

# Why No One is Required to File Tax Returns...

...and what you  
can do about it

by Bill Conklin

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general information purposes only. If you wish specific legal advice  
on the issues covered in this book, please consult a competent  
attorney.

## PROLOGUE

Leave it to my dedicated friend Bill Conklin to finally figure out how to successfully challenge the hated income tax system. He has been working on it only slightly longer than I have, and for less time than some others, but he has unarguably identified its fatal weakness.

I've been looking for a way to do away with the tax and its feared enforcement agency since 1979. Initially, I felt somewhat alone; even the brave fellow Americans I had recently served with in Vietnam were reluctant to join me when I jumped into this particular battle. I studied and fought hard, on my own. Later, I shared what I had learned with a few brave souls and eventually conducted classes on the IRS Code. Since then I've corresponded with congressmen; debated with agents and tax accountants on radio and TV; and informed countless citizens as to their power as jurors to nullify bad laws (such as returning "not guilty" verdicts in income tax cases). I gave up a lucrative real estate career in my native Hawaii in order to devote more hours to studying sovereignty, common law, statutory law, codes and regulations; in short, to finding the Achilles heel of this monster that was created 83 years ago.

Along the way, I decided I could no longer participate in good conscience in what another author once described very succinctly as The Tax Scam. I stopped filing returns and stopped paying the income tax. Subsequently, of course, I had to then break myself of the banking habit in order to reduce my exposure to IRS seizure. For the same reason, I've had to (temporarily, I hoped) give up my job, my way of life and my American dreams of owning a home, new car and a yacht.

On the positive side, however, I've re-established a privacy in my financial dealings that one can never have with a bank account (since 1970, federal laws have required that your and my banking records be maintained essentially forever and made available to government snoops at any time). I've learned to deal in silver and gold coin and to barter directly, or with scrip.

Unable to seize or otherwise financially punish me for my position, the IRS launched a criminal investigation of me and in 1987 I was indicted for willful failure to file. A federal trial jury in Honolulu acquitted me of one of the three counts, but out of their very real fear of IRS retaliation, the poor jurors convicted me on the other two identical counts! This costly battle became costlier as I was forced to come to the mainland to file and argue an appeal in order to continue my defense. Happily, the guilty verdicts were overturned, and I was spared further expense and anguish when the prosecutor missed the re-trial deadline.

Had Bill come up with the answers in this book when I first started looking for an effective way to challenge and change the tax laws in 1979, neither I nor dozens of other intrepid Americans fighting for tax reform would have had to undergo our trials and tribulations. I would likely still be selling pieces of Hawaiian paradise, or maybe even retired by now and worrying only about how much time to take away from my scuba diving off Maui to go snow skiing in Colorado.

On the other hand, I really value all of the experiences, the friendships with the wonderful hard-working patriots I've met, and the education I've received in the workings of our government, our laws and our courts which I would have missed if I had failed to become involved and chosen to travel any other road.

And thanks to Bill, I can add to my list of experiences a better understanding of the rights given to each of us by our Creator, and an appreciation of our forefathers' concern for those rights when they provided the protections they did in the Constitution. From here on, anyone taking the small amount of time required to read and apply Bill's approach can safely join the ranks of those of us who have wrestled with the gargantuan tax bogeyman. Without having to give up their present lifestyle or take any of the risks that those of us have taken who have

gone before, anyone joining the cause today is guaranteed the enjoyment in the near future of looking back on their participation in a movement that produced the grassroots pressure necessary to restore every American's freedoms from the un-American income tax and the hated IRS.

Danny Hashimoto

#### FOREWORD

This book is about recovering the freedoms we lost as Americans when special interests stuck us with the federal income tax over eighty years ago. Incredibly, we've been saddled with this tax for so long that many of the current generation believe that it has always been a part of the American fabric--even that it was provided for by the nation's founders when they drafted the Constitution.

Far from it. Not only did America not have an income tax from the beginning, it was unneeded. The original taxing provisions of the constitution proved more than ample to fund the new government. In fact, there were several years prior to the implementation of the income tax when Congress' biggest concern was what to do about an embarrassing, growing surplus monster! Since the income tax was put into place, however, Congress has not had such embarrassment. Since that time, the deficit monster has reigned.

The legislation which led to our present federal income tax was requested of Congress by President Taft in 1909. A few years earlier, in 1895, the Supreme Court of the United States struck down an attempted income tax, ruling in the Pollock case that such a direct tax was unconstitutional.

Desirous of raising several additional millions of dollars, President Taft first acknowledged the Justices' decision and then immediately proposed that an amendment be made to the constitution. Once the amendment was in place, he opined, it would be constitutional to levy such a direct tax. He proposed levying the tax on the incomes of corporations and joint stock companies. He didn't say anything about levying the new tax on individuals, and in the ensuing debates the Congress reiterated that the new tax was not to be exacted from the wages of the laborer or even the professional man, only from corporations and joint stock companies. (See Appendix A for President Taft's address.)

How things changed! The income tax was levied on corporate incomes and still is, but now more income tax money is extracted from the aggregate middle class wage earners and self-employed than from the corporations. Although there is undeniable proof that the amendment to the constitution was never ratified, many new additions to the income tax laws and regulations have been passed every year, until they have become strangling. A few years ago, President Reagan called on his audience to assist him in making sweeping changes: "Our federal tax system is, in short, utterly impossible, utterly unjust and completely counterproductive. It has earned a rebellion. And it's time we rebelled."

The enforcement agency, the Internal Revenue Service, has, over the years, been given the power to probe, audit, summons, levy, lien, seize and sell, and even recommend criminal prosecution in order to collect. They have also become a feared government agency (shame on us self-governing, "free and brave" Americans for allowing our government to get to that point). However, the pendulum has now begun to swing hard against their abuses of power, and Americans are rebelling as President Reagan suggested they should. Individuals in increasing numbers are resisting the IRS by refusing to file or pay altogether. Many have paid the price for such rebellion by stiff fines and even jail sentences. Neither the author of this book nor I wish to see more stiff fines or imprisonment. But we can still rebel effectively, without such risk, and that is what this book is about. Properly utilizing the constitutional tool the author has identified, a few thousand of us can add significant

grassroots pressure to the legislative efforts of Congressmen Archer, Schaefer and Tauzin, and kill the income tax.

Now, in 1995, statesmen such as U.S. Representatives Bill Archer (R-TX), Dan Schaefer (R-CO) and Billy Tauzin (D-LA) are supporting a proposal which would abolish the income tax and the IRS. Their proposal would replace the income tax with a national sales tax. With our help, I am of the opinion that such a proposal could actually become popular in Congress and become law in the near future. On the 17th of January, 1996 Senate Majority Leader Dole (R-KS) and Speaker of the House Newt Gingrich (R-GA) voiced their personal support on national television (CNN) when they stated that the IRS must go.

We the People must help these Congressmen effect such changes by adding our muscle to their effort. Communicating with your Representative and Senator to win their support is a good place to start. Following the suggestions of the author of this book is another. Unlike those who have gone before and suggested that Americans simply stop paying the tax man, author Bill Conklin is suggesting a grassroots protest activity that is safe and sane, even fun. I believe that if a few thousand Americans were to follow his suggestions, not only would the IRS and the Department of Justice be unable to threaten anyone with criminal charges and prosecution in an effort to put down the rebellion, but the IRS themselves might wind up pleading with Congress to change the tax laws!

I look forward, as I'm sure you would, to the prospect of being able some day to boast to my grandchildren that I participated, along with several thousand other Americans, in challenges that ultimately eliminated the income tax and the IRS, and initiated the restoration of many related freedoms that Americans have lost over the years.

John Voss

Director,  
National Commodity and  
Barter Association  
January, 1996

#### DEDICATION

This book is dedicated to Dick Viti, one of the few brave attorneys in America. Dick took personal action after he became aware of the issues outlined in this book. Dick was singled out, prosecuted and convicted for having the temerity to stand up and tell the public the truth. His only failing was that he had, like others who had gone before, faith in the legal system. He felt that the system would see the truth once it was properly presented; he did not foresee that the legal system would ignore the Constitution and the many related rulings by the Supreme Court in order to protect the federal tax system.

#### Contents

#### Introduction:

##### The Problem With the Tax System

1. My story: How It All Began
2. The Fifth Amendment
3. The Tax Return and the Privacy Act Notice
4. What the Attorneys Say!
5. My \$50,000.00 Reward
6. My 10th Circuit Case
7. The Tenth Circuit Proves--  
    We Waive Our Rights When We File Returns
8. The Internal Revenue Code
9. The IRS and Criminal Prosecutions

10. The IRS: A Modern Gestapo
11. The Summons Power of the IRS
12. What You Can Personally Do About the Problem
13. What Will Uncle do?
14. Empower Yourself
15. Questions and Answers.
16. Conclusions

## INTRODUCTION

### The Problem With the Tax System

All individuals who file tax returns waive their Fifth Amendment protected rights.

The government cannot require individuals to waive their Fifth Amendment protected rights.

The income tax system of the United States has become absurd. It has become absurd because it has become complicated beyond belief. The system is so complicated that the average person must spend hundreds of dollars each year for professional help or on computer software in order to attempt to comply with the system. Individuals feel compelled to sign documents, under the penalty of perjury, that they do not understand. The IRS misleadingly refers to the tax system as "voluntary." They do so because they know that requiring individuals to provide information on 1040 returns--information which may be used to criminally prosecute the provider--would create a severe constitutional problem.

The IRS routinely prosecutes individuals who choose not to voluntarily file 1040 returns, in order to keep the pressure on the rest of the public to continue to volunteer. Criminal prosecutions, unsubstantiated and arbitrary Notices of Deficiency, garnishments, outrageous penalties and illegal searches and seizures, are all tools the IRS employs to force "voluntary" compliance with the present tax laws. The IRS is an agency out of control. It has little respect for the right to due process, or the many other rights of the citizens of this country which are protected by the Constitution. It is time for a change and this book will tell you, in plain and simple language, how you personally can become a catalyst for making change.

So, sit down in your favorite chair and give me about two hours of your time. I'll expose for you the most incredible scam ever perpetrated on the American public: the federal income tax system.

You will learn in this book that:

1. There is no statute that makes a person liable or responsible to pay the income tax. Individuals only become liable to pay the income tax when they voluntarily file a tax return, or when the IRS follows its assessment procedures as outlined in the Internal Revenue Code.

2. If there were a statute which clearly and unequivocally required the filing of tax returns, such a statute would be unconstitutional under the present income tax system to the extent that it would require individuals to give the government information which could be used against them criminally.

3. The IRS, under our U.S. Constitution, cannot legally require information on 1040 returns from individuals--that is why the IRS continually refers to the income tax as "voluntary."

My Story:  
How it All Began for Me

The year 1976 was the two hundredth anniversary of the signing of the Declaration of Independence. During that year, there was a lot of interest in the Constitution and its influence on modern society. One day in early June of 1976, I was walking to get a bit of exercise after a hard day spent as an elementary school teacher, when I noticed a sign on the front of an old building which read: "National Tax Strike." My generally strong curiosity led me to enter, and the subsequent meetings and conversations I had with the folks I met inside that building started me on the twenty year voyage that eventually led to the writing of this book. Inside the building, I met several gentlemen whose ideas at first seemed completely loony to me. However, they did get my attention with their views on the tax laws, and gave me enough incentive to begin my own research. After several months in a law library, I realized they had some valid concerns, and I too "went public" with my new-found knowledge. A local newspaper in the Denver area published an article quoting my comments about the tax system.

The IRS immediately sent me an audit notice and proceeded to do everything they could to shut me up and destroy me emotionally and financially. During the extensive litigation that followed over the years, however, I defeated the IRS six times! My wins in the federal Tenth Circuit Court of Appeals are published in the Federal Reporters found in the law libraries.

If you visit a law library, you may obtain photocopies of the published court decisions in the cases that I have won. There is no doubt that in over twenty years of litigation involving these cases, the IRS has spent hundreds of thousands, if not millions of dollars fighting me, a little guy! It is a shame that the IRS wasted so much money with their frivolous litigation--not just once, but six times!

If you were to raise similar challenges against the IRS, you could have published wins in the lawbooks, too. The challenges I've made are not difficult to make, nor do you have to have formal legal training to understand. However, the implications of repeated losses for the IRS are significant. If more of us forced such losses, the laws would have to be changed by Congress. The only reason the present tax system continues to exist is because not enough people take time to challenge it. In fact, they continue to voluntarily waive their rights (rights which the Fifth Amendment was designed to protect) every time they file 1040 returns; they do everything they can to avoid litigation with the IRS when the agency challenges them.

Here are just a few of the details of some of the challenges I've made to the IRS. In 1977, I set up a church to promote my religious beliefs, and take advantage of the tax laws relative to churches. (I also started exercising my First Amendment protected rights by telling others about my beliefs, and sharing with them the concepts for setting up their own church. The IRS became extremely upset with me because in establishing these churches I made sure that all of the rules set out in the law were strictly followed and thereby forced the IRS to let the small churches take advantage of the tax breaks which the law allows all churches.) When followed to the letter, the laws passed by Congress pertaining to all churches, large and small, allow literally billions of dollars of church assets and income to escape taxation--church organizations are exempted from the tax laws by the IRS. Of course, if there were true separation of church and state, churches would actually be immune from government regulation and taxation and thus wouldn't even have to ask the IRS for exemption, but I won't sidetrack on that issue here.

In an effort to discourage my activities, the IRS attacked my church and told me they would pull the exempt status of the Church if I didn't answer some additional questions to their satisfaction. We went to court over their efforts to force my answers. In my first case, Church of World Peace, Inc. v. IRS, 715 F.2d 492, the Tenth Circuit

ruled that the IRS couldn't pull the tax exempt status they had previously granted me, without following all the procedures to the letter, including first issuing me a summons.

Seeing that I was going to dig in my heels and not be quickly intimidated, the IRS backtracked a bit and issued a summons, as instructed. I filed a court action challenging the summons, but the district court ordered it enforced, so in order not to be held in contempt of court, I had to appear and answer some of the IRS' questions. I wasn't done, though. I appealed. In my appeal, *United States v. Church of World Peace*, 775 F.2d 265, the Tenth Circuit Court of Appeals essentially ruled in favor of my argument, and quashed the lower court's enforcement order! Even though I won this round, I wasn't refunded any court filing fees or granted any monetary relief for the costs I had incurred. However, in reading over the rules and the law, I noticed that since this was a summons issue, I could at least apply for a small witness fee, which I did. Their own code says they must pay it since I appeared in answer to the summons. However, the IRS refused to pay me (probably because they didn't get all the answers they had wanted), so I sued them again, this time in order to collect the meager witness fee! Again, the lower court seemed only too anxious to help the government--they sanctioned me \$1,000 for filing what they called a frivolous lawsuit. But again I stuck to my guns, and again I prevailed. In the case of *Conklin v. United States*, 812 F.2d 1318, the Tenth Circuit reversed the lower court. (Additionally, they chastised the Department of Justice for misrepresenting the facts in their responses to my lawsuit!)

Because the summons enforcement order had ultimately been quashed, I filed a motion to suppress the information that the IRS had obtained from my forced response. Since the information had already been obtained by the IRS, the court held that my motion issue was "moot." (See *U.S. vs. Church of World Peace*, 878 F.2d 1281.) However, some years later, the Church of Scientology took the exact same concern up to the U.S. Supreme Court. (See *Church of Scientology of California v. United States of America* 113 S.Ct, 447; 121 L.Ed.2d 313.) In the Scientology case, the Supreme Court reversed the earlier ruling that the Tenth Circuit had made in my case, and even pointed to my case as an example of "bad" law. They ruled that my issue had not been moot and that relief should have been granted. With this encouragement, I subsequently re-litigated my case and I won that case, too!

My battle was not over though. After defeating them on this initial church issue, the IRS decided to lay on me a statutory Notice of Deficiency for tens of thousands of dollars that I didn't owe. In this personal attack on me, their true colors and incipient tyrannical tendencies showed up. Without going into the details of this case, suffice it to say that the Tenth Circuit ultimately reversed everything the IRS argued. (See *Conklin v. C.I.R.*, 897 F.2d 1032 and *Tavery v. United States*, 897 F.2d 1027.) For those readers who may wish to check all this out in the law library, you'll note that the IRS finally settled the financial part of this battle in a case titled *Tavery v. United States*, Civ. No. 87-Z-180, USDC Colorado. I think they did so because they knew they would otherwise have to defend their outrageous actions to a jury, if the case were to have gone to trial.

Eventually, in 1995, the IRS got their way. The Tenth Circuit Court of Appeals upheld a Tax Court judge's opinion revoking the tax exempt status of the Church of World Peace--for doing the same things that other churches do. The Tenth Circuit ignored its previous rulings (where they had decided in my favor), and they ignored the decision by the Supremes in the Scientology case. Interestingly, they chose to mark the last Church of World Peace case, "not for publication."

Although I finally lost the battle, I feel that I won the war, because I learned so much about the IRS and the courts in the process. I have learned that knowledge of the law is only one small part of the issue. The "big picture" issue is realizing and understanding how the courts and the government bend the law if it is in their best

interest, that is, if they feel it necessary in order to defeat a perceived threat to the sacrosanct tax system. I'm not saying such things because I'm a poor loser, but because that's just the reality of it. I certainly have no regrets about the final outcome, because I have gained invaluable insights into the methods and madness of the courts and the government in general. I have learned how to litigate and obtain justice in spite of that terrible reality.

My next-to-last case to date argued before the Tenth Circuit was *Tavery v. United States*, 32 F.3d 1423 (10th Cir., 1994). Although the IRS thinks they won this case, they don't really understand the implications of the Tenth Circuit decision. The Tenth Circuit ruled that information may be entered from tax returns into criminal cases involving third parties if the individual who filed the return is either a friend, spouse or relative of the defendant. That means that if the IRS is prosecuting a friend of yours they can, according to the Tenth Circuit, use information in that friend's case which came from your personal finances, if they think that you might have been able to provide financial help for the friend. If the courts take the position that information from your return may be inserted into third party cases, it becomes clear that every time you file a return, you waive not only your rights to privacy (protected by the Fourth Amendment) but also your rights to not witness against yourself (protected by the Fifth Amendment). If that doesn't bother you, you may as well put this book down now; I'm wasting your time. The IRS insists that you waive many of your rights when they insist that you file a tax return; they deceitfully tell you that you are voluntarily filing because they and the courts both know that the government simply cannot require you to waive any rights protected by the Constitution. They're worse than sneaky; they know that as long as you voluntarily provide information, you haven't a legal leg to object on if they later decide to use the volunteered information against you.

As I learned more and more about my rights, the constitutional protections of my rights, and the intricacies of IRS procedures and the federal court system, I eventually realized that I was on to something big. I saw the IRS' use of return information in criminal cases directly colliding with the Fifth Amendment. I realized that the Achilles heel of the federal income tax code was in the Bill of Rights to the United States Constitution, specifically the Fifth Amendment.

Much additional case studying and research in the law library convinced me that the Fifth Amendment was the reason I had never been able to find a specific statute requiring me to file an income tax return! I began publishing an offer for a reward of \$50,000.00 to anyone who could satisfactorily answer the following questions:

1. How may I file a tax return without waiving my Fifth Amendment protected rights?

2. What statute in the Internal Revenue Code makes me liable to pay the income tax?

I've published my reward offer for several years now, and although several famous attorneys have applied for it, none of their answers have really qualified them for it.

In 1986 I decided to file an unsigned tax return. I submitted the unsigned return with a cover letter pointing out that I had discussed with several attorneys my perceptions of the Fifth Amendment conflict with the requirement of filing returns, and none of them had been able to show me how I could file a return without waiving my rights. I enclosed photocopies of their written opinions to that effect. I gave the IRS the power of attorney to sign the return for me if they could do so without waiving the Fifth Amendment protections of my rights.

The IRS fined me \$500 for my concern! They told me that without a signature I was filing a frivolous tax return and was thus



subject to their \$500 penalty for filing a frivolous return. Far from giving up my habits of challenging their rulings, I filed a suit to argue the issue. During five years of wrestling with the issue, Judge Nottingham, a federal judge in Denver, Colorado told me that if he were to rule in my favor, he was afraid that he would overturn the federal tax system. Finally he ruled against me, but he took the position that the Fifth Amendment does not apply to the federal tax system because the Fifth Amendment only applies to "compelled testimony." I appealed the case and the Court of Appeals (the Tenth Circuit again, in Denver) upheld Judge Nottingham's contention that tax returns are not the compelled testimony spoken of in the Fifth Amendment, and that therefore the Fifth Amendment does not apply to the income tax system. (See more on this case in Chapter Six.)

This was an incredible ruling. In other words, the court ruled that filing tax returns is not required, or compelled. Said yet another way, the courts had just ruled that filing returns was truly voluntary! Perhaps the government realized that significance of the ruling, too, because they lost no time in trying to put a damper on my celebration of what the ruling truly signified; they immediately asked the court to order me to pay them \$6,000 for the valuable time it had taken their attorneys to prepare arguments and motions to defend against my "frivolous" contention. Permit me to also state this another way: the government wanted the court to fine me for taking the position that the filing of income tax returns was compelled or required!

Are you confused yet?! I hope not, in fact, I hope you feel the same elation I felt about the outcome. I thought it was great! As the judge had mused out loud earlier during one of our hearings, either way he ruled, I win! For example, if he were to have ruled that the \$500 fine be abated, he would have had to decide that the unsigned return and my concerns were not frivolous. But he couldn't do that, because then other folks might start submitting unsigned returns. That would pull the IRS' teeth--they could no longer fine folks for submitting a "frivolous" return, but more importantly, how then could the IRS use anyone's return information against them criminally if they hadn't signed it "...under the pains and penalties of perjury"?

On the other hand, his upholding the \$500 fine would mean that he was ruling against the written, professional opinions of six attorneys whom I was relying on, and would underscore the uncomfortable fact that their opinions brought into sharp focus; namely, that the IRS could use the club of a fine to force me to sign and submit a return, forcing me to waive my God-given rights not to be a witness against myself.

Either the Fifth Amendment applies because filing returns is compelled, or the Fifth Amendment does not apply because filing returns is voluntary. Of course, if the Fifth Amendment applies, then my argument is far from frivolous, and if the Fifth Amendment doesn't apply, I have proven my point that filing is not required. In any event, the only way that justice can prevail, in the face of a judicial system that will declare words to mean their opposites in true Orwellian fashion (or Alice in Wonderland, whichever prose you prefer), is for the American public as a whole to become aware of the terrible deceit that has been perpetrated on them regarding the federal income tax, and to make their own challenges. The IRS, in an obvious attempt to deal with the problem, continually refers to the income tax system as voluntary. This book will tell you that I believe the IRS is right; as long as we have the Fifth Amendment to protect our rights, filing returns must indeed be voluntary. And I believe we can shove such words right back down their throats until they, too, go with us to the Congress and demand that the law be changed!

## Article V: United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on the presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation. (emphasis added)

As our proposed Constitution was being discussed prior to adoption, many people expressed concern that it gave too much power to a central government. To calm such concerns, eventually a Bill of Rights was proposed and adopted which listed several prohibitions to the new government--certain individual rights which the government was to understand from the beginning that they could not infringe upon. The Fifth Amendment is part of the Bill of Rights and it holds that individuals cannot be required to give the government information which may be used against them in criminal cases. Subsequent case law has applied the Fifth Amendment in civil cases, too, when there is the possibility that the information in question may be used criminally. (Of course, there is always the possibility that information may be used for criminal prosecution in a system like our present tax system--where civil enforcement is used by an agency to gather information that the very same agency may utilize for criminal prosecution.)

When police question an individual for information that may be used against that individual in a criminal case, they are supposed to first read him a "Miranda" warning to advise him of many of his rights (from *Miranda vs. Arizona*, 384 U.S. 436; 1966). After such warning, every time that individual does answer a question, he is voluntarily waiving the Fifth Amendment protection of his rights; he cannot later object when the answers he volunteered are used in his criminal prosecution.

If an individual is indicted and taken to trial by the government, he cannot be required to testify against himself. The government must have enough information before the indictment to convict the individual without his own testimony. The Fifth Amendment protections we all enjoy are thus extremely important to protect us against government prosecution and persecution, but as you will see from the rest of the information in this book, the government cynically ignores the Fifth Amendment in the collection of income taxes. Since the population is generally ignorant as to the nature of their rights and their constitutional protections, the federal government continues to get away with the biggest scam in United States history; they've done so for over eighty years. The government of the United States of America, through its agency the Internal Revenue Service, supported by a court system that deliberately ignores the law in tax cases, is cynically requiring individuals to waive their Fifth Amendment protected rights to provide information on April 15, that may be used against the individual criminally. Such a situation makes a complete mockery of the Fifth Amendment. Through the IRS and the Department of Justice the government, by carefully orchestrated trials and outrageous fines and criminal penalties, instills fear and thus perpetuates a tax system which is not only un-American in that it taxes an individual's industriousness and productivity, but un-constitutional in that Americans must waive their constitutionally protected rights in order to comply with it. In this manner, they essentially beat confessions out of 100 million Americans each year, and make a mockery of our Bill of Rights. It is time for us to wake up, assert our God-given rights again, and reveal the truth to others.

The Tax Return and the  
Privacy Act Notice

All government agencies are required to tell the public the law and the penalties for not obeying the law under the Privacy Act. The following statement is the IRS' Privacy Act Notice as it appears in the 1040 Instruction Booklet.

The law says that when we ask you for information we must tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive the information and whether your response is voluntary, needed for a benefit, or mandatory under the law.

This notice applies to all papers you file with us, including this tax return. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect the tax, interest, or penalties. Internal Revenue Code Sections 6001, 6011, and 6012(a) say that you must file a return for any tax for which you are liable. Your response is mandatory under these sections. Code section 6109 says that you must show your social security number on what you file, so we know who you are and can process your return and other papers. You must fill in all parts of the tax form that apply to you. However, you do not have to check the boxes for the Presidential Election Campaign.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to cities, states, the District of Columbia, U. S. Commonwealths or possessions, and certain foreign governments to carry out their tax laws.

If you do not file a return, do not give the information asked for, or give false information, you may be charged penalties and you may be subject to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make the tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. It may help you if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office. (emphasis added)

Most people in the United States of America have heard of the 1040 Income Tax Form and the rest of the forms in the 1040 family. Each year, approximately 100 million people rush to the post office (many at the last minute!) to give the government complete information on their financial lives. Amazingly, thousands, perhaps even millions of these individuals file their returns without any real understanding of the form or the information placed on it. Their lack of understanding is why they use CPAs and computer programs to prepare the documents for them. But think on this: they then sign the forms they don't understand, oftentimes prepared entirely by others, and swear to their accuracy "...under the pains and penalties of perjury!"

I have to hand it to the IRS for their fantastic conditioning of millions. Millions of individuals blindly and unthinkingly commit the federal crime of perjury each year because they file income tax returns that they do not understand and that they thus could not explain or defend. (Perjury is a serious felony punishable by a fine of up to \$2,000 and a jail term of up to five years, or both--see Title 18, United States Code, Section 1621.)

The IRS is very aware of the fact that they have a legal right to use any information given to them on a 1040 Form. They are also aware that the Privacy Act requires all government agencies to inform the public about the law and to tell the public what they might do with the information requested, as well as advise them of the consequences for disobeying the law. That is why the IRS warns us that information on tax returns may be given to the Department of Justice.

The IRS goes to great lengths in their Privacy Act Notice to create a confusing situation. After all, they want you to think that you are required to file a return and at the same time warn you that you are giving them information that they can use in a criminal case (yours!). The Privacy Act Notice also states that individuals are required to file a return "...for any tax for which you are liable." You are referred to IRS Code Sections 6001, 6002 and 6012. Get a copy of the IRS Code in the law library and read those sections. Do you see where they make you liable to file a return? These sections don't make you liable, they simply state that if you are liable, then you must file. Discuss these sections with your attorney. They will have to conclude that in and of themselves, the language of these sections do not make you liable to pay an income tax. (The lawmakers didn't simply mis-speak here. Contrast these sections with Section 5005, for example. This section very clearly specifies that if you distill or import distilled spirits, such action makes you liable for the tax.) Your attorney will likely further conclude that you are not liable for the tax unless and until you voluntarily file a return. Such action is what assesses or bills you; by signing the bill, you are making a promise to pay. Again, there is no section in the Internal Revenue Code that generally makes individuals liable to pay an income tax.

Read their lips (and their written words); the IRS insists it's voluntary!

If you will look through their literature, you will see that the IRS continually refers to the income tax as a "voluntary tax." They also say that millions of individuals voluntarily file returns. Several years ago, I searched through the entire Internal Revenue Manual and I found numerous instances of the IRS' use of the word "voluntary" in relation to the filing of income tax returns.

Here are some examples:

Chapter 6200 at 6210 states that... "It is the goal of the Internal Revenue Service to encourage and achieve the highest possible degree of voluntary compliance with the tax laws..."

Chapter 100 at 110 states that... "The primary mission of the Taxpayer Service is to promote voluntary compliance through education and assistance to taxpayers."

In Part VI, under Section 6810-Taxpayer Service, it is stated at (13) 31(1)(f) that... "returns are voluntarily submitted by taxpayers."

In Operating Techniques and Reporting Section 6810 at (13) 91(1)(a), the Manual states: "securing a valid voluntary income tax return from the taxpayer..."

In the Section on IRS Policy Statements at P-4-84, the Manual states: "The purpose of criminal tax investigations is to enforce the tax laws and to encourage voluntary compliance."

In the General Section, at 4022.65(3) it is said that... "When a person indicates he/she will voluntarily comply but requests that he/she be served..."

In the Automated Collection Function Procedures at 5535.4, the Manual states that the IRS may file returns under 6020(b) if the returns are... "not filed voluntarily.")

Furthermore, Webster's Dictionary defines the word voluntary to mean the following:

Voluntary: brought about by one's own free choice; given or done of one's own free will; freely chosen or undertaken; arising in the mind without external constraint; spontaneous; in law, (a) action done without compulsion or persuasion.

The IRS' Privacy Act Notice doesn't mention that the only purpose of the Department of Justice is to investigate and prosecute crimes. If it did, more folks might pause and ask why the IRS would be alerting them to the possible sharing of their individual return information with that prosecutorial agency. I think this is deceitful: the IRS doesn't really want you to know that you are providing information that they can use against you. However, they know that they must have something in print to point to in the event you later try to claim you were never told that you were waiving the Fifth Amendment protections of your rights by "volunteering" the information. Note that the Fifth Amendment states that you cannot be compelled to witness against yourself; and note further that its protections don't apply if you can be tricked into voluntarily witnessing against yourself. Doesn't this make you just a teensy bit mad?

At the risk of belaboring this point, the IRS would not be required to give the warning that information may be given to the Department of Justice unless they were allowed to use information on tax returns in criminal cases. So when we read the Privacy Act Notice, we should know beyond a doubt that filing returns is indeed "voluntary" because the IRS is warning us that they can give the information to the Department of Justice. To say it one more time: when you send in a tax return, you have been forewarned how the information may be used. Since, in spite of that warning, you have voluntarily given the information on the return to the government, you cannot later object if they decide to use it against you in a criminal prosecution.

Each year the IRS indicts several hundred individuals who have not filed tax returns, in order to keep a degree of fear alive in the general public and keep them volunteering. Although the IRS refers to the filing of returns as voluntary, they have both criminal and civil penalties for those individuals who do not volunteer. That is why any challenge or stand you make for the truth and the Bill of Rights is serious business, and why you must know what you are doing. You are dealing with a corrupt government agency and a major judicial conspiracy to protect the income tax. The actions of both the IRS and the courts have the blessing of our elected representatives. That is why this situation can only be changed by the people themselves.

4

What Do the Attorneys Say?

Guy Curtis, an attorney who practices law in Imperial, Nebraska and who has extensively studied the issues discussed in this book, has the following to say about the federal tax system and its filing "requirements". Mr. Curtis put his legal opinion in writing in 1985:

Dear \_\_\_\_\_:

In response to your letter requesting my legal opinion as an attorney regarding the voluntary nature of filing an income tax return, I am generally in agreement with Mr. Rendelman's excellent analysis of the income tax laws. Regarding my own qualifications and experience, I

have served as an elected prosecuting attorney for over twenty years. In addition, I have handled a number of criminal tax trials in federal courts as defense attorney.

The average individual is utterly intimidated by the voluminous 6000 plus pages of the Internal Revenue Code. It is so vague, confusing and impossible to understand that even Commissioner Roscoe Egger, Jr., I.R.S., told an audience on November 30, 1984, in Baltimore that: Any tax practitioner, any tax administrator, any taxpayer who has worked with the Internal Revenue Code knows that it is probably the biggest "mishmash" of statutes imaginable. Congress, various Administrations and all the special interest groups have tinkered with it over the years, and now a huge assortment of special interest and pet economic theories have been woven into the great hodgepodge that is today's Internal Revenue Code. IR-84-123, 11-30-84.

Even President Reagan has attested to the fact that the Code is impossible to understand (for the average citizen). The President said in a 1984 Associated Press (AP) Release: The government has the nerve to tell the people of the country, 'you figure out how much you owe us - and we can't help you because our people don't understand it either - and if you make a mistake, we'll make you pay a penalty for making the mistake.'

The Supreme Court, in *Garner vs. U.S.*, 424 U.S. 648 (1975), held that the information in a return is, for Fifth Amendment analysis, the testimony of a witness. Therefore, since no citizen can be compelled to be a "witness" against himself, any statute that attempted to require a citizen to file a return which could be so used would be unconstitutional.

I must tell you that the Internal Revenue Service and the Federal Courts have taken positions that are in conflict with the opinion in this letter. However, in IRS publication #17, the IRS says that where there is a conflict in the Court decisions, the IRS will favor the position of the government, not the taxpayer, even though this policy is a blatant violation of the well established legal principle that in case of any ambiguity of statutory construction, the doubt should be resolved in favor of the taxpayer, not the government. See *Greyhound Corp. vs. U.S.*, 495 F.2d 863 (1974).

I cannot tell you not to file an income tax return. As the IRS itself stated in their Publication 21, you must make this decision.

However, the critical point as to whether your decision not to file would be "criminal," that is, in violation of section 7203 depends on your "intent." Merely proving that you filed to file a return is not enough. The government must also prove beyond a reasonable doubt that your failure to file was "willful." Failing to file a tax return is not a crime. As stated by Mr. Rendelman, if you reasonably believe in good faith that you are not required under the law to file a return, then your action cannot be considered to be "willful" or in "bad faith," even if you're wrong. By virtue of the fact that you have sought, accepted and relied upon a professional opinion, your actions ought to be construed as "reasonable" and "in good faith," not "willful" or in "bad faith."

In the Bishop case referred to in Mr. Rendelman's letter, the United States Supreme Court said that any person who relies upon a prior decision of that Court cannot be "willful". Consequently, any person relying upon the decision of *Flora vs. U.S.* which stated that our tax system is voluntary, cannot be considered to be acting with "willful" or "evil" intent as formulated in the Bishop case. The Supreme Court in the Bishop case said, "it is not the purpose of the law to penalize frank differences of opinion." If the government were to

prosecute you without evidence of willfulness, it would be the same thing as prosecuting you for murder without having a witness, or even a body.

A citizen is entitled to rely on an official interpretation of the law even if mistaken. See U.S. vs. Barker, 546 F.2d 940 (1976), District of Columbia. In this case, the Federal Court of Appeals cites the Model Penal Code which states the defense as follows:

"A belief that conduct does not legally constitute an offense is a defense to a prosecution...when (b) he acts in reasonable reliance upon...a judicial decision,... or... an official interpretation of the public officer charged by law for the administration or enforcement of the law." Sec. 204 (3)(b).

Again, the individual has no patriotic duty to volunteer any more than what the law requires. The Supreme Court in Gregory vs. Helvering, 293 U.S. 465 said it in plain words:

"The legal right of the taxpayer to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits, cannot be doubted."

I applaud your research and study of the law, and urge you to continue. If you have any questions, please don't hesitate to call me.

Yours very truly,

Guy Curtis.

5

My \$50,000.00 Reward

I studied the Fifth Amendment issue for years before I felt positive that the government has a severe conflict with it and their alleged filing requirement. I am completely convinced that the government is abusing the Fifth Amendment severely every time it indicts an individual or civilly penalizes an individual for not filing a return. It saddens me to think that our government resorts to skullduggery to get away with such abuse, but unfortunately it is true. Once I understood the problem, I tried to think up a way that I could call attention to the situation and at the same time, convince people that I am right. I decided at that point to offer a \$50,000 reward to anyone who could show me:

1. How I could file a tax return without waiving my rights protected by the Fifth Amendment, and
2. The statute in the Internal Revenue Code which made me liable to pay an income tax.

Soon after I started advertising my reward, the famous "palimony" attorney Melvin Belli applied for the reward. He even threatened to sue me if I did not send him the \$50,000 immediately. Mr. Belli said that the way I could file a tax return without waiving my rights would be to do it through an attorney such as himself. He suggested that I give to the attorney my power of attorney to file returns for me, and also that I give him the money for my taxes, which would be placed in the attorney's trust account. The attorney would then file the return and pay the IRS out of his trust fund. The attorney would, however, file the return with a code number on it known only to

me and to him. He would not put my name and address on the tax return, but simply sign the return as the preparer, using my power of attorney.

Obviously, the IRS would then have to come to the attorney to ask him the name of the individual who was represented by the return. The attorney would stand on attorney-client privilege and refuse to identify me, thereby preserving my Fifth Amendment protected rights!

Well, even though it seemed like quite a bit of trouble if I were to file in this manner in order to still preserve my rights, I was pleased with Mr. Belli's answer to my question because he was so creative. I informed him that he had basically proven my point: there is definitely a Fifth Amendment problem if filing tax returns is required.

I informed Mr. Belli that he did not win the reward, however, because if the IRS tried to prosecute me criminally for "willful failure to file returns" (Section 7203 of the IR Code), or if the IRS proceeded civilly against me, in my defense I would ultimately have to put the attorney on the courtroom stand as my witness and have him testify that he had filed a return for me. Of course, if I had to have him so testify in order to defend myself, the IRS would be forcing me to waive my rights supposedly protected by the Fifth Amendment in order for the IRS to consider my return as filed. I encouraged Mr. Belli to sue me for the money in order to publicize my point, but he chose not to.

Another excellent criminal trial attorney from California, Mr. William Cohan, next applied for the reward. He explained that he felt one could file a return without waiving his Fifth Amendment protected rights by filing two returns. The first return would contain financial information only--no identifying information. The second return would contain the name and other identifying information, but indicate Fifth Amendment objections on each and every specific question concerning income and deductions. I agreed with Mr. Cohen that this approach would not require me to waive my Fifth Amendment protected rights when I mailed the returns, but if the IRS proceeded against me, I would have to testify in my defense that I had mailed returns containing, in toto, all the information required, and I would have to identify them and at that point I would be waiving my rights.

After six years, I am still offering the reward. One individual, a Mr. Charles Ostman, sued me in Federal Court in Seattle, Washington with an absurd theory of law, but the judge decided the case in my favor and even granted me my costs. See *Ostman vs. Conklin*, Civ. #C92-1371C; USDC Seattle, 1992. (The judge also referenced contract law in order to set aside Mr. Ostman's objection to me being the proper arbiter of the reward I offered.)

The point is that no one can answer my two questions: it is simply impossible for me or anyone else to file a tax return without waiving Fifth Amendment protected rights; and there simply is no statute or provision in the Internal Revenue Code that makes an individual liable to pay the income tax.

The second part of my reward involves showing me which statute makes me liable to pay an income tax. There are only two ways that an individual may be made liable and therefore legally owe an income tax. First, an individual may become liable by voluntarily filing a tax return; or an individual may become liable if the IRS files a return for him. However, law requires the IRS to follow definite and involved procedures if they decide to file a return for an individual who has not filed; if a knowledgeable person decides he wants to fight such action by the IRS, he can force the agency to expend a lot of time and energy following through with their assessment.

6

My Tenth Circuit Case

Beginning in 1985, it took me over seven years of thinking about the Fifth Amendment as it relates to the income tax to become absolutely convinced that the government has no legal way around the



Fifth Amendment conflict with their alleged requirement to file 1040 tax returns. If Americans were more concerned about waiving their Fifth Amendment protected rights, the IRS would no longer be able to routinely use information on tax returns in criminal tax cases; nor would they be able to proceed civilly against individuals and later turn the case into one of criminal prosecution once they obtained enough information civilly to determine that the case might have criminal potential. As we have seen, law requires the IRS to warn the public that the agency may use the information criminally whenever they wish to, but most of us overlook this warning--strangely, the compliant individual is at much more risk in our convoluted system than the individual who stands on the constitutional protections of his rights. The only reason that the present hated tax system continues to work is because individuals continue to voluntarily waive their rights and file tax returns.

During my research, I discovered that the court system and the IRS are schizophrenic in their interpretation of this Fifth Amendment problem. I became bound and determined to figure out a way to raise the Fifth Amendment issue and to put the court in a position where it would have to come up with a decision that would make my point.

Years ago, when I started to criticize the IRS publicly, the IRS classified me as an illegal tax protester. I sued the IRS under the Privacy Act to get the classification removed. I lost in the Tenth Circuit Court of Appeals, but one judge did rule in my favor with an eloquent opinion that really put the IRS in its place. Nonetheless I was, by a vote of 2 to 1 of the Appeals Court panel, branded an illegal tax protester for the rest of my life. This was primarily because I had dared to criticize an agency that deserves criticizing.

Judge McKay dissented in my case, Conklin vs. IRS (an unpublished case, circa 1982) with his opinion from U.S. vs. Amon, 669 F.2d 1351 (1981) which follows:

McKAY, Circuit judge, (dissenting):

"...It makes clear that IRS activities with regard to tax protesters extend well beyond the manifestly permissible policy of using admissions of a crime against the criminal, to the suspect policy of punishing political protesters--or in other words, of punishing citizens for exercising a right which is front and center to the First Amendment. Indeed, if the objective of the IRS were only to prosecute the more serious or frequent violators of the tax laws, the word 'protester' would be irrelevant. As the trial court found, the object of the selectivity is to shut up the 'outspoken.'

"The test for determining whether a prosecution is unconstitutionally selective is two-pronged. To support a selective prosecution claim a defendant bears a heavy burden of establishing, at least prima facie (1) that he has been singled out for prosecution, and (2) that the selectivity for prosecution was invidious or in bad faith, and that it was based on such impermissible considerations as race, religion, or the desire to prevent or inhibit the exercise of such constitutional rights as free speech...

"...Here, the IRS declared (and the court believed) that it intended to select and silence outspoken 'tax protesters.' Thus, both the fact of selectivity and its motivation to silence the outspoken are proved by direct evidence. I find it impossible to believe that the majority really means what it is saying. Surely it does not mean that even though the government declares its intent to select persons for prosecution in order to silence them, the ensuing prosecution does not violate constitutionally protected interests.

"It is beyond cavil that this conviction would fall if the trial court had found this defendant to have been selected for prosecution because he is black. Nor would there be any doubt if the trial court had found this defendant had been selected for prosecution by the IRS

because he is on the President's political enemies list. Similarly, there can be no doubt that this conviction would fall if the trial court had found this defendant had been selected for prosecution because he protested in writing that:

"There is nothing sinister in so arranging ones affairs to keep taxes as low as possible. Everybody does so, rich or poor, and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exaction's, not voluntary contributions. To demand more in the name of morals is mere cant. Commissioner vs. Newman, 159 F.2d 848 (1947), Judge Learned Hand, dissenting.

"Whatever else the trial court may have found, its express language compels the conclusion that it found that this defendant had been selected for prosecution because he was an 'outspoken protester.' To hold that such selectivity is permissible would make the examples of selectivity I have just set out equally permissible. For First Amendment purpose, nothing distinguishes an 'outspoken protester' against existing tax laws from one who protests as Judge Hand and Justice Frankfurter have protested.

"By definition, each and every instance of selective prosecution which reaches us on appeal involves a person who has allegedly violated some law. Nevertheless, the usual carte blanche of the prosecutor in seeking the convictions of these persons is subject to the requirement that the decision to prosecute not be motivated by factors by which the government cannot constitutionally distinguish one violator from all others. If administratively, the government has not the resources to prosecute every violator, if the government therefore must pick and choose from among all violators, it may not do so based on its desire to shut the taxpayer up. However reprehensible may be citizens who object to paying the taxes which make possible an acceptable degree of civilization, the First Amendment protects the right to make those objections. If not, then the constitutional guarantee for Free Speech is illusory. The right to protest against government policies lies at the core of First Amendment values....

"Where, as here, the government seeks to silence a citizen precisely because it detests or fears the citizen's spreading of ideas relating to effective self-government, the Constitution forbids the government action unless the annunciation of those ideas amounts to such clear and present danger to the security of the Republic that it falls outside the ambit of otherwise protected political speech.

"While one could argue that the history of the American Revolution supports a finding that tax protests present a clear and present danger to the Republic, there is no argument before us that they do; no court has so held; and it is doubtful that any court is prepared so to hold. Of course there is a danger that illegal tax practices will become more widespread if the government fails to strike swiftly and decisively in gagging or at least intimidating the most outspoken tax protesters. However, in a day in which even a computerized search is incapable of tabulating the fractions of a citizen's conduct which the government agents now have discretion to charge serially or cumulatively as alleged violations of the law, the necessity of subjecting that discretion to constitutional scrutiny is manifest and certain.

"It seems a puny enough effort to suggest that the limit on the dangers of unconstitutional discrimination be drawn at least where the hapless citizen can carry his heavy burden to show that he was singled out because (to use the trial court's express language) 'he is an active and outspoken protester.'

"It is hard to imagine a kind of political protest more consistent with the most cherished traditions of this nation than protest focusing

on taxation. Certainly no form of protest is more American. (Furthermore, tax protest is neither modern nor American in its origin. Many people venerate one who commented on the publicans who collected the taxes in his time.) It was, after all, protest against the Stamp Act which helped set in motion that chain of events which won for this nation its independence from a repressive King George and led to the enshrining in the First Amendment of the right to protest.

"Since the trial court seemed justifiably confused as to the proper application of the first prong of the test, this case should be remanded to give the trial court an opportunity to reconsider the matter in light of this clarification of the various means by which selectivity may be proved. The possibility that the confusion may have affected the finding that selectivity was motivated by a desire to suppress outspokenness suggests that the trial court not be bound by that finding on remand but rather be permitted to reconsider whether both selectivity and illegal purpose were proved in this case. I would therefore reverse and remand for reconsideration by the trial court."

As you can see from Judge McKay's dissenting opinion, apparently neither the IRS, nor at least the other two Tenth Circuit judges on the panel with Judge McKay for this case, have much respect for the First Amendment and its freedom of speech guarantee when the federal income tax is involved. It is a shame there are not more judges like Judge McKay.

During my research I discovered that the IRS' classification of anyone as an illegal tax protester is a project of their Criminal Investigation Division (CID), so I came up with a new idea. I believed it was a new idea, because I couldn't find any evidence in my research that anyone else had ever tried it. Here it is:

In 1986, I went to several attorneys and other tax professionals and explained my concerns of wishing to comply with the filing law if I must, but not wanting to waive my rights in order to do it. All of the professionals I talked with agreed that I had a definite dilemma: since the IRS by officially classifying me as a tax protester had essentially notified me that I was under scrutiny by the CID, I obviously had reason to be concerned about witnessing against myself with anything I said or submitted, so there was no way I could file a return without waiving my Fifth Amendment protections. They put their opinions in writing, on their letterheads.

In order to comply with the alleged filing requirement, and at the same time prevent the IRS from using criminally any of the information that I might voluntarily give to them, I filed an unsigned return. I also enclosed photocopies of the letters from the attorneys I had contacted, and said in my cover letter that I was relying on their professional evaluations. I attached an IRS Power of Attorney Form #2848 on which I gave power of attorney to the IRS District Counsel to sign the returns for me, if he could figure out how to do so without waiving my Fifth Amendment protected rights. The attorneys in private practice couldn't figure out how I could do it; maybe the attorneys working with the agency could! The IRS accepted and processed my return and never said a word about the manner in which I had mailed it to them.

In the Spring of 1988, I filed a return for the tax year 1987 in the same manner as I had done the previous year, for 1986. However, this time the IRS fined me \$500.00 for filing a frivolous return. (Apparently some sharp-eyed return processor or agent figured my action was an excuse for the agency to collect another 500 bucks from me and perhaps put me in my place for doing what I did.) I didn't think they had any real basis for the fine, because they hadn't objected the first time I did it, and in the meantime I had come across several cases where it had been held that a return was not really a return unless and until it had been signed. So I had concluded that I was on relatively solid ground; if my unsigned return was not even to be officially considered as a return, how could they assess a frivolous return penalty? However, after I was hit with the frivolous return penalty, I

could only conclude that once again the IRS was making law: an unsigned return was not a return when they didn't want it to be, and it was a return when they wanted it to be--like when they wanted to assess a fine!

I paid the percentage of the fine required by statute to have standing to sue them (15%), and filed suit in federal court. Judge Nottingham, a federal district court judge in Denver, Colorado finally informed me (after putting off his decision while he wrestled with my issue for a couple of years) that he had a real problem ruling on my lawsuit. The problem, he said, was that if he ruled in my favor, allowing me to file without signing, he might overturn the federal tax system. He also realized that if he ruled against me, he would be ruling against all of the attorneys whose opinions stated that I would be forced to waive my Fifth Amendment protected rights--he didn't want me to go on to the Supreme Court which has ruled time and again that no one may be forced to waive constitutional protections in order to comply with a law.

Judge Nottingham stated in a hearing on August 27, 1992, in federal district court in Denver, (Case No. 89 N 1514):

"And one of the fatal things that I--or things that you are overlooking--I won't say it is fatal, although it appears to me it may be fatal--is when you don't sign a return, the reason that the tax collection system is frustrated is because you're not signing under the penalty of perjury. I mean, if everybody could do what you did, the tax collection system would collapse, which you know I'm sure some people would argue is not a bad result. But it's not one that I'm in a position to bring about."

Notice that the judge basically told me that I couldn't possibly win because it would overturn the federal tax system. Of course, that was the point of my lawsuit to begin with!

After thinking about the case for five years(!), he decided to rule against me. He took the position that the Fifth Amendment does not apply to tax returns because the Fifth Amendment applies only to "compelled testimony." In other words, the Fifth Amendment only applies to information that individuals are required to give to the government. Since I had argued that the Fifth Amendment applies to tax returns because I felt that their filing was compelled by the penal provisions of the law, it is clear that Judge Nottingham took the position that individuals are not required to give information to the government on 1040 returns (or, in other words, he was talking like the IRS talks and saying "...it is voluntary"), and that is why the Fifth Amendment cannot be applied.

Judge Nottingham had to rule directly against the position of the Supreme Court in *Garner vs. U.S.*, supra. Remember, the Garner Court took the position that information on tax returns is "compelled testimony" for purposes of the Fifth Amendment.

Furthermore, Judge Nottingham also accused me of taking a blanket Fifth Amendment position, even though I certainly had not done that. In fact, I had completely filled out the return and provided the supporting documentation and paid the tax that I voluntarily self-assessed. He further attempted to put my Fifth Amendment concern down by referring to the Supreme Court in *U.S. vs. Doe*, 104 S.Ct. 1237 (1984). There, the Justices took the position that if an individual so much as even admits to having books and records, he waives the Fifth Amendment protections of his rights because the Fifth Amendment does not apply to documents, it only applies to testimony. Judge Nottingham also ruled that "Plaintiff has wholly failed to persuade me that truthful completion of the IRS Form 1040 or any related forms would tend to incriminate him." Well, the judge answered a question that I didn't ask. How could the judge know if a piece of information would incriminate me? There is no way either of us could know that! But I wasn't arguing that I might incriminate myself. I was arguing that I couldn't be required to

waive the Fifth Amendment protections of my rights; and as a layman, there is no way I could be presumed to know if a piece of information would be incriminating or not. His opinion duly impressed me again as to how tricky the courts can be in their Alice in Wonderland language.

I appealed the case to the Tenth Circuit Court of Appeals. The Tenth Circuit upheld the lower Court and thus also took a position exactly opposite the one taken by the Supreme Court in the Garner case. The circuit court judges held that information on a tax return is not compelled, and they also accused me of taking a blanket Fifth Amendment position even though I had answered all the questions. I couldn't believe it; it was like they hadn't even looked at my return! Then they sent the case back to the lower court for any further recommendations by Judge Nottingham. The government seized the opportunity and asked Judge Nottingham to order me to pay the amount they estimated it had cost them in attorney time to respond to my complaint. I was amazed when they submitted a bill for their time for \$6,000! I was really flabbergasted when Judge Nottingham assessed me the entire amount--this for raising the frivolous argument of law that individuals are required to file tax returns!

For me, the judge's action underscored the unfair bias of the courts against someone who is challenging the incongruities of our income tax laws. Think about the contradictions in this scenario: The judge was saying that this was an obviously frivolous issue--one that even I, a layman, should immediately realize could be quickly defeated. Yet when the government submitted a \$6,000 bill for the time that it required of two professional attorneys to defeat my position, the judge accepted their bill and the many hours it represented without question, and considered it appropriate to pass it along to me in entirety! I guess I should have been grateful that the judge didn't add his time to my bill, too; it took him five years to evaluate my easily-understood-as-frivolous-even-by-a-layman argument! Of course, I appealed once again, this time on the issue of the newly-imposed \$6,000 worth of sanctions. Unfortunately, the Supreme Court was too busy with other far more important issues; they decided to not even consider my objection to the \$6,000 sanction.

Putting aside my outrageous \$6,000 fine, do you now understand why the IRS continually refers to the filing of tax returns as voluntary? They know that stating it is required to file tax returns would create a Fifth Amendment confrontation, so they enforce the idea that tax returns are indirectly required; they require you to volunteer, and then they punish you if you chose not to volunteer. (Did I just hear you say that you feel like Alice in Wonderland, trying to tie the Queen down to fixed definitions for words?)

Like the attorneys I consulted for their learned opinion on the law, I have a formal education which I have used professionally. Therefore, after all this, I decided to put my own understanding of the language of the Tenth Circuit opinion into a written opinion. If you write me for a copy of it, here is what it will say:

Dear \_\_\_\_\_,

Thank you for your recent request. I appreciate your interest in my litigation efforts in the 10th circuit of the federal courts.

I am a Communication Expert and have made an extensive study of the morpho-syntax of English. I have a Master's Degree from the University of Colorado in Communications and I have over fourteen years of experience teaching English and Communications at the elementary, junior-high, high school, and college levels.

In my recent case that I filed in federal court, both the lower (district) court and the appeals (circuit) court ruled against my argument that individuals waive their Fifth Amendment protected rights when they file tax returns. The courts took the position that my

argument was frivolous because the Fifth Amendment only applies to "compelled testimonial communication."

The circuit court took the position that the income tax Form 1040 is not "compelled testimonial communication." The court stated:

"In granting the IRS' motion for summary judgment, the court found Conklin's argument that his refusal to sign his 1987 Form 1040 on the grounds that his signature would violate his Fifth Amendment rights was rejected in *Betz vs. United States*, 753 F.2d 834, 835 (10th Cir. 1985). ('It is well settled that the Fifth Amendment general objection to filing a proper tax return is not a valid claim of the constitutional privilege.') Conklin's contention that his classification by the IRS as an illegal tax protester justifies invocation of the Fifth Amendment privilege misunderstands the nature of the ...privilege... which protects against compelled testimonial communications... (emphasis mine) and Plaintiff has wholly failed to persuade me that truthful completion of the IRS Form 1040 or any related forms would tend to incriminate him. (R. Vol. II at p. 6).

"On appeal, Conklin posits the following issues: Whether an individual who has been classified as an illegal tax protester has a valid concern about waiving his Fifth Amendment protected rights when he signs a federal income tax return; and whether an individual who has been advised by several attorneys that he will waive his Fifth Amendment protected rights on a federal tax return should be penalized when he relied in good faith on the advice of counsel. The government responds that the District Court correctly held that Conklin was liable for the \$500.00 frivolous return penalty imposed under Section 6702. Further, the government urges that we should impose sanctions against Conklin for bringing this frivolous appeal. We agree."

As you can see, the Court has taken the position that the Fifth Amendment does not apply to the income tax because the income tax is not a "compelled testimonial communication."

Black's Law Dictionary defines "compel" as follows:

Compel: To urge forcefully, under extreme pressure. The word "compel" as used in constitutional right to be free from being compelled in a criminal case to be a witness against one's self means to be subjected to some coercion, fear, terror, inducement, trickery or threat--either physically or psychologically, blatantly or subtly; the hallmark of compulsion is the presence of some operative force producing an involuntary response. *U.S. v. Escandar*, C.A. Fla., 465 F.2d 438, 442.

Furthermore, the Random House Dictionary of the English Language defines "compel" as follows:

1. To force, drive, esp. to a course or action. 2. To secure or bring about by force. 3. To force to submit; subdue. 4. To overpower.

As an expert on the English language, it is my opinion that "compel" means to force or to require someone to do something. A compelled action would be an involuntary action. A compelled action is the opposite of a voluntary action.

The circuit court has obviously sanctioned me because I have taken the position that individuals are required to give the government information on 1040 Forms. The court has taken the position that providing information to the government on 1040 forms is not "compelled." Thus, from an English language standpoint, I can only conclude that if an income tax form is not "compelled" or required, it must be voluntary. This is also why the court ruled that the Fifth Amendment does not apply.

For a more in-depth analysis of the word "voluntary" and other words related to the income tax, I suggest that you order my opinion letter on the "Words and Phrases of the Internal Revenue Code."

For your own reliance, I further suggest that you order a copy of the opinion from the Tenth Circuit Court of Appeals (in Denver) so that you will have your own official version of a case in which a circuit court rules that the income tax form is not compelled (required).

You may order the case from the United States Court of Appeals, Tenth Circuit, 1823 Stout Street, Denver, Colorado 80257. Ask for a copy of the Order and Judgment in Conklin vs. United States of America, No. 94-1213.

Curiously enough, although the Tenth Circuit Court has taken the position in this particular case that providing information on income tax forms is voluntary, since this case is not published the holding by the judges cannot be used as law. Nonetheless, if you are one of the many individuals in the country who believe that the income tax is not compelled, I think you should order and have on hand a copy of the appellate decision so you can see for yourself that the Tenth Circuit judges agree with you, even though they are not willing to let the world know their thoughts on the issue.

My attorney, Guy Curtis, also wrote an analysis of the Tenth Circuit Opinion. His analysis follows:

Dear \_\_\_\_\_,

In response to your request for my legal opinion regarding the recent decisions in William T. Conklin vs. IRS, Civil action No. 89 N 1514 filed May 2, 1994, in the U.S. District Court for the District of Colorado, and the appellate decision in this same case by the Tenth Circuit Court of Appeals, No. 94-1213 filed September 10, 1994, affirming the District Court's opinion, these decisions can be interpreted in two ways:

First, that the information given on an income tax return is not "compelled testimonial communication". This implies that an individual is not required to give return information to the IRS.

If we follow this reasoning to its logical conclusion then it would be absurd to penalize a person for not signing a return that is not required. And it is doubly absurd to sanction him for appealing the issue to the appellate court.

My second interpretation would be that information given on a tax return is compelled, i.e., that the individual is required to give it, but because it is not viewed as "testimonial communication" the Fifth Amendment protections do not apply.

The second interpretation directly contradicts the U.S. Supreme Court in *Garner v. United States*, 424 U.S. 648 (1975) ruling that the information on a tax return is compelled testimonial communication.

The *Garner* Court specifically stated:

"The information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a witness."

Furthermore, in the case of *U.S. v. Doe*, 465 U.S. 605, 79 L.Ed. 2d 552, (1985), the Supreme Court held that the act of

producing subpoenaed documents would involve testimonial self-incrimination. Therefore "testimonial" does not exclude everything except oral testimony.

The holding in the Doe case supports the statement in Garner that the privilege applies to written as well as oral compelled testimony that may have testimonial aspects and an incriminating effect.

It seems clear that the District Court erred in stating that Mr. Conklin took a general Fifth Amendment objection since he did provide specific personal information for assessing the tax with supporting documentation.

"Furthermore, it was clearly Mr. Conklin's intent to raise and resolve this issue at an administrative level with the I.R.S. Mr. Conklin's good faith attempt to properly resolve the 5th Amendment issue is evidenced by the Power of Attorney he gave to the I.R.S., and the copies of legal opinions he received from attorneys and tax consultants outlining the Fifth Amendment dilemma.

By volunteering such information there is also no question but that Mr. Conklin waived his Fifth Amendment protected rights as to the information given.

However, there was no waiver of those rights as to signing the return.

Since Mr. Conklin did not make a general Fifth Amendment objection, the ruling in Betz v. United States, 753 F.2d 834 10th Cir. 1985) cited by the District Court and the Tenth Circuit Court does not apply.

As Mr. Conklin would have waived his Fifth Amendment protections by signing the tax return, and would have authenticated information could that be used in a criminal case (such as Doe and Garner, supra), his concerns were not frivolous, particularly in view of Mr. Conklin's classification by the I.R.S. as an "illegal tax protester."

Regarding my own qualifications and experience, I have been a licensed attorney for over thirty years and admitted and currently in good standing to practice law in the State of Nebraska as well as in the 7th, 8th, 9th, and 10th U.S. Courts of Appeals, the U.S. District Courts for Nebraska and Hawaii, and the U.S. Tax Court, and I have served as an elected prosecuting attorney for over twenty years. In addition, I have handled a number of criminal tax trials in federal courts as a defense attorney.

Sincerely,

Guy Curtis  
Attorney at Law  
610 Broadway  
Imperial, Nebraska

69033

\* \* \*

My Petition for Certiorari challenged the constitutionality of the statute that allows the Court of Appeals to sanction without any due process. The essence of my Supreme Court argument is as follows:



William T. Conklin, the appellant in this action, hereinafter referred to as "Conklin," was classified as an illegal tax protester by the IRS for his involvement in the Church of World Peace. His case was set aside for special scrutiny by the Internal Revenue Service Criminal Investigation Division. There can be no question that he was confronted with substantial and real hazards of incrimination by virtue of the Criminal Investigation's interest in his case. He became concerned about waiving his Fifth Amendment protected rights on a 1040 return after speaking with several attorneys who advised him that he does waive his rights when he signs a return.

So, Conklin, in an attempt to comply with the law and not voluntarily waive his rights, filed a return with payment and the necessary assessment information. He did not sign the return, but instead he provided a power of attorney form giving the IRS power of attorney to sign the return if they could do so without waiving his rights.

The IRS assessed Conklin a \$500 penalty for filing a frivolous return. Conklin paid the fine and filed a claim for a refund. The IRS denied the claim and Conklin filed suit in 1989.

The lower Court ruled May 2, 1994 that the IRS imposition of the penalty was justified, and the Tenth Circuit affirmed the opinion on September 10, 1994 and sanctioned Conklin with attorney's fees and double costs. The Tenth Circuit sent the case back to the District Court for its recommendations and the District Court ruled on January 13, 1995 that Conklin should be sanctioned approximately \$6,000 plus double costs. The District Court told Conklin that due process does not apply. Conklin appealed and on June 6, 1995, the Tenth Circuit Court of Appeals ruled that Conklin could not contest the fairness of the sanction at the remand to District Court.

#### REASONS FOR GRANTING THE WRIT

The court ruled that: "Plaintiff misunderstands the nature of the fifth Amendment Privilege. It protects against compelled testimonial communications." (emphasis mine ) Conklin is a pro se and he naturally has assumed in the past that the testimony on a tax return is a "compelled testimonial communication" in view of the fact that the IRS continually indicts individuals for willful failure to file tax returns under 26 USC 7203. Since the general public believes that information on a tax return is "compelled" and since the Supreme Court has ruled in *Garner v. United States*, 424 U.S. 648 (1975) that information on a tax return is compelled testimony for the purposes of the Fifth Amendment, it is not unreasonable for a layman to conclude that giving information to the government on a tax return is compelled and that it is testimonial.

The *Garner* Court stated:

...Government compels the filing of a return much as it compels, for example, the appearance of a "witness" before a grand jury. (p. 652).

The *Garner* Court went on to say:

...The information revealed in the preparation and filing of an income tax return is, for purposes of Fifth Amendment analysis, the testimony of a "witness." (p. 656).

The court has taken the position that Conklin's position is frivolous because testimony on a tax return IS NOT compelled. The Supreme Court in *Garner* ruled that testimony on a tax return IS compelled and that it is Fifth Amendment testimony.

The court sanctioned Conklin with attorney's fees and double costs even though he relied on counsel. In sanctioning Conklin, the Court held Conklin to the standards of an attorney in direct violation of the law in *Haines v. Kerner*, 404 U.S. 519 (30 L.Ed. 2d, 1972).

Furthermore, the lower courts ruled that Conklin had taken a blanket Fifth Amendment even though he completed a tax return and provided copies of his tax records to the IRS. In the case of *United States v. Doe*, 104 S. Ct., 1237 (1984), the Supreme Court ruled that an individual waives his Fifth Amendment protected rights if he admits to having records. Since by his filing Conklin admitted to having records, and since he completed his tax return and sent it to the IRS lacking only a signature, he could not have taken a blanket Fifth Amendment position.

In view of the facts that the Supreme Court has ruled in *Garner*, supra, that information on a tax return is "compelled testimony;" the District Court for the District of Colorado and the Tenth Circuit have ruled that information on a tax return is not "compelled testimony;" the lower courts have held Conklin to the standards of an attorney in sanctioning him; and the Court has taken the position that an individual takes a blanket Fifth Amendment simply by withholding a signature in contradiction of *Doe*, supra, this Court should correct the refusal of the Court of Appeals to consider Supreme Court cases.

The District Court and the Court of Appeals denied any sort of due process to Conklin and sanctioned him on an issue of first impression in spite of the fact that the lower court ruled directly opposite the Supreme Court. Such a position violates the Supreme Court law in *Chambers v. NASCO, Inc.* 1991, 111 S. Ct. 2123, and *McKnight v. General Motors Corp.*, 114 S. Ct. 1826 (1994). It also takes a position opposite that taken by the Seventh Circuit Court of Appeals in *Brooks v. Allison Div. of Gen. Motors Corp.*, 874 F.2d 489 (7th Cir. 1989) since the government did nothing to mitigate the expenses. The Court of Appeals ruled that the petitioner could not raise the issue of due process in the District Court on remand. It is the petitioner's position that the issue of due process could not be raised until a final determination of the amount of sanctions had been made by the court. Since the Court of Appeals remanded the case to the District Court for its recommendations, the issue of sanctions was not arguable until the final determination as to the amount of the sanction was made. Therefore, the instant appeal is the proper time to raise due process and fairness issues.

Rule 38, the Appellate Rule that allows the Circuit Courts to sanction litigants, is unconstitutional because it allows the Circuit Court to sanction a litigant and does not allow any meaningful opportunity for the litigant to contest the sanctions. Due process requires that before sanctions are imposed, the offender be afforded fair notice and an opportunity to be heard. Conklin had no reasonable notice that he would be fined \$6,000 and he had no reasonable opportunity to respond. Since Rule 38 does not mandate due process for the offending litigant, it is unconstitutional.

#### CONCLUSIONS

The issues raised here involve a substantial question of law about the imposition of sanctions by the Circuit Court of Appeals when there has been no determination that the petitioner acted in bad faith and when the Circuit Court of Appeals for the Tenth Circuit has failed to consider the law in *McKnight* and *Chambers*, supra. There is also a substantial question of law about whether Rule 38 is

constitutional when it allows the Court of Appeals to sanction an offending litigant without an opportunity to be heard. Furthermore, since the government did nothing to mitigate the damages, the decision of the Tenth Circuit is in direct conflict with the ruling in *Brooks v. Allison Div. of Gen Motors Corp.*, supra.

Wherefore, it is prayed that this honorable Court will grant the Petition for a Writ of Certiorari.

And so the battle for truth continues.

7

More Cases Where the  
Tenth Circuit States That  
Anyone Who Files a 1040 Return  
Waives the Fifth Amendment  
Protections of His Rights

The first case is that of *Mary Ann Tavery vs. United States*, 32 F.3d 1423, 1428-30 (10th Cir. 1994). The IRS was happy because they won this battle, but actually they lost the war again since this case proves one more way that individuals who file 1040 returns do waive the Fifth Amendment protections of their rights. Since the government cannot require individuals to waive their constitutional protection or their God-given rights in order to comply with any law, then this case stands for the proposition that the filing of 1040 returns must be voluntary.

The court ruled that information on a tax return may be put into any criminal case that involves a family member or friend. That means the court has ruled that if you file a tax return, information may be disclosed in virtually any criminal case involving some person that you might happen to know.

The Court in *Tavery*, supra, stated as follows:

The scope of the relevant inquiry on the financial inability issue is broad. See *United States vs. Barcelon*, 833 F.2d 894, 897 and n.5 (10th Cir. 1987) detailing numerous factors to be considered, including "the availability of income to the defendant from other sources such as a spouse..." The factors to consider include money sent to the applicant by his mother, *Souder vs. McGuire*, 516 F.2d 820, 821 (3rd Cir. 1975), and transfers in trust. *United States vs. Schmitz*, 525 F.2d 793, 794 (9th Cir. 1975) Opinion of Chambers, Chief Judge: "Financial inability includes an inquiry into whether there is available to the defendant funds for his defense from other sources such as family, friends, trusts, estates, or defense funds." *United States vs. Martinez-Torres*, 556 F. Supp. 1275, 1279 (S.D.N.Y. 1982). Under this broad test, we hold that the district court correctly decided that Ms. Tavery's income and tax refunds were relevant to the issue of Rev. Conklin's eligibility for appointment of counsel, and that the government's disclosure of this information was therefore permissible under Section 6103(h)(4)(B).

Tavery had argued in her case that since the Department of Justice obtained her income information from her tax return, the information disclosure was an unlawful disclosure as she was not a party to the proceeding. It is clear in this particular situation that Ms. Tavery waived her Fifth Amendment protected rights when she filed the tax return and disclosed the information that the government allowed into evidence. Could the government have used Ms. Tavery's tax return information against her if she had been compelled to submit it? Of course not, if the Fifth Amendment means anything. So the court must

have decided that she had volunteered the information on the return. And of course the opinion in *Conklin vs. United States*, supra, is consistent with this theory since the Tenth Circuit took the position that information on tax returns is not compelled by the government. Ms. Tavery voluntarily waived the Fifth Amendment protections of her rights by filing her return and disclosing information.

I then filed a suit arguing that unrelated information on tax returns cannot be disclosed in third party litigation. The Tenth Circuit ruled against me on July 31, 1995 in an unpublished decision: *William T. Conklin vs. United States*, No. 95-1013 (Tenth Cir., July 31, 1995). Since the Tenth Circuit declined to publish this decision, I will quote it here in its entirety:

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

In 1990 the Internal Revenue Service (The IRS) revoked the tax-exempt status of the Church of World Peace (CWP). The CWP then asked for a declaratory judgment regarding the revocation of its tax exempt status. In the course of that case, the IRS introduced the tax returns of the plaintiff, who was a central figure in the CWP organization.

Plaintiff subsequently filed this federal action pursuant to 26 U.S.C. Section 7431. He claims that the introduction of his tax returns violated 26 U.S.C. Section 6103. Section 7431 allows civil suits against any employee of the United States who knowingly or negligently discloses a return or return information in violation of Section 6103. Id Section 7431(a)(1). The district court granted the government summary judgment and denied plaintiff's summary judgment motion. Plaintiff now appeals. We have jurisdiction pursuant to 28 U.S.C. Section 1291 and affirm.

The government contends that the IRS could properly disclose this evidence under 26 U.S.C. Section 6103(h)(4)(B) That section states:

A return or return information may be disclosed in a Federal or State judicial proceeding pertaining to tax administration but only...(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding.

Plaintiff does not claim that the information in his return was not an "issue in the proceeding" or that the information was not "directly related" to the resolution of an issue, cf. *Tavery vs. United States*, 32 F.3d 1423, 1428-30 (10th Cir. 1994). Instead, he claims that only one item on the return was relevant to the proceedings and, consequently, it was error to introduce the entire return.

"A statute's plain meaning must be enforced." *United States Nat'l Bank vs. Independent Ins. Agents*, 113 S. Ct. 2173, 2182 (1993). "If the language is clear and unambiguous, then the plain meaning of the words must be given effect." *Resolution Trust Corp. vs. Love*, 36 F.3d 972, 976 (10th Cir. 1994).

The statute clearly authorizes the IRS to disclose the entire return even if only one part of the return is relevant. The statute gives the government an option. Once the predicate condition is met (i.e., an item on a "return is directly related to the resolution of an issue in the proceedings," 26 U.S.C. 6103(h)(4)(B)), then the "return or return information may be disclosed," id. 6103(h)(4) (emphasis added.) Because the statute is phrased in the disjunctive, the government may disclose either the return or return information once it

satisfies that one of Section 6103(h)(4)'s predicate requirements is met.

The government therefore did not violate section 6103 when it introduced plaintiff's entire tax return, and the district court properly entered summary judgment for the government. Accordingly, the judgment of the district court is AFFIRMED.

Well now, isn't that interesting? The IRS may disclose your tax return information in any criminal case involving a friend or family member and the IRS may disclose your entire tax return in any litigation if only one small part of the return is relevant. Doesn't this make it even more clear that you waive your Fifth Amendment protected rights when you file a tax return? Of course, that doesn't matter anyway, since the Tenth Circuit has also ruled that the Fifth Amendment only applies to compelled or required testimony or information. So, once again, either filing tax returns is required and the government is requiring individuals to waive their protections and their rights, in which case any statute that requires the filing of tax returns would be unconstitutional; or, filing tax returns is voluntary so that the Fifth Amendment doesn't apply. Either way, it is obvious that the IRS has a severe problem. Once this cat fully gets out of the bag (i.e., once everyone understands these concepts), I think the income tax is dead. What do you think?

8

#### The Internal Revenue Code

The Internal Revenue Code is a thick and very boring book. It is composed of hundreds of complex statutes and it is written in very complex and difficult to understand language. It is the law book that our government uses as the basis of the income tax. I have looked through the entire Internal Revenue Code over a period of almost twenty years now, and I have not found any statute in the Code that makes an individual liable to pay the income tax. There is a statute, Section 6020(b) that says the government may file a return for an individual if the individual does not file a return. However, the individual does not become liable to pay the tax through any statute in the Code, he only becomes liable if the government files a return for him, or if he personally voluntarily files a return. Let's examine some of these code sections:

Sec. 6012. Persons required to make returns of income.

(a) General rule.

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)

(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount...

"Returns with respect to income taxes under Subtitle A shall be made by he following..."

IRS Privacy Act Notice 609 (Rev. Oct. 1986).

Sec. 6020. Returns prepared for or executed by Secretary.

(b) Execution of return by Secretary.

(1) Authority of secretary to execute return. If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary

shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns. Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

"Shall"

(a) to express futurity in the first person, and determination, compulsion, obligation, or necessity in the second and third persons;

Webster's Dictionary

"Shall"

As used in statutes, contracts or the like, this word is generally imperative or mandatory... In common ordinary parlance, and in its ordinary signification, the term "shall" is a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. It has a peremptory meaning, and it is generally imperative or mandatory. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless a contrary intent appears. ...But it may be construed as merely permissive or directory (as equivalent to "may,") to carry out the legislative intention and in cases where no right or benefit to anyone depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense... Also, as against the government, it is to be construed as "may," unless a contrary intent is manifest.

Black's Law Dictionary, Revised 4th ed., pp 1541-1542.

The IRS relies on Section 6012 of the Internal Revenue Code as the statute that allegedly requires the filing of tax returns. However, the IRS Privacy Act Notice states it a little differently; that the law requires you to file a return for any tax you are liable for. Since there is no statute that makes you liable, and since the IRS Privacy Act Notice is supposed to tell you the requirements of the law; then Section 6012 can't apply until you are made liable.

Let us assume, however, that Section 6012 of the Internal Revenue Code does require individuals to file, even though they are not first made liable. The problem with Section 6012 is that the word "shall" is used in the statute. According to Black's Law Dictionary (above), we've seen that the word "shall" is mandatory except when a mandatory interpretation would create a rights or constitutional violation. Since an interpretation of "mandatory" in this case would require individuals to waive the Fifth Amendment protection of their rights, Section 6012 would be unconstitutional if it really required individuals to waive such protections. Therefore, the word "shall" in Section 6012 must be interpreted to be permissive.

As you can see, Section 6012 has been deliberately left murky by Congress so that Congress cannot be accused of requiring individuals to waive the constitutional protections of their rights. Exacerbating the problem is the courts' consistent interpretation of Section 6012 as requiring the filing of returns. I know of several cases in which individuals have raised issues related to this contradiction in 6012; the courts deliberately ignore the arguments and dismiss the cases without comment. One criminal case went all the way to the Supreme Court and was dismissed all the way up without comment. That case was the one involving attorney Dick Viti, to whom I dedicated this book. The judges know they have to stay away from this issue because if they meet it head on, they will definitely overturn the federal income tax. We cannot legally have a law that requires individuals to give the government information that can be analyzed and used in criminal cases for

violation of the very law that requires the returns to be filed. Yes, something is rotten here, and I maintain that it is up to us to take out such garbage and be sure that it is properly buried. The IRS is requiring individuals to waive their rights at the same time that it emphatically states in all of its publications that we have a "voluntary" tax system.

Another interesting point is that Section 6020(b) also contains the word "shall." When the government files returns for individuals under 6020(b), they never sign the return. However, if an individual submits an unsigned return, the IRS will not code the computer to show that a return has been filed.

In my Tenth Circuit case, the IRS has not posted my return to their records as having been filed because I did not sign it. Remember, I was fined \$500 for not signing it. Since then, I have also been fined \$6,000 for arguing that since the IRS has not filed my return in their computer system, I should be penalized for filing an unsigned return. The IRS consistently, however, records the returns that they file in their computer system when they do so under 6020(b), even though they never sign the returns. I actually did the same thing that the IRS consistently does when they file returns for individuals under Section 6020(b) of the Internal Revenue Code, but I was fined a total of \$6,500.00!

9

#### The IRS and Criminal Prosecutions

The IRS has the power to proceed criminally whenever they wish to, against anyone. In their criminal cases, the IRS may use any information that has been given to them because individuals "voluntarily" file tax returns. Section 7203 of the Internal Revenue Code is one of the IRS' favorite sections for proceeding criminally. Section 7203 states that the IRS may prosecute people who "willfully" don't file tax returns. Congress was very careful to make the aspect of "willfulness" important for the crime because the tax system is so complicated. Every year, the IRS indicts a few hundred individuals for "willful" failure to file tax returns and some of these people end up in federal penitentiaries. The IRS indicts individuals in order to keep the rest of the population "voluntarily" filing their tax returns.

About 20 years ago, when many people started to become aware of the Internal Revenue scam, individuals began to file "exempt" on the W-4 form they gave their employer, and then did not file returns. Over the last 20 years, the IRS has prosecuted hundreds of such individuals. In these proceedings, the IRS has cynically used tax returns that were previously filed by the defendant to "prove" to the juries that the defendant knew all along that he was required to file returns. Juries have bought that routine and convicted many for not filing returns. The argument used by the defendants - that they only filed returns previously because they were unaware that they had been waiving their rights but now they wanted to stop waiving them - was ridiculed by the prosecuting attorney.

I believe that the principal flaw in the legal position of such defendants is their use of the W-4. The moment an individual files an exempt W-4 with his employer, he waives his Fifth Amendment protections. In my view, it is inconsistent to file an Exempt W-4 and then not file a tax return.

During the last ten years, I have traveled the country to observe and even participate in many criminal tax trials. I am convinced that the juries have convicted many people for not filing tax returns because they have been led to completely ignore the "willfulness" requirement of the statute. Juries convict individuals because the jurors are made to feel jealousy about a defendant who did not "pay his fair share," while they did. Prosecutors appeal to this emotion by

pointing out such "fair share" baloney with these very same words. An individual who is knowledgeable about the tax system and the issues discussed in this book won't be taken in by such rhetoric, but then he won't be allowed to be on a jury if the prosecutor or the judge become aware of his knowledge during jury selection. The IRS and the Court make sure that the individuals on juries are uneducated as to tax and legal issues. They also appear to prefer that jurors work as employees for someone else. Self-employed people tend to be a little more original and independent in their thoughts and actions; I have often seen them eliminated when juries are selected. The government doesn't wish to chance such jurors identifying with the defendant--the government might lose the case.

Several years ago, a fellow named John Cheek took the issue of proper and adequate jury instructions relative to "willfulness" up to the Supreme Court. The Supreme Court made it clear that the trial judge in Cheek's case had not done a proper job of instructing the jury relative to their consideration of the reasonableness of his defense. The Cheek case is very important because, among other things, it stands for the proposition that individuals who rely on attorneys and other professionals in making their decisions about this complex tax system are entitled to inform the jury as to the extent of their reliance. It also stands for the proposition that the jury must be instructed to view the defendant's actions subjectively, not objectively. In other words, the juror has to put his own pre-conceived notions aside of whether or not the juror believes everyone must file, and instead get inside the defendant's head and try to determine if he really believed, based on the defendant's own research and the advice of the attorneys he consulted, that he acted in good faith, and truly believed that his research in toto indicated that he was not required to file. When it can be shown that one's actions were based on a good faith reliance on professional advice, the element of "a willful violation of the law," essential for a conviction, is conclusively eliminated. It is apparent to me that the Cheek case destroyed the ability of the IRS to prosecute individuals for "willful" failure to file who have followed the procedures outlined in this book. In sum, if you stop waiving your rights on April 15 on reliance of counsel, and if you are an employee and allow wage withholding [or you are self-employed and you submit quarterly payments against any tax that the IRS might assess you under Section 6020(b)], you will virtually eliminate the ability of the IRS to victimize you for relying on, and refusing to waive, your constitutional protections. In Chapter 12, I'll show you how easy it is to consult with attorneys and get them to provide you their legal opinions that will support your decision to stop filing.

10

#### The IRS: A Modern American Gestapo

Most Americans don't have any idea of the incredible power that Congress has given to the IRS. When we are students in school, we are taught the fundamental (and somewhat unique) American legal maxim that even though the government may accuse someone of wrongdoing, that person must be considered innocent unless and until the government can prove them guilty. However, when it comes to civil tax cases and the IRS, the burden of proof is placed on the accused. That means that the IRS can say anything they want to say about how much money we owe them and we have to prove that they are wrong. I know this first-hand, because years ago after I criticized the IRS publicly, they assessed me a bogus deficiency of upwards of \$100,000. After years of litigation, when I finally signed a stipulation, the IRS owed me \$4,000. As this book is written, there is a bill before Congress to shift the burden of proof back to the IRS. If this bill passes, it will be a very important milestone in curtailing the power of the IRS Gestapo. (It may not pass though; Ohio congressman Traficant has introduced it repeatedly for the last ten years and it has gone nowhere. However, it presently has the



support of a majority of congressmen, so it appears close to being passed.)

Since the IRS has been given incredible power to seize assets, it is very important if you decide to take on the IRS that you have pre-paid any liability that they might reasonably allege. If you do that, you will be in the driver's seat. (I will be repeating my main points including this one more than once in this book. Although I may seem redundant at times, I think redundancy is necessary to be sure that everyone pays attention. If you already think I am redundant, then you must be understanding what I have been saying.) Sparring with the IRS when you are in a defensive position is exhausting; but sparring with them when you are in the driver's seat can be enjoyable indeed.

An important fact to remember if you get into an IRS confrontation is that you should not ignore any correspondence from them and you should be sure to challenge them with every procedure available to you. In the interest of your constitutional guarantee of due process, the IRS is required to follow specific procedures when they deal with us. If you force them to toe the line and go through each procedure, they will expend a lot of time and energy; but you will have lots of fun, and you will be the one to come out on top.

Many people heard recently about the new policy for "life-style audits" by the IRS, which were reported to allow them to come into your home in their effort to verify your declared income against your lifestyle. Before the idea of such invasive audits was scrapped, I talked with people who were outright angry that a government agency would be allowed to do that. Actually, there is nothing to worry about. Although many Americans don't know it, the IRS must and always has had to have a search warrant if they want to enter your house, just like any other law enforcement agency. Just say "No!" If Americans just say "NO" to the IRS, the IRS Gestapo will be forced to go back to their offices, prepare affidavits to support their request for a warrant, and then go to a judge and submit their request for his consideration. If the IRS is forced to go to court to get search warrants each time they want to do a full-blown "life-style audit," there will be very few entries indeed.

Also, there is no law that requires you to attend any audit. If you don't attend an audit, the IRS has two choices: they may send you a summons, which you have every right to contest in federal court, or they may invent a bogus assessment which you may choose to contest in either their tax court or in federal court. You are only at the mercy of the IRS if you don't know anything about your rights and the IRS' procedures. With knowledge you have power.

11

## The Summons Power of the IRS

The IRS has the power to issue an administrative summons. That means that the IRS may send you a summons if they wish to talk with you (for an audit, for example), and they can require you to show up. If you don't show up and comply with the summons by either answering their questions, or properly asserting the Fifth Amendment in answer to their questions, the IRS can go to Federal Court and get a judge to order you to comply. Only if you don't comply at that point can you be charged with say, contempt. Up to this point, you have not violated any law. However, if you are ultimately held in contempt of court, such a charge is based on a violation of law and the judge could put you in jail or fine you, or both.

The fact that the IRS has to issue a summons and get enforcement of the summons in District Court just to require an individual to show up, clearly shows that the IRS cannot require you to give them the same information on a tax return without a summons enforcement hearing. Actually, if you do show up and you choose to take

the Fifth Amendment in response to specific questions of the IRS, you will prevail, providing that you do not admit that you even have books and records. Contrary to popular belief, the IRS cannot make you answer their questions! See U.S. vs. Sharp, 920 F.2d 1167 (4th Cir. 1990), and U.S. vs. Argomaniz, 925 F.2d 1349 (11th Cir. 1991). These are two federal appeals court rulings that deal with the issue of using the Fifth Amendment in IRS summons cases. If you handle your summons correctly, the IRS will not be able to enforce it and get information from you. However, if you handle the summons incorrectly, you could end up in jail for either civil or criminal contempt or both. Obviously, it is extremely important that you know exactly what you are doing when you respond to a summons.

Do not ever ignore a summons. If you do, the IRS will immediately move for enforcement because they think that you are afraid to respond, probably because you don't understand your position and probably don't know your rights. Ninety-nine times out of a hundred they're probably correct; it's certainly been my experience that people who ignore a first party summons from the IRS don't know what they are doing.

On the other hand, I remember individuals who are those one in one hundred. I remember one recently who, like a few before him, made the IRS agent wish he hadn't initiated efforts to make an assessment of liability in the first place. When the IRS discovered that he had failed to file a return, they issued a summons requiring him to appear for questioning. The individual appeared but stood on the Fifth. The IRS went to court and obtained a court order, ordering the individual to respond to their questions. Again, he took the Fifth. The IRS tried to get him cited for contempt, but the judge held that the individual had responded satisfactorily and completely by invoking the Fifth in response to each individual question. The individual and the judge were both aware that any information he provided could become a link in the chain of evidence that could be used for prosecution of a criminal violation of the tax law. (See Sharp, supra.) The individual stuck to his position, and the court ruled that he had fully complied with the summons and the court order enforcing it, and did not hold him in contempt even though the IRS agent obtained no information!

Now, think about this; if the courts will not require individuals to answer the IRS' questions in response to a summons, and, in fact, rule that they may properly take the Fifth to each question asked, how can the government require individuals to answer the same questions on 1040 returns? They really cannot. Some might say that answering questions on a 1040 return form may not qualify as warranting the protections of the Fifth Amendment, especially if no criminal accusation or proceeding has been initiated. However, in Argomaniz, supra, the 11th Circuit Appeals Court judges ruled that a taxpayer could take the Fifth Amendment in a civil matter as well as criminal. The court stated: "There can exist a legitimate fear of criminal prosecution while an IRS investigation remains in the civil stage, before formal transfer to the criminal division." Of course this is true any time, because the IRS can gather all the information they wish to gather civilly and then switch the audit to criminal at any point in time.

The IRS is sneakily requiring individuals to "volunteer" information that can be used in any criminal case at any time. Do I say "sneakily" because they don't inform us of such intentions? No, I say sneakily because they only make a quick statement to that effect in the Privacy Act Notice section of the 1040 Instruction Manual--and nobody takes the time to read that anyway. I wouldn't accuse them of sneakiness if they put a big, bold WARNING! above that statement. If they did, I'd blame individuals for being stupid to ignore it! But they don't emphasize that they may use the information to criminally prosecute at a later date. They just benignly state that they "...may give the information to other agencies (including) the Department of Justice..." How many of you have ever read that sentence, and if you have, have you pondered its significance? Do you know that the Department of Justice only has one mission, and that is to investigate and prosecute crime?

The only thing that the Department of Justice will do with your information will be to use it against you, to convict you of a crime so you may be fined and/or sent to jail. The IRS didn't point that out anywhere in the Notice, did they? Are they sneaky, or what?

The IRS may also issue a summons to third party record keepers, such as banks. That means that any information you give to a bank you are making available to the IRS. The IRS may obtain anyone's bank records (there's nothing private or secret about your checking or savings accounts--the government has complete access to all the details anytime they want it, thanks to a law passed by Congress in 1970 and sneakily mislabeled, "The Bank Secrecy Act"), and although the law permits you to file a motion to quash such a third party summons in a federal district court, it is virtually impossible to beat the IRS on this issue. When you entrust banks and other third parties with your records, once again you are voluntarily giving up a constitutionally protected right--your right to privacy.

If you receive a summons for your own personal records, you have a right to assert the Fifth Amendment as long as you do not admit the existence of books or records. If you admit the existence of books and records, you automatically waive the Fifth Amendment protections of your rights because the Supreme Court has said that the Fifth Amendment applies to testimony and not to books and records. See the Supreme Court case of United States vs. Doe, 465 U.S. 605 (1985) [Of course, if you see things like Judge Nottingham did in my case, you could say that even if someone answered all of the questions asked, they've still taken a blanket Fifth Amendment position(!); but of course you and I both know that any other judge would rule that you had waived all Fifth Amendment protections by providing all the answers.] If you use banks and other similarly third-party entities for holding your money, the laws allow the IRS to get all the information that you have entrusted to those entities. Remember that the Fifth Amendment is still incredibly powerful in an IRS summons enforcement. When it is used properly, the IRS is helpless before the law. This is very important to keep in mind.

Several years ago a friend of mine was jailed for contempt by a federal district court judge because he had been summonsed by the IRS and had refused to show up. He again refused even after the IRS went to the judge and obtained a summons enforcement order. On the order of the judge, a United States Marshal then arrested him and brought him to court. He told the federal judge that he didn't believe that the court had any jurisdiction over him. As if to show him otherwise, the judge promptly found him in contempt of his lawful order and jailed him. Later on, after a little jail time, he wised up. After talking with a counselor, he went in and apologized to the judge and took the stand as the court had originally ordered. He then answered every one of the government's questions by asserting the Fifth Amendment. The judge allowed him to stand on the Fifth Amendment on all but a couple of real non-threatening questions. ("What is your name?"; "Where do you live?", etc.) The IRS agents and the Department of Justice attorneys were completely beside themselves because they still couldn't get the answers they were seeking! The power of the Fifth Amendment when used properly is astounding, and when enough Americans wake up and quit waiving their Fifth Amendment protections on April 15, the power of the Fifth Amendment will force Congress to change our un-American federal tax system.

12

What Can You Personally  
Do About the Problem?

If you have studiously read through the previous chapters in this book (and they certainly require only a modicum of concentration), you have come to the following conclusions:

1. Individuals who file tax returns voluntarily waive the Fifth Amendment protections of their inherent rights.

2. The government cannot require individuals to waive any constitutional protections of their rights.

3. Therefore, the government cannot lawfully (constitutionally) require individuals to file tax returns.

However, you might also have come to the conclusion that the government and the courts are not ready to admit this problem to the general public because if the general public knew that filing tax returns was truly voluntary (as the IRS insists it is, so you won't complain of being "compelled"), the tax system would fall apart. The present federal income tax system depends completely on voluntary self-assessment.

From a practical standpoint, if you wish to get involved in standing up for your rights, and if you wish to quit voluntarily waiving your Fifth Amendment protections each April 15, you have certain actions that you can take which will not subject you to a defensive posture. For example, if you are not judgment proof, you must either allow wage withholding or, if you are self-employed, you must submit quarterly payments toward any tax that you figure you might owe if you were to choose to file a tax return at year end and voluntarily waive your rights. You are not judgment proof if you own a car or a house or other "attractive nuisances" that tend to entice IRS collection agents, or if you depend on wages, or if you represent yourself as an independent contractor but you are paid by only one or a few clients. Nor are you judgment proof if you have any monetary assets such as a checking or savings account in a bank, or an investment account with a stock broker. If the IRS insists that you owe them something, they may proceed civilly against you in these areas, and take such assets. Therefore, if you are not judgement proof, but you choose to cease waiving your rights and cease filing returns, you must be sure that the IRS has any money that they think you owe them, up-front. Then, when the end of the year rolls around and you decide to file a Claim for Refund instead of a 1040 return, you can go on the offensive to effect your Claim, rather than be forced to go on the defensive like you surely would have to if they were to decide to take your assets, or charge you criminally.

Also, if you wish to quit waiving your rights voluntarily, you must consult with a few tax professionals and get opinion letters from them. You must be careful to have professional support in advance, advice that you can rely on for deciding to stop voluntarily waiving your rights. To work for reform in the laws, and force change from a powerful position, make sure that you can show that your actions are based on legal advice, otherwise you wind up becoming more grist for the IRS' enforcement mill.

Assuming you are like most Americans, that is, assuming you are not judgement-proof because you have assets and work for a regular paycheck, you can still assert your rights once you have consulted with and obtained advice from tax professionals. Meet with a few attorneys who bill themselves as tax experts and ask them to explain to you how you may file a return without waiving the constitutional protections of your rights. Show them the Fifth Amendment and the IRS' Privacy Act Notice. Don't forget to take along copies of the Sharp and Argomaniz cases too, in the event a sharper-than-average attorney insists that the language of the Fifth Amendment means that it doesn't apply unless you are already under criminal investigation or prosecution. At the conclusion of your individual meetings with each tax attorney, after they have admitted to you that they cannot advise you of any way you can file a return without waiving the Fifth Amendment protections of your rights, ask them to put their opinion in writing, on their letterhead. Now, you're ready for the next step, and you have several strong options.

If you are an employee, the best action to take in order to stand up for your rights is to instruct your employer to continue to withhold so that at the end of the year, were you to calculate a tax owed on a 1040 as you used to do, it would come out that you would not owe any more than what was withheld throughout the year. An even more solid position would be to submit a W-4 early in the year that results in your employer withholding even a little more by year-end than would be required, so that the IRS owes you a little money at year-end.

Then, at year-end, instead of filing a return, send a letter in to the IRS explaining to them that you have become aware that filing a return requires you to waive your rights, which you no longer wish to do. Explain further that you have consulted with several professionals and none have been able to tell you how you can file a 1040 return without waiving your rights. Be sure to enclose photocopies of their written opinions. Ask the IRS for an extension of time to file, until they can come up with a way for you to file without waiving your rights. (Incidentally, at this time, if you feel that your withholding has not quite been enough to cover what you have calculated would be owed if you were to file a return, include a payment for the difference--you want to eliminate any excuse that the IRS might use to seize any of your assets.) Point out also that you have become aware that unless and until a return is filed making you liable for a tax, you understand that the money that has been withheld and sent in in your behalf just sits in a "pending" file somewhere and cannot be used by anyone. (Your return is your self-assessed tax bill; if you don't prepare it and bill yourself, you cannot owe any tax.)

State that you wish your letter to also serve as an informal Claim for Refund. Now, pursuant to IR Code section 6532(a)(1) which states:

Sec. 6532. Periods of limitation on suits.

(a) Suits by taxpayers for refund.

(1) General rule. No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

...unless the agency can inform you of a way you may file a return within the next six months (without waiving your rights, of course), you are entitled to sue them to enforce your Claim. When you sue, you are in the driver's seat and the IRS will be on the defensive. To a jury, they will have to try to explain why they haven't been able to respond to your concerns for your rights, and the Achilles heel of the hated income tax system will become apparent to twelve more Americans. Are we having fun yet?

This should be a thoroughly enlightening experience for both you and the jurors, and an embarrassing one for the IRS. Perhaps the IRS will scurry around prior to trial and file a return for you under their Section 6020(b) procedure, and then argue that your withheld moneys have been applied to that return. They could do that because the procedures allow for it, but they don't have the manpower to do it for thousands of folks who will read this book and then take the IRS to court. Probably, the worst thing that could happen to you would be that you would become totally tongue-tied and completely fumble your argument and the jury simply would not understand the issues and would not award you your claimed refund. But how many cases like this filed in the courts do you think it will take to thoroughly consume the agency and force the agency itself to go to Congress and ask them to either correct the tax laws or amend the constitution? Which do you think they will do?

An individual who is not an employee but is self-employed could follow essentially the procedure outlined above, except that the

"withholding" would be his responsibility. He should be sure that he posts a bond against any assessment the IRS might make, in other words, sends in his estimated tax amounts quarterly as he has in the past. Then he can follow the same procedure as the employee; file a combined extension of time and informal Claim for Refund letter, follow up with a lawsuit to enforce his Claim, and so forth. Remember, anyone who decides to quit filing tax returns must only do so on the advice of attorneys and other professionals; and, especially if he is not completely judgment proof, he must be sure that any tax the IRS might assess under Section 6020(b) is pre-paid.

Each year, an individual could send photocopies of his opinion letters along with his own letter to the IRS requesting an extension of time and also making an informal Claim for Refund, instead of waiving his rights and submitting a tax return. After going through the first lawsuit or two to pursue his Claims, I'd wager that he'd even find that it was an easier thing to do than what he had done in the past; that is, try to get all of his receipts sorted out, understand the latest changes in the tax laws, figure out what amount goes on what line and where he fits in the tax tables, ad nauseam. I'm certain that he'll find it to be a lot more satisfying and a lot more fun!

Our governmental system was for years the envy of the rest of the world, but it currently suffers from many severe problems and it is now so huge and sluggish that making changes is quite difficult. However, if just a few thousand responsible Americans became aware of and challenged the severe constitutional problem with the income tax, I believe that the system could be changed in just a couple of years. Remember that when you file a tax return, you vote in favor of the income tax, and you also vote in favor of the IRS' cynical abuse of your rights and your Fifth Amendment protections. If the government can require you to give them information that they can decide at any time to use against you in a criminal tax case, or in any kind of criminal case, then the Fifth Amendment has become a nullity, a joke. As long as the American public remains unaware of the situation, this horrible abuse will continue. If you are reading this book, however, you have become aware, and I hope that you feel confident enough with what you have learned to seriously consider joining those who have decided to quit voting (filing) every year in favor of a system that cynically continues to ignore, and even trample on your rights.

You say you don't quite feel that confident yet? Well, that's either my fault or perhaps I haven't given enough credit to the IRS' propagandist and fear-instilling program. Or perhaps you've been filing 1040 forms so long that you just can't quite yet bring yourself to quit cold turkey this year. As a suggestion for you to ease into the ranks of us erstwhile reformers, let me suggest a slightly different twist that may feel more comfortable. I call it the "substitute jurat" approach. Next year, go to your CPA and have your return prepared, as usual. In preparation, take the time this year to adjust your W-4 so that a little more than normal is withheld; make sure the IRS will owe you a little money. When your CPA presents your return to you for filing, file it but file it without signing it. Instead, attach a statement that states something like this: "I cannot sign this return under the penalty of perjury, as the attestation requires, because I do not understand the document or its contents. Obviously, if I did understand the return and the tax laws governing its preparation, I would have prepared it myself. I am, however, certifying with this statement under the penalty of perjury that I told the truth about my income to the CPA who has prepared the return, and who has signed as its preparer."

Now the IRS will react by either issuing a \$500 fine or declining to send you your refund; in either case, you have still set up your own opportunity to challenge the Federal Income Tax in court at its very roots. Here again, you are postured to file and follow through on a Claim for Refund.

Let's return to the idea of not filing, but sending the IRS a Claim for Refund letter. Since the IRS knows they cannot require

individuals to waive their rights, they are not going to accept or decline your request for an extension of time. They will most likely ignore the request and they will proceed under Section 6020(b). In order to proceed they will have to follow very expensive and time-consuming procedures. There is no possible way that the IRS could deal in this way with even half a million people a year out of the 100 million who file. I am confident that less than half a million people a year using this approach could completely reform the existing tax system within two years. The existing system will not work unless people voluntarily waive their rights on April 15. Similarly, if the IRS doesn't send the refund to the individual who has filed but who has signed his own jurat instead of their jurat, the IRS will still have to defend themselves against a Claim for Refund lawsuit in federal court.

The jurat-related lawsuit could pose an additional problem for the judge. He may decide that it is an issue of law that he should rule on rather than a jury. Then he will have to rule that either the individual must commit perjury and sign a document that he has already sworn under the penalty of perjury he does not understand, or he will have to rule that the customized jurat is OK for purposes of a refund suit. Either way the judge rules, he creates a problem for the IRS. If and when just one judge rules that the customized jurat is OK, his ruling will be published far and wide so that it will become common knowledge that individuals are not required to file signed returns. The IRS' prosecutorial teeth will be pulled. Millions will quit voluntarily waiving their Fifth Amendment protected rights.

In the past, many individuals have chosen to challenge the invalid assumptions of our tax system by not giving the government money and not filing. Most of these individuals were not judgment proof. Years later, when the IRS finally made an assessment, the individuals were assessed thousands in late charges and interest in addition to the taxes for those years, and the IRS seized their assets. In addition, many of these individuals went to jail for their efforts. Unfortunately, other than make some of the rest of us wake up and start thinking about the issues ourselves, their great sacrifices accomplished little. It was apparent too that some were doing what they were doing for the wrong purpose, that is, saving money on taxes. They were not doing it to protect their rights, in fact many were not even very well educated about their rights. They certainly did not prepare for their situation in advance. They did not establish a strong and defensible good faith foundation for their actions. It is my opinion that if the techniques outlined in this book would have been used by these early activists, the system would have been changed by now. Rather than successfully prosecute for non-filing and non-paying, the IRS would have found it impossible to enforce a tax system against millions of people who were simply insisting on the constitutional protections of their rights and choosing not to voluntarily waive such protections.

13

What Will Uncle Do?

Each year, as individuals quit voting (filing) in favor of the income tax on April 15, the IRS will have to begin assessing each individual separately. Even if individuals did not file Claims for Refund that the IRS would eventually have to defend in court, the agency would still face the burden of having to issue a Statutory Notice of Deficiency to each individual who has not voluntarily self-assessed. Going through this process for a few hundred thousand individuals would require more of the IRS than they could handle. Each person who receives a Statutory Notice has 90 days from its date of issuance to file a Tax Court petition. If they availed themselves of this opportunity, the IRS would have to schedule Tax Court for these hundreds of thousands of challengers. Even if those individuals who have allowed withholding or posted bond against the government's 6020(b) assessment simply elect to agree to the assessed amount and not pursue a Claim for Refund action,

the IRS will have to do an incredible amount of work on each individual case.

There is no doubt that the IRS would become overburdened immediately with the amount of administrative paperwork, and Congress would be forced to give us a more fair and equitable tax system that does not blatantly ignore our constitutional protections. People can force the IRS to tell the truth and to quit cynically requiring all of us to voluntarily waive the Fifth Amendment protections of our rights. Handled properly the IRS is a paper tiger, but it could quickly become a paper victim. Feel like slaying a tiger today?

14

#### Empowerment

Many individuals who have read this far in this book will be completely amazed at my position. They had no idea that there is no statute that requires the payment of income tax on an individual basis; in other words, that there is no statute that makes one liable for the income tax. Furthermore, the idea that the government can cynically require individuals to give information that the IRS may immediately turn to their use in any criminal tax case they wish, will probably amaze and anger many people that weren't upset with the tax system before.

I imagine that although many will become aware from reading this book, a large number will probably feel that they are too small to take on city hall. I run into that reaction often on the lecture circuit. Actually, the truth is quite different. I too felt overwhelmed by city hall back in 1978, but I started reading and studying and finally taking action. My experiences taught me that I could take the government on, all by myself, and win. I'm proud of my six published wins on my case related to the audit of my 1979 tax return. Of course, I'm proudest of the ruling I received from the Tenth Circuit Court of Appeals--that tax returns are not compelled or required. I've never had any formal legal training. If I can do it, everyone can do it. It is not necessary for you to reinvent any wheels. You can benefit from my experiences and those of others who have gone before both of us. I'll be pleased to hold your hand and walk you through the process. Since I am not an attorney, nothing in this book can or should be construed as legal advice, but I can certainly share my experiences.

Speaking of attorneys, I'd like to suggest that you give this book to your attorney to read. Let me know of his opinion. Ask him to put in writing the conclusion he is bound to come to, that is, that he cannot figure out a way for you to file without waiving your rights and the constitutional protection of those rights.

Ask him to apply for my \$50,000 reward. If you decide to quit voting in favor of the Federal Income Tax on April 15, there is a lot you can do, but you must do it. I've walked this road many times with others, but I'll be only too happy to walk it again with you and keep you from taking any wrong turns. I know you'll feel great taking the journey, and feeling that you've personally been a major catalyst for positive change in America.

jj

15

#### Typical Questions and Answers

Q. I have read your book and you have convinced me that you are right, but I am still a little afraid to take what seems like a major step. Do you have any further suggestions that I might consider in order to help?



A. Yes, there is a lot that you can do to help! First of all, you can pass out copies of this book to your friends. You can schedule a speaking engagement for me with a local group in your town. You can put copies of my \$50,000 reward advertisement in your local newspaper or you can advertise in your local newspaper that the Tenth Circuit Court of Appeals has taken the position in Conklin vs. U.S. that tax returns are not compelled or required. State in your ad how a reader may contact the court for a copy of their unpublished decision--think of the effect on the judges here in the Tenth Circuit as they receive such requests and realize that thousands are aware of their decision.

Q. If enough people become convinced that you are right and take actions, what will our government do for money?

A. I am not advocating that people should not send the government money. I am taking the position that individuals should know that filing returns is voluntary and that they waive a very important constitutionally-protected right when they file a return voluntarily. If the IRS wishes to count the money in their accounts as a collected tax, then they must assess each individual under Section 6020(b) who does not voluntarily file a return. When a few hundred thousand of us take such positions each year, the load of the IRS will become so severe that Congress will either have to give us a new tax system or correct the constitutional conflicts in this system. Right now, our income tax system only functions because, each year, a hundred million individuals voluntarily waive their rights and give an abusive and cynical agency unnecessary and unprecedented power over them. (Even if I were advocating that we not send them any money, they'd get along without it because they already print what they need anyway. It's because they just print what they need that we have such huge deficits each year -- how do you think their many programs are paid for, if there is a deficit between the program cost and the taxes collected? That's right - printing presses churning out the difference in billions of dollars of paper currency.)

Q. If the IRS cannot require individuals to answer specific personal financial questions when the Fifth Amendment is specifically asserted in response to a summons, then how can the IRS require individuals to answer the same questions on a 1040 Form each April 15th?

A. I think you understand the thesis of this book quite well. The answer of course, is that the IRS cannot require that any individual give them information on a 1040 return.

Q. What will happen if I file a 1040 return and I take the 5th Amendment on the return on specific questions?

A. You have asked a very good question because it would seem that filing a return with specific Fifth Amendment objections would be a good way to deal with the problem. However, if you object on the tax return, the IRS will issue a \$500.00 penalty for filing a frivolous return, and as you can see from my case, the courts will come up with some sort of ridiculous argument to protect the income tax system. There is a judicial conspiracy to protect the income tax and keep the truth from the American public. The Alice in Wonderland logic and Orwellian doublespeak is rampant and knows no bounds. That is why I suggest instead that you mail an informal request for an extension of time to file the return once the IRS can show you how to file it without waiving the Fifth Amendment protections of your rights. Since you have not proffered a return with your mailing, the IRS cannot fine you for filing a frivolous return.

Q. How does the IRS get so many people to file returns voluntarily each year?

A. Congress and the IRS have conspired together to keep the people in fear. They've done so with criminal sanctions and prosecutions, inexcusable in my opinion in a country like America that so strongly touts freedom. Unbelievably, America is one of the very few countries in the world which have criminal tax implications in their laws! The IRS throws a few people in jail each year for "willfully" not filing returns to intimidate the rest of us and keep us volunteering. Also, have you ever wondered why it is that when you adjust your W-4 to the correct number of allowances, you always get a refund? The withholding tables are specifically designed so that the IRS owes you money at the end of the year. The IRS is playing with our minds again; it's another psychological ploy to encourage people to file returns--the benevolent IRS will send them a refund! I'll bet that if the tables were designed so that everyone owed the IRS a few dollars each year, the IRS would lose control immediately. But as it is, many, many people voluntarily file returns to get a refund at the end of the year. They count on it and regard it as akin to a windfall--some have apparently lost track of the fact that it's their earned money in the first place! However, if your rights are important to you, then you need to consider doing something to change this absurd situation.

Q. I understand your criticism of the current system and I am astounded. What would you envision as a decent system in a perfect world?

A. I don't have a perfect answer to that question. If I did, I would know more than any of our politicians or economists. I do know however, that we must have a government and a court system that is honest with the people. We cannot have a Fifth Amendment that gives the people a right not to give the government information that can be used in criminal tax cases and then turn around and prosecute individuals criminally for not volunteering the information. We cannot have an agency that cynically collects information in civil proceedings and then turns the case to one of criminal prosecution once the information has been collected. We cannot have a system that survives only because it is feared; and we cannot have a system in which the IRS can take any property it wants without a court order.

For a start, if we are to have a fair system, we must do the following:

1. Shift the burden of proof to the IRS.
2. Allow jury trials on all tax cases without prepayment.
3. Repeal all criminal tax laws.
4. Prevent the use of any information on tax returns in any criminal case.
5. Require the IRS to obtain a court order before it can seize any property.
6. Make it illegal for the IRS to audit or harass individuals who exercise their First Amendment protected rights and criticize the system.

Q. How can the person who owns a car, has a job and uses banks, etc. quit waiving his Fifth Amendment protections on April 15th, and still hold on to his assets?

A. Good, you are now thinking on the right track. If you are sure that the IRS has the money up front for any tax they might eventually assess under Section 6020(b) of the Internal Revenue Code, and you assert all your rights as the IRS attempts to assess, you will

not lose any assets. As a matter of fact, you should have a lot of fun. The IRS will probably spend more money following the assessment procedures under 6020(b) than you will pay them in tax. As you can see, we only have the tax system we have because the people continue to tolerate the cynical abuse of their rights.

Q. I am completely judgement proof. I don't own a house and I work for cash jobs. I don't even have a bank account. I haven't filed returns or paid any income taxes for over ten years. What can the IRS do to me?

A. Actually, the IRS might have a lot of trouble with you. They may proceed criminally, but that is unlikely unless you make quite a bit of money or you are very vocal. If they ever discover you, they are likely to issue a Statutory Notice of Deficiency and proceed with an assessment. However, if you don't have any visible assets they can seize, they will be forced to issue a First Party Summons to you. If you know how to respond to the summons properly, the chances are the IRS will just leave you alone and go after easier fish. I think that right now there are literally tens of thousands of people in the country who are following your approach. The IRS Commissioner has admitted in public that over ten million returns are not filed each year! From this point forward, I'd be sure to rely on the advice of professionals for any decisions you make regarding the federal income tax. While I admire your temerity, I am not advocating that people take a position as hard-core as yours. However, I know that there are all types of people in this country and I know that many people hate the income tax system so much that they simply neither file nor pay income taxes. Obviously, if enough people were to start doing what you are doing, Congress would definitely have to come up with a better system.

Q. It sounds like I would have to be a real knowledgeable legal expert or have a lot of money to hire lawyers if I decide to quit voluntarily waiving my Fifth Amendment protections on April 15th. Isn't that really necessary?

A. Actually, if you prepare yourself in advance by making sure there is withholding or a bond posted against a 6020(b) assessment, and if you have opinion letters from various professionals, you will be in a great position to have fun and learn a lot.

Q. I would like to write my congressperson about this problem; what should I say?

A. Write your congressperson and ask the following three questions:

1. Do I waive my Fifth Amendment protected rights when I file a 1040 tax return?

2. If I do waive my Fifth Amendment protected rights when I file a 1040 tax return, what statute requires me to so waive them?

3. If I do not waive my Fifth Amendment protected rights when I file a 1040 Return, then why does the IRS have a Miranda-type of warning in the Privacy Act Notice of the 1040 Instruction Book, stating that the IRS may give any information on my return to the Department of Justice, obviously for use in criminal cases?

Let me know what your congressperson has to say about this issue. In the past, congresspeople have either neglected to answer the letters or they have ignored the questions and sent back generic answers that are not responsive to the question. They must be aware there is a problem.

Q. Several congressmen and several presidential candidates are talking strongly about replacing the income tax with a flat tax. Won't that get rid of the Fifth Amendment conflict that the present tax system has with the Constitution?

A. Not at all. The flat tax would still require filing a return. It is said that it will be a shorter return, with no deductions allowed, but it still requires a return. Not only that, but Congressman Arme, who has proposed the flat tax, is proposing that his flat tax require the short return to be filed every month, with a 13th return, a summary return, due at the end of the year also! The IRS would not go away; they would still be needed to audit the returns. In fact, since there will be 13 times as many returns, the IRS will probably have to hire more IRS employees to help (harass) us. Now, the present system gives the IRS one return to find errors on and take us to task for, civilly and criminally; don't you imagine our exposure to such prosecutions and persecutions will increase with 12 more returns, even though it has been promised that they will be simpler?!

On the other hand, a national sales tax, as proposed by Congressman Archer, would get the IRS out of our lives, altogether. With a national sales tax, there would be no returns filed by individuals; the tax to support the federal government would simply be collected at the point of sale, by the retailer, like state and local sales taxes are collected in most states today. In turn, the retailer would turn what he collects over to the state and the state would submit the state's pro-rata share of the federal budget needs to Washington, D.C.. Even though our federal government shouldn't be involved in so many expensive (and un-constitutional) programs that require the collection of a sales or income tax at all, a tax handled in this way would be far more in line with the concept of taxation held by our founding fathers. The federal government would not directly interact with the citizens at all, only with the states, as envisioned by the founders. For almost all of us, there would be no more recordkeeping, audits, late fees and other penalties, interest, or fear of criminal prosecution and incarceration. Wow! What a burden to lift off of our own shoulders!

Q. If your thesis in this book is correct, hundreds of thousands of people have been punished with both civil and criminal fines illegally since the beginning of the income tax. In other words, if filing returns is voluntary, many people have been convicted and have spent jail time for not volunteering.

A. Your point is well taken. It is my position that the issues in this book are quite clear to anyone with a modicum of sense.

The IRS is completely honest when they state that we have a voluntary tax system. However, Department of Justice attorneys who argue to the Court that individuals are required to file and therefore required to waive their Fifth Amendment protected rights are either ignorant of the law or they are bald-faced liars. The same goes for district court and appellate judges. I personally believe that the situation has gone on so long that the establishment has an investment in continuing the lies, the doublespeak and the Alice in Wonderland logic. Incidentally, the longer we allow this un-American system to continue, the more entrenched it becomes. That is another reason why the system cannot be changed only by challenges in the courts, or only by writing to your congresspersons. It's going to take both, but if we're willing to put our traditional American determination to the task, we'll get it done. A few hundred thousand of us simply have to get off our collective duffs, make the safe Claim for Refund challenges I've outlined, and work to gather support for congresspersons who are pushing for true reform with a national sales tax, for example, and it will happen.

## Conclusions

If you have read this book carefully, you know the following concepts:

1. The Fifth Amendment is one clause of our Bill of Rights. It stands for the proposition that individuals are not required or compelled to give the government information that may be used against them in criminal cases.

2. The IRS continually uses the word "voluntary" in relation to the filing of income tax returns because they know that the Fifth Amendment prohibits the government from requiring individuals to waive their rights.

3. Individuals who voluntarily file tax returns freely give the IRS information that may be used in a criminal case if the IRS decides at any point in time to turn a civil investigation into a criminal case.

4. The IRS has a "Miranda" type of warning in their Privacy Act Notice. The purpose of the warning is to warn individuals who file returns that the information may be used against them in a criminal case.

5. Individuals who become aware that they are voluntarily waiving their Fifth Amendment protected rights when they file tax returns and who wish to quit waiving those rights, should seek professional counsel, and then ask the IRS for an extension of time to file their return until the IRS can inform them how to file the return without waiving their rights. Opinion letters from professionals should be sent in to the IRS with the request for an extension of time to file.

6. The IRS cannot require any individuals to come to an audit without issuing a summons. However, once a summons is issued, a knowledgeable individual can appear and assert the Fifth Amendment to specific questions. The IRS cannot enforce a summons in the face of specific Fifth Amendment responses.

7. There is no statute that makes anyone liable to pay the federal income tax. Individuals become liable to pay the tax by filing tax returns and self-assessing themselves voluntarily. Alternatively, the IRS may make an assessment under 26 USC 6020(b). However, in order to assess, the IRS must follow certain procedures.

8. Knowledge is power. On the other hand, ignorance breeds fear. The IRS is able to get away with its terrible abuse because lack of knowledge about their own rights leaves individuals afraid.

9. If you think that you can prove that I am incorrect, you may wish to apply for my reward. In order to win the \$50,000 reward you must show me: (1) What statute in the Internal Revenue Code makes me liable to pay an income tax, and you must also show me (2) How I can file a tax return without waiving my Fifth Amendment protected rights. I welcome your challenges.