

Presumed Duties

by Frank Kowalik

As we've seen in some of the previous articles, the government seems to impose the income tax on private sector workers through a measure of legal trickery. Mr. Kowalik offers one strategy to defeat some of that trickery.

There is no simple way to explain the term "Federal income tax return." It is certain, however, that it does not mean that a 1040 form is required by law to be made by *all* working Americans. The duty to make a "Federal income tax return" applies to wages received *from the U.S. Government*. The duty to file a 1040 form applies primarily to *federal government employees* (FGE).

The Revenue Act of 1918 (c. 18, 40 Stat. 1057, enacted by Congress on February 24, 1919 Sec. 213) controls the wages received by persons whose conduct is effectively connected with a trade or business within the U.S. Government:

“. . . for the purposes of this title. . . the term 'gross income' -

“(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether

elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.”

Under this law, “gross income” includes “gain” and “income” derived from “wages” received by a *federal government employee* (FGE).

The “income” portion is consideration for their labor, while the nature of “gain” portion remains U.S. Government property transferred into the possession of the FGE “transferee” [see 26 USC Sec. 6902]. The “gain” portion creates the liability and duty to “return” to the U.S. Government any part of it that cannot be legally retained by the FGE. That which can be retained is noticed on a 1040 form; the balance is returned to the U.S. Treasury. The part which is returned is commonly referred to as tax.

To avoid prejudice to property that belongs to the FGE, Con-

gress does not permit the “income” portion to be taxed. According to 4 U.S.C. Sec. 111:

“State, and so forth, taxation affecting Federal areas; taxation affecting Federal employees; income tax. The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.”

By this law the U.S. Government permits state governments to tax its property (the “gain” portion of “gross income derived from “wages”) in the possession of a FGE. State governments demonstrate their understanding of this fact by only applying state income taxes to persons who are *first* required to make and file the *Federal* income tax return.

However, Congress has made no law as to taxation of pay or compensation for personal service performed for any person *other than the U.S. Government* [see 4 U.S.C. Sec. 111]. Congressional intent to exempt private sector workers from the income tax is demonstrated by 26 U.S.C.

Sec. 7701 (a)(31) which identifies one's estate as *foreign* to the U.S. Government and not includible in gross income under subtitle A when it is created through sources other than the U.S. Government. In other words, where a human being's gross income is from sources *without* the U.S. Government there is no U.S. Government property ("gain" portion) in one's possession that is liable to be returned; and makes unnecessary the requirement to file a 1040 form.

Voluntary compliance

Although the duty to pay federal income tax was originally intended to apply only to government employees, under the IRS mission of voluntary compliance all non-government workers are also encouraged to "voluntarily" send their property to the IRS:

"Sec. 1111.1 Mission. The mission of the Service is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and to maintain the highest degree of public confidence in the integrity and efficiency of the Service. This includes communicating the requirements of the law to the public, determining the extent of compliance and causes of non-compliance, and doing all things needful to a proper enforcement of the law." *Federal Register*, Vol.39, No.62 - March 29, 1974, page 11572.

The IRS enforces "voluntary compliance" which is *presumed* to exist when a 1040 form is based upon property *not* received from the U.S. Government. However, if filing a 1040 is compelled (not presumed) by any legal and or physical coercion, the result is evidence of involuntary servitude. This was expressed by the U.S. Supreme Court:

"We hold only that the jury must be instructed that compulsion of service by the use or threatened use of physical or legal coercion is a necessary incident of a condition of involuntary servitude." *U.S. v. Kozminski*, 487 U.S. 931,955-956(1988)

Involuntary servitude is unconstitutional. Constitutional prohibitions apply when a 1040 form filed by private sector workers can be used to compel them to deliver their personal property to the IRS. However, many constitutional issues do not apply where a 1040 form is filed by a FGE to return government property to the U.S. Treasury. Because it's easier to prosecute defendants who do not enjoy constitutional protections, an incentive exists to prosecute all private sector workers as if they were government employees.

Presumptions

Under Rule 301 of the Federal Rules of Evidence, where you do not place into evidence a rebuttal to that which is presumed, you accept the presumptions and permit


enforcement of the IRS collection procedures on a voluntary compliance basis. However, according to Rule 301, government agents and the courts must respect any remedy afforded you by any rebuttal you place into evidence:

"Presumptions in General in Civil Actions and Proceedings: In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast."

In other words, if the government enters a presumption into evidence that you are a "space alien" and you don't rebut that presumption, the court will defy common sense and issue a verdict based on the "legal fact" that you *are* a space alien (and perhaps order you extradited to Mars). It's important to recognize that you need not *prove* you are not a space alien (in fact, that's not possible since you can't prove a negative) -- but you must rebut the presumption or it stands as fact. To rebut, you must merely issue a denial (i.e., "I am not a space alien", or better yet an *affidavit*: "I swear under penalty of perjury that I am not a space alien"). Once rebutted, if government can't show *proof* that you're a space alien (or a "taxpayer"), the court cannot base its verdict on that allegation. If the government's presumption is critical to its case, the case must fail.

Given that Constitution has less application when prosecuting federal government employees than when prosecuting private sector workers, it's easier to prosecute government employees. This ease of non-con-

STOP THE SLAUGHTER NOW!
Every 24 minutes a drunk kills. Are you next?



Take Their License & Car On The Spot. JAIL THEM NOW!

The irresponsible drinker must be stopped. Send \$5 and SASE for 2 Bumper Stickers, black or red. Police, Security Patrol, Military Police, Fraternal Clubs, 50 Bumper-Stickers \$30 S&H incl.
BLAKE P.O.B. 114 North Miami, Florida 33161

stitutional prosecution creates an incentive for government to try all persons *as if* they were associated with the government. The government responds to this incentive by offering subtle presumptions into evidence that suggest private sector workers are in fact tied to the government. If the workers do not rebut these presumptions, they are tried as government employees and typically convicted.

At present, the only way I know to rebut government presumptions that legally obligate private sector workers to pay income tax is: 1) identify whatever presumptive elements exist in the government's case; and 2) produce and submit an *affidavit* which denies those presumptions.

If the proper affidavits are submitted early in the tax enforcement process, the IRS can be stopped administratively by removing the presumptions they depend on to prosecute their case. However, in my affidavits, I

am careful to rebut the government's presumptions without creating *new* controversies that can be adjudicated by the courts.

I believe that silence to my affidavits is evidence that government cannot overcome my rebuttal and therefore makes a record (and perhaps a presumption in *my* favor) that they accept as fact that my position has merit and is correct at law.

Also, where a return is required but has not been made, the Secretary has remedy under 26 U.S.C. Sec.6020(b) to effectuate the return by making and subscribing a 1040 form:

"(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." [Emph. add.]

Therefore, it might be "presumed" and later argued that the neglect or failure of the Secretary (or delegate) to make and subscribe a 1040 form for a particular individual becomes evidence that a "return" is *not* required from that person, and implies that person's property cannot be included as gross income under subtitle A.

Upon this evidence I believe that I can exercise, or initiate, control over my life, liberty and property.

Frank Kowalik is the author of the book, *IRS Humbug*, available for \$33.50 (\$29.95 for the book and \$3.55 for P & H), check made payable to Frank Kowalik, at Universalistic Publishers, P.O. Box 70486, Oakland Park, Florida 33307. ■

Do you Think Foreclosure is ONLY a Personal Problem?

The Federal Reserve (owned by international bankers) is foreclosing on the United States. Our politicians obey the international bankers by passing Regulations & Land Use Laws and by promoting contrived "wars" to justify: IRS, gun control, EPA, Urban Renewal, Endangered Species, Seizing & Destroying Aging Cars, ATF, etc. etc. Under the guise of these "wars," government uses police power to steal, seize and foreclose on more & more private property.

Our illegal debt-building MONEY SYSTEM is the CAUSE of our problems

To stop it, you must understand why America is going broke!

Pilla, Dan 101PAID 1/2 page 10K

LEARN the MONEY ISSUE!

with a Fast and Easy FLIP CHART PRESENTATION on Money Troubles and Solutions by Byron Dale and Dan Pilla (Sr.). Large print. Easy to Read

Order From... Dan Pilla (Sr) :- *Truth in Print* 704 Edgerton #AS · St. Paul, MN 55101

Only 20.00 post paid

The *best* speaker on the money problem is: **Byron Dale 952-925-6099**

HELP save America from Bankruptcy & Foreclosures Caused by "Money-Credit-Debt System."