primary with "P" and all others that apply with "X")
a. X Individuals or households
b. ___ Business or other for-profit
c. ___ Not-for-profit institutions
d. ___ Farms
e. ___ Federal Government
f. ___ State, Local or Tribal Government

12. Obligation to respond (Mark primary with "P" and all others that apply with "X")
a. X Voluntary
b. P *Required to obtain or retain benefits*
c. ___ Mandatory

13. Annual reporting and recordkeeping hour burden

a. Number of respondents	16,000,000
b. Total annual responses	16,000,000
1. Percentage of these responses collected electronically	0 %
c. Total annual hours requested	2,275,000
d. Current OMB inventory	2,000,000
e. Difference	275,000
f. *Explanation of difference*	
1. Program change	0
2. Adjustment	+275,000

14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

a. Total annualized capital/startup costs	N/A
b. Total annual costs (O & M)	
c. Total annualized cost requested	
d. Current OMB inventory	
e. Difference	
f. Explanation of difference	
1. Program change	
2. *Adjustment*	

15. Purpose of information (Mark primary with "P" and all others that apply with "X")
a. X Application for benefits
b. ___ Program evaluation
c. ___ General purpose statistics
d. ___ Audit
e. ___ Program planning or management
f. ___ Research
g. ___ Regulatory or compliance

16. Frequency of recordkeeping or reporting *(check all that apply)*
a. ☐ Recordkeeping b. ☐ Third party disclosure
c. ☒ Reporting
1. ☒ On occasion 2. ☐ Weekly 3. ☐ Monthly
4. ☐ Quarterly 5. ☐ Semi-annually 6. ☐ Annually
7. ☐ Biennially 8. ☐ Other (describe)

17. Statistical methods
Does this information collection employ statistical methods?
Yes ☐ No ☒

18. Agency contact (person who can best answer questions regarding the content of this submission)
Name Frederick W. Brickenkamp
Phone (410) 965-4145

OMB 83-I EF-FF (10-95)

Exhibit 13

19. Certification for Paperwork Reduction Act Submissions
On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention periods for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, or mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);

(i) It uses effective and efficient statistical survey methodology; and **

(j) It makes appropriate use of information technology.

** This information collection ☐ does/☒ does not employ statistical survey methods.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Program Official (SSA Reports Clearance Officer)	Date
Nicholas E. Castellanos	12/19/97
Signature of Senior Official or Designee	**Date**
	12/19/97

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

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

DEPOSITION OF:
Gary Metcalfe

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

Exhibit 14

APPEARANCES:

George Harp, Esq.
610 Marshall Street
Suite 619
Shreveport, LA 71101
On Behalf of the Defendants

Thomas M. Newman, Esq.
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
On Behalf of the Plaintiff

John Baptist Kotmair, Jr., Pro Se
12 Carroll Street
Westminster, MD 21157

INDEX

PROCEEDINGS

WHEREUPON,

Gary Metcalfe,

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

EXAMINATION

BY MR. HARP:

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

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

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

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

Q That's fine.

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

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

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

Q Okay.

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

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

THE DEPONENT: Privacy --

MR. KOTMAIR: Through a disclosure officer.

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

MR. KOTMAIR: Okay.

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

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

MR. KOTMAIR: And those letters actually --

THE DEPONENT: Whatever.

MR. KOTMAIR: Actually impede that.

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

MR. KOTMAIR: There's no --

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

MR. KOTMAIR: That's fine.

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

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

THE DEPONENT: No, I don't know.

Your Appeal Rights and How To Prepare a Protest If You Don't Agree

IRS
Department of the Treasury
Internal Revenue Service
www.irs.ustreas.gov
Publication 5 (Rev. 01-1999)
Catalog Number 46074I

Introduction

This Publication tells you how to appeal your tax case if you don't agree with the Internal Revenue Service (IRS) findings.

If You Don't Agree

If you don't agree with any or all of the IRS findings given you, you may request a meeting or a telephone conference with the supervisor of the person who issued the findings. If you still don't agree, you may appeal your case to the Appeals Office of IRS.

If you decide to do nothing and your case involves an examination of your income, estate, gift, and certain excise taxes or penalties, you will receive a formal Notice of Deficiency. The Notice of Deficiency allows you to go to the Tax Court and tells you the procedure to follow. If you do not go to the Tax Court, we will send you a bill for the amount due.

If you decide to do nothing and your case involves a trust fund recovery penalty, or certain employment tax liabilities, the IRS will send you a bill for the penalty. If you do not appeal a denial of an offer in compromise or a denial of a penalty abatement, the IRS will continue collection action.

If you don't agree, we urge you to appeal your case to the Appeals Office of IRS. The Office of Appeals can settle most differences without expensive and time-consuming court trials. [Note: Appeals can not consider your reasons for not agreeing if they don't come within the scope of the tax laws (for example, if you disagree solely on moral, religious, political, constitutional, conscientious, or similar grounds.)]

The following general rules tell you how to appeal your case.

Appeals Within the IRS

Appeals is the administrative appeals office for the IRS. You may appeal most IRS decisions with your local Appeals Office. The Appeals Office is separate from - and independent of - the IRS Office taking the action you disagree with. The Appeals Office is the only level of administrative appeal within the IRS.

Conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or at a personal conference. There is no need for you to have representation for an Appeals conference, but if you choose to have a representative, see the requirements under ***Representation.***

If you want an Appeals conference, follow the instructions in our letter to you. Your request will be sent to the Appeals Office to arrange a conference at a convenient time and place. You or your representative should prepare to discuss all issues you don't agree with at the conference. Most differences are settled at this level.

In most instances, you may be eligible to take your case to court if you don't reach an agreement at your Appeals conference, or if you don't want to appeal your case to the IRS Office of Appeals. See the later section *Appeals To The Courts*.

Protests

When you request an appeals conference, you may also need to file a formal written protest or a small case request with the office named in our letter to you. Also, see the special appeal request procedures in Publication 1660, Collection Appeal Rights, if you disagree with lien, levy, seizure, or denial or termination of an installment agreement.

You need to file a written protest:

- In all employee plan and exempt organization cases without regard to the dollar amount at issue.
- In all partnership and S corporation cases without regard to the dollar amount at issue.
- In all other cases, unless you qualify for the small case request procedure, or other special appeal procedures such as requesting Appeals consideration of liens, levies, seizures, or installment agreements. See Publication 1660.

How to prepare a protest:

When a protest is required, **send it within the time limit specified in the letter you received.** Include in your protest:

1) Your name and address, and a daytime telephone number,
2) A statement that you want to appeal the IRS findings to the Appeals Office,
3) A copy of the letter showing the proposed changes and findings you don't agree with (or the date and symbols from the letter),
4) The tax periods or years involved,
5) A list of the changes that you don't agree with, and why you don't agree.
6) The facts supporting your position on any issue that you don't agree with,
7) The law or authority, if any, on which you are relying.
8) You must sign the written protest, stating that it is true, under the penalties of perjury as follows:

"Under the penalties of perjury, I declare that I examined the facts stated in this protest, including any accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete."

If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

1) That he or she submitted the protest and accompanying documents and
2) Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

We urge you to provide as much information as you can, as this will help us speed up your appeal. This will save you both time and money.

Small Case Request:

If the total amount for any tax period is not more than $25,000, you may make a small case request instead of filing a formal written protest. In computing the total amount, include a proposed increase or decrease in tax (including penalties), or claimed refund. For an offer in compromise, in calculating the total amount, include total unpaid tax, penalty and interest due. For a small case request, follow the instructions in our letter to you by: sending a letter requesting Appeals consideration, indicating the changes you don't agree with, and the reasons why you don't agree.

Representation

You may represent yourself at your appeals conference, or you may have an attorney, certified public accountant, or an individual enrolled to practice before the IRS represent you. Your representative must be qualified to practice before the IRS. If you want your representative to appear without you, you must provide a properly completed power of attorney to the IRS before the representative can receive or inspect confidential information. Form 2848, Power of Attorney and Declaration of Representative, or any other properly written power of attorney or authorization may be used for this

Exhibit 15

purpose. You can get copies of Form 2848 from an IRS office, or by calling 1-800-TAX-FORM (1-800-829-3676).

You may also bring another person(s) with you to support your position.

Appeals To The Courts

If you and Appeals don't agree on some or all of the issues after your Appeals conference, or if you skipped our appeals system, you may take your case to the United States Tax Court, the United States Court of Federal Claims, or your United States District Court, after satisfying certain procedural and jurisdictional requirements as described below under each court. (However, if you are a nonresident alien, you cannot take your case to a United States District Court.) These courts are independent judicial bodies and have no connection with the IRS.

Tax Court

If your disagreement with the IRS is over whether you owe additional income tax, estate tax, gift tax, certain excise taxes or penalties related to these proposed liabilities, you can go to the United States Tax Court. (Other types of tax controversies, such as those involving some employment tax issues or manufacturers' excise taxes, cannot be heard by the Tax Court.) You can do this after the IRS issues a formal letter, stating the amounts that the IRS believes you owe. This letter is called a notice of deficiency. You have 90 days from the date this notice is mailed to you to file a petition with the Tax Court (or 150 days if the notice is addressed to you outside the United States). The last date to file your petition will be entered on the notice of deficiency issued to you by the IRS. If you don't file the petition within the 90-day period (or 150 days, as the case may be), we will assess the proposed liability and send you a bill. You may also have the right to take your case to the Tax Court in some other situations, for example, following collection action by the IRS in certain cases. See Publication 1660.

If you discuss your case with the IRS during the 90-day period (150-day period), the discussion will not extend the period in which you may file a petition with the Tax Court.

The court will schedule your case for trial at a location convenient to you. You may represent yourself before the Tax Court, or you may be represented by anyone permitted to practice before that court.

Note: If you don't choose to go to the IRS Appeals Office before going to court, normally you will have an opportunity to attempt settlement with Appeals before your trial date.

If you dispute not more than $50,000 for any one tax year, there are simplified procedures. You can get information about these procedures and other matters from the Clerk of the Tax Court, 400 Second St. NW, Washington, DC 20217.

Frivolous Filing Penalty

Caution: If the Tax Court determines that your case is intended primarily to cause a delay, or that your position is frivolous or groundless, the Tax Court may award a penalty of up to $25,000 to the United States in its decision.

District Court and Court of Federal Claims

If your claim is for a refund of any type of tax, you may take your case to your United States District Court or to the United States Court of Federal Claims. Certain types of cases, such as those involving some employment tax issues or manufacturers' excise taxes, can be heard only by these courts.

Generally, your District Court and the Court of Federal Claims hear tax cases only after you have paid the tax and filed a claim for refund with the IRS. You can get information about procedures for filing suit in either court by contacting the Clerk of your District Court or the Clerk of the Court of Federal Claims.

If you file a formal refund claim with the IRS, and we haven't responded to you on your claim within 6 months from the date you filed it, you may file suit for a refund immediately in your District Court or the Court of Federal Claims. If we send you a letter that proposes disallowing or disallows your claim, you may request Appeals review of the disallowance. If you wish to file a refund suit, you must file your suit no later than 2 years *from the date of our notice of claim disallowance* letter.

Note: Appeals review of a disallowed claim doesn't extend the 2 year period for filing suit. However, it may be extended by mutual agreement.

Recovering Administrative and Litigation Costs

You may be able to recover your reasonable litigation and administrative costs if you are the prevailing party, and if you meet the other requirements. You must exhaust your administrative remedies within the IRS to receive reasonable litigation costs. You must not unreasonably delay the administrative or court proceedings.

Administrative costs include costs incurred on or after the date you receive the Appeals decision letter, the date of the first letter of proposed deficiency, or the date of the notice of deficiency, whichever is earliest.

Recoverable litigation or administrative costs may include:

- Attorney fees that generally do not exceed $125 per hour. This amount will be indexed for a cost of living adjustment.
- Reasonable amounts for court costs or any administrative fees or similar charges by the IRS.
- Reasonable expenses of expert witnesses.
- Reasonable costs of studies, analyses, tests, or engineering reports that are necessary to prepare your case.

You are the prevailing party if you meet all the following requirements:

- You substantially prevailed on the amount in controversy, or on the most significant tax issue or issues in question.
- You meet the net worth requirement. For individuals or estates, the net worth cannot exceed $2,000,000 on the date from which costs are recoverable. Charities and certain cooperatives must not have more than 500 employees on the date from which costs are recoverable. And taxpayers other than the two categories listed above must not have net worth exceeding $7,000,000 and cannot have more than 500 employees on the date from which costs are recoverable.

You are not the prevailing party if:

- The United States establishes that its position was substantially justified. If the IRS does not follow applicable published guidance, the United States is presumed to not be substantially justified. This presumption is rebuttable. Applicable published guidance means regulations, revenue rulings, revenue procedures, information releases, notices, announcements, and, if they are issued to you, private letter rulings, technical advice memoranda and determination letters. The court will also take into account whether the Government has won or lost in the courts of appeals for other circuits on substantially similar issues, in determining if the United States is substantially justified.

You are also the prevailing party if:

- The final judgment on your case is less than or equal to a "qualified offer" which the IRS rejected, and if you meet the net worth requirements referred to above.

A court will generally decide who is the prevailing party, but the IRS makes a final determination of liability at the administrative level. This means you may receive administrative costs from the IRS without going to court. You must file your claim for administrative costs no later than the 90th day after the final determination of tax, penalty or interest is mailed to you. The Appeals Office makes determinations for the IRS on administrative costs. A denial of administrative costs may be appealed to the Tax Court no later than the 90th day after the denial.