FAILURE TO FILE DEFENSE

1. FAILURE TO FILE, 26 U.S.C. 7201: THE ELEMENTS THE GOVERNMENT MUST PROVE ARE:

- Defendant failed to file a return (***47B C.J.S. 1258*, note 89**)
- He must be a person required to make a return (***47B C.J.S. 1258*, note 93**)
- He must have done so "*willfully*" (***47B C.J.S. 1258*, note 90**).

The word "*willfully*" in the Statute means "*a voluntary, intentional violation of the known legal duty to file a return*" (***47B C.J.S. 1258*, note 5**), and the taxpayer's motives in failing to file such are immaterial and irrelevant (***47B C.J.S. 1258*, note 96**). Some cases have construed the Statute as not requiring an intent to defraud the government or other similar bad purpose or evil motive (***47B C.J.S. 1258*, note 98**).
"*Willfulness*" means "*a voluntary intentional violation of a known legal duty*" (***47B C.J.S. 1256*, note 45**) which may be shown through consistent patterns of not reporting large amounts of income.
An act may be done knowingly and intentionally whether as the immediate act of the person charged, or his authorized act through an employee (***Prather v. U.S.***, [1834] *9 App. D.C. 82*).

2. INITIAL DEFENSE

Determine what returns you are being charged with evading or not filing, as:

> "income tax liability for any one year constitutes a single cause of action."
>
> ***Lewis v. Reynolds**, 284 U.S. 281*

Determine whether they are beyond a statute of limitations to sue since Congress has consented to a defense to which in effect is a statute of limitations (***Lucia v. U.S.*,** [C.A. Tex. 1973] *474 F2d 565*) and under the Code (***26 USCA 6502***) a suit is barred when not brought within the statutory limitation period, and move to dismiss any counts which are past the statute of limitations.
Refuse to produce anything the government does not already have on you from payroll. You may refuse any *I.R.S. Summons* not judicially enforced, as long as the attack is in "*good faith*" and the Statute usually referred to is ***26 USC 7210*** which prescribes criminal punishment for anyone refusing to obey an Internal Revenue Summons for production records, was addressed by the U.S. Supreme Court in ***Reisman v. Caplink***, 375 U.S. 440. The Court stated:

> "Non compliance is not subject to prosecution thereunder, when the summons is attacked in good faith. ... And by the same token, it seems that one who makes a good faith challenge to specific questions on a 1040 tax return is not subject to successful prosecution."

The Courts have also stated that:

> "Broad discretions given tax officers with regard to investigations, is for legitimate tax investigations and is not a license for official harassment of the citizenry"
>
> ***U.S. v. Cutter**, 374 F.Supp. 1065*

If our rights are not given to us during a verbal conversation as enumerated in the ***Mathis*** decision, (*No. 726*, May 6, 1938, *3910 Winterhaven. n. 1*) then you move to suppress the evidence gathered through that conversation.

- Prepare a Motion to Dismiss, using this document as reference.

- Prepare requests for Jury Instructions or Requests for Findings of Fact and Rulings of Law.

- Make sure the submitted "*Jury Instructions*" contain what you want to argue in front of the Jury (See ***U.S. v. Watkind***, *Fed Case No. 16.649* [*3 Cranch, CC 441 U.S. 1829*) as:
  "Counsel will not be permitted to argue before a jury questions of law not involved in the instructions asked and submitted to the court."

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3. HABEAS CORPUS

The question can be raised whether an individual incarcerated on a 26 USC §7203 or §7201 charge, even if he has pled guilty, or has a suspended sentence, or has finished their sentence but has probation or other restrictions, can find relief with the legal points in Parts 1 and 4. The answer appears to be an unqualified yes.

Below is a sample pleading regarding Habeus Corpus:

[court caption with district court case number]

MOTION TO VACATE AND SET ASIDE JUDGMENT

FOR LACK OF JURISDICTION

AND FOR

FAILURE TO STATE A CRIMINAL OFFENSE IN NATURE OF HABEAS CORPUS

The defendant Moves this court to Order a review of the defendant's incarceration in the nature of a Writ of Habeas Corpus, directing that the Movant be brought before the court without delay to hear and consider any objections to this Motion.

The defendant additionally Moves this court, after review, to vacate and set aside the judgment imposed by this court; to restore full civil rights; and to have notice that the conviction has been vacated and set aside to be published in all legal publications that contain a record of this conviction; for the return of all fines, penalties, and restitution ordered by the court; and for such other relief as is deemed equitable by this court; for the good and sufficient cause that the court was without jurisdiction to impose such sentence, and for the additional reason that the indictment does not identify a criminal offense, all in violation of due process

Upon review, the indictment for 26 USC §7203, commonly identified as a charge of willful failure to file, is found to be without any claim the defendant had a statutory duty to the plaintiff and defendant is therefore not charged with violating any legal requirement imposed by law. Without a claim of a statutory duty being violated by the defendant, no crime has been charged (there is no cause stated). The Fifth Amendment mandate that judicial actions shall proceed against a citizen only by due process (the law of the land) has therefore been violated, and since any procedure which violates the constitution is not a government action, jurisdiction has not been vested.

Under penalty of perjury, all statements of fact in this Motion and the attached memorandum are declared to be true and correct.

[signed and dated, address suggested]

[court caption with district court case number]

MEMORANDUM IN SUPPORT OF MOTION TO VACATE AND SET ASIDE JUDGMENT

FOR LACK OF JURISDICTION

AND FOR

FAILURE TO STATE A CRIMINAL OFFENSE IN NATURE OF HABEAS CORPUS

This Motion is filed pursuant to statutory provisions of 28 USC §2255 for habeas corpus and FRCrP 12(b)(2) that authorizes a challenge to jurisdiction/for failure to state an offense to be noticed at any time.

The defendant is federal prisoner number _____ at _____ prison sentenced by this court to _____ months incarceration on _____(month, day, year).

The court will take judicial notice that the indictment in this case claims the defendant violated Title 26, United State Code, Section 7203 by reason that he had gross income of $_____ for the year _____ and that he did willfully fail to make a tax return "as required by law." There is no other statute from Title 26 mentioned in the indictment.

The court will also notice that §7203 is an administrative procedure in Subtitle F, PROCEDURE AND ADMINISTRATION that is applicable to all 80 or so taxes the IRS collects. It does not identify what tax is being enforced.

There is no statute/law cited that imposes any type of legal responsibility on the defendant. The only law cited (§7203) is that the IRS/DOJ is empowered to prosecute and punish individuals who willfully refuse to pay any taxes legally collected by the IRS. This premise is not challenged.

It appears from a generous reading of the indictment that an income tax has been pursued. The adjective 'income' is found before the noun 'tax.' Is the defendant supposed to make some legal assumption from that phrase? Defendants cannot be required to make legal assumptions from criminal process.

Does the term 'gross income' impose some legal responsibility? If so, the indictment does not identify it. An indictment is required to identify any legal duty allegedly violated by the offender.

In brief, the indictment does not charge the defendant with being legally responsible for any tax. This position has been obliquely observed in recent adjudication that might be best to review.

In US v Moore, 692 F2d 95, pro se Moore suggested IRC §7203 was unconstitutionally vague and additionally failed to specify who has to pay an income tax. The trial court prevented such arguments from being made to the jury and the appellate court declared IRC §l and §6012(a) made the defendants responsible for the income tax.

In three appeals by the same lawyer from tax court, the court in Lively v CIR, 705 F2d 1017 declared a claim of "*no law imposing an income tax on (Lively)*" was without merit while in Ficalaro v CIR, 751 F2d 85 and Charczuk v CIR, 771 F2d 471 the court declared §§1 and 61 made the taxpayers liable for the income tax. Since all three citizens had petitioned tax court, there was no indictment served nor did the 'taxpayer' have standing to challenge the legality of the income tax. A petitioner to tax court cannot make such a challenge. To file a petition in non judicial tax court inherently assumes jurisdiction of the legislative Article I 'court' (not an Article III judicial court) and the legal position of a taxpayer. This is the Roman civil law procedure that is applicable in administrative tax court. To challenge liability for the income tax in appellate court after acquiescence to the status of taxpayer in tax court is an absurd appeal that justified personal sanctions on the lawyer. It might be in the public interest to revoke his license. Legal conclusions of the tax court are declared to be reviewed denova while factual findings are upheld unless they are 'clearly erroneous', but the tax court will not make any legal conclusions regarding the constitutionality of the income tax.

In Stelly v CIR, 761 F2d 1113, the court declared §61(a) made the defendant responsible for the income tax.

In US v Pederson, 784 F2d 1462 (1986), the court declared liability was imposed by §§1 and 6012.

In US v Bowers, 920 F2d 220, the court declared IRC §6012 requires payment of taxes.

In US v Vroman, 975 F2d 669, the court declared it was not necessary to cite IRC §6012 to give the defendant notice of the charges filed against him. id 671.

This list is not exhaustive. District and circuit courts have in other published and in unpublished opinions denied motions during trial and by habeas corpus that challenge the adequacy of the indictment, and occasionally offer their favorite statute which the court claims to impose liability. There is no known opinion that attempts to address the Supreme Court holdings and conclusions that are presented in this Memorandum.

While not holding on this court, we can observe the Treasury Department has recently suggested several statutes impose liability on the taxpayer. At website http://treas.gov/irs/ci/tax_fraud/docnonfilers.htm, we find: "**The Truth**: The tax law is found in Title 26 of the United States Code. The requirement to file an income tax return is not voluntary and it is clearly set forth in the Internal Revenue Code (IRC) Sections 6011(a), 6012(a), et seq., and 6072(a)." id 7-8. {Earlier editions were at page 4} At IRS website http://www.irs.gov/pub/irs-utl/friv_tax.pdf , the publication **THE TRUTH ABOUT FRIVOLOUS TAX ARGUMENTS** , subsection B. **Contention**: Payment of Tax is Voluntary declares "the requirement to pay taxes is not voluntary and is clearly set forth in section 1 of the Internal Revenue Code, which imposes a tax …" on page 4 of 32. The same article is also found at website http://www.ustreas.gov/irs/ci/tax_fraud/frivolous.pdf .

It can additionally be shown that the Congressional Research Report titled **FREQUENTLY ASKED QUESTIONS CONCERNING THE FEDERAL INCOME TAX** prepared for members of Congress declares IRC §§1, 61, 63, 6012 and 6151 "working together, make an individual liable for income taxes." Page numbers vary in different publication dates.

The memorandum from a district court that dismisses a challenge to the indictment will often declare: "petitioner makes the same tired argument that an indictment, citing 26 USC §7203 (or §7201), fails to identify the statute that makes an individual liable for an income tax… " and will cite a case in their circuit that may have mentioned the same issue but with little or no legal support. There is no reason to ridicule a litigant for making such a claim. As we have seen, confirmation of the claim that liability lies outside of §7203 is repeatedly acknowledged and declared by federal appellate courts. At the risk of repetition, the few known cases that have not been listed "not for publication" include:

In Ficalaro v CIR, 751 F2d 85, the 2nd Circuit declared IRC §1 and §61 was responsible for liability.

In US v Bowers, 920 F2d 220, the 4th. Circuit declared §6012 requires payment.

In Stelly v CIR, 761 F2d 1113, the 5th. Circuit declared §61(a) made the individual responsible.

In US v Pederson, 784 F2d 1462, the 9th. Circuit relied upon §1 and §6012 to make the individual liable. In US v Vroman, 975 F2d 669, the 9th. Circuit declared it was not necessary to cite IRC §6012 to impose liability.

In US v Moore, 692 F2d 95, the 10th. Circuit declared IRC §1 and §6012(a) made the defendant responsible for the income tax. In Charczuk v CIR, 771 F2d 471, the 10th. Circuit declared §1 and §61 made the taxpayers liable for the income tax.

Since different statutes are claimed by various sources to impose legal responsibility, is there any justifiable reason why legal liability was not declared in the indictment? Of more importance, is the indictment in this case, which does not include a statute declaring legal responsibility for a tax, consistent with fundamental requirements of due process as established by the Supreme Court to confer jurisdiction upon this court?

The inescapable conclusion is that various sources recognize the requirement that legal responsibility for a tax must be made by statute, and they all offer their favorite statute as the authority. It is a violation of due process if a taxpayer has to guess what law makes him responsible for a tax. "(*A) statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.*" Connally v General Construction Co., 269 US 385, 391 (1926). But the quotation almost misses the real point. We are not addressing a vague statute. There is no '*statute which requires the doing of an act*' averred in the instant indictment, and that "*violates the first essential of due process of law.*"

It is manifestly obvious the defendant cannot violate IRC §7203. The section reads: "Any person ***required*** under this title to pay any estimated tax or tax, or ***required*** by this title or by regulations made under authority thereof …" emphasis added. The ***requirement*** is clearly outside §7203; the defendant cannot violate §7203. If the defendant is required "under/by this title", then the punishment of §7203 can be pursued by the prosecutor. §7203 is statutory authorization to prosecute putative taxpayers. What law "under/by this title" requiring the payment of a tax and making the defendant into a 'taxpayer' has been violated? The indictment has no answer.

Concurrence that legal responsibility is acknowledged to be outside §7203 is evidenced in the circuit court opinions, Congressional Report, and government websites listed above.

Federal Rules of Criminal Procedure 7(c)(1) requires the indictment to "*state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated*." The notification of legal responsibility "*or other provision of law which the defendant is alleged therein to have violated*" is not found in the indictment. Criminal process must allege every essential element of the offense. Evans v US, 153 US 584; Hagner v US, 285 US 427; Hamling v US, 418 US 87. Notification of legal responsibility is "*the first essential of due process of law*." Connally v General Construction Co., 269 US 385, 391 (1926).

The memorandum by the district court that dismisses a challenge may reproduce §7203 and declare an indictment must contain the "statute, rule, regulation, or other provision of law that the defendant is alleged to have violated" [FRCP 7(c)(1)] and conclude §7203 informs the petitioner of "his specific tax obligation (required to pay income tax)." How the court can additionally quote the nebulous statement in the indictment---"(defendant) did willfully fail to make an income tax return as required by law and regulations"---and make such a conclusion is incomprehensible. Is the 'law' the indictment is referring to §7203? Section 7203 is the only law cited in the indictment. Such a position is untenable with the knowledge §7203 has been used to prosecute other than income taxes.

In Grosso v US, 390 US 62, the Supreme Court addressed an issue of willful failure to pay wagering tax (IRC 4401) and willful failure to pay an occupational license tax (IRC §4411). 'Willful failure' is not described in either of the two cited statutes. Willful failure came from §7203.

In Ingram v US, 360 US 672, the Supreme Court case utilized §7201 and §7203 to punish violators of §4401, §4411, and §4421. Ref. Footnote 1.

In Tyler v US, 397 F2d 565, §7203 was used to convict the defendant of willful failure to file excise tax returns required by §4401 and §4411. The same or similar result is in US v Stavros, 597 F2d 108; Edwards v US, 321 F2d 324; US v Sams, 340 F2d 1014; Scaglione v US, 396 F2d 219; US v Magliano, 336 F2d 817; Rutherford v US, 264 F2d 180; US v Gaydos, 310 F2d 833; US v Sette, 334 F2d 267; US v Simon, 241 F2d 308; US v Wilson, 214 FSup 629.

In US v Willoz, 449 F2d 1321, §7206 was relied upon for a conviction of willfully making a false statement on a wagering form required by §4412 and §4401.

Are wagering and occupational tax violations the only cases in addition to income tax cases that can be brought by provisions of Chapter 75 (including §7201 through §7209)? Of course not. §4071 imposes a tax on tires, §4081 imposes a tax on gasoline and diesel fuel, §4091 imposes a tax on aviation fuel, §4121 imposes a tax on coal mining, §4161 imposes a tax on sporting goods, but the entire list would be very lengthy. The statutory provisions in §7203 that apply to "Any person required under this title to…" authorizes punishment for violators of sections listed in this paragraph, and other tax violations, or there is otherwise no penalty for such offense---with a few specific exceptions. The criminal penalties of Chapter 75 for the above mentioned taxes may be seldom filed, but if there were no penalties, the manufacturers would surely cease paying the taxes.

It is submitted a lone citation of Section §7203, or §7201, within an indictment has been conclusively confirmed by federal appellate courts to not include the statute imposing liability for an alleged income tax nor does §7203 identify what tax of many potential taxes is being pursued. "(T)he court in effect rendered judgment against him upon a matter that was not within the pleadings and was not in fact litigated. To do this without his consent---and the record shows no consent---is contrary to fundamental principles of justice." Coe v Armour Fertilizer, 237 US 413, 426 (1915). The question becomes one of the legal standing of an indictment that does not aver a statute that imposes liability or identify what tax is being pursued.

"Law is something more than mere will exerted as an act of power...Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law...the limitations imposed by our constitutional law

upon the action of the governments...are essential to the preservation of public and private rights...the enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities... against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government." Hurtado v California, 110 US 516, 536 (1884).

The phrase "as required by law" within the indictment is a conclusion of law that is unacceptable in criminal process. "(A)s required by law" is an implicit acknowledgment that responsibility for an income tax is not within §7203. Due process is violated if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. Snyder v Massachusetts, 291 US 97, 105 (1934). After reciting several constitutional restrictions that can be side-stepped, the court declares: "What may not be taken away is notice of the charge and an adequate opportunity to be heard in defense of it." id 105. Of what use is process if it does not tell the defendant what he has done wrong? In Boyd v US, 116 US 616 (1886), the court observed the succinct statement by Lord Camden: "*If it is law, it will be found in the books; if it is not to be found there, it is not law.*" id 627. All the IRS must do is cite their favorite statute. An indictment without specifics of the case is invalid. Russell v US, 369 US 749.

Without a statutory claim that the defendant is legally responsible for paying a tax, the defendant has not been charged with the performance of a legal duty. If he is not charged with violating a legal duty, no crime has been alleged. If no crime is alleged, there is no case. If there is no case, there is nothing for this court to have jurisdiction over. The above steps are the fundamental requirements of due process. If due process is not followed, the court does not have jurisdiction. "*A judgment rendered in violation of due process is void*." World Wide Volkswagen v Woodsen, 444 US 286, 291 (1980); National Bank v Wiley, 195 US 257 (1904); Pennoyer v Neff, 95 US 714 (1878).

"*(T)he record of his conviction should show distinctly, and not by inference merely, that every step involved in due process of law, and essential to a valid trial, was taken in the trial court; otherwise, the judgment will be erroneous*." Crain v US, 162 US 625, 645.

Due process requires the government to affirmatively evidence their authority to tax: "...*jurisdiction of the Courts of the United States means a law providing in terms of revenue; that is to say, a law which is directly traceable to the power granted to Congress by §8, Article I, of the Constitution, 'to lay and collect taxes, duties, imposts, and excises*.'" US v Hill, 123 US 681, 686 (1887). US v Hill, read simply, declares the court does not have jurisdiction unless the law cited in the indictment reflects a constitutional authorization. In the instant case, there is no law cited that claims to impose statutory responsibility on the defendant, which is far less than the required averment of constitutional authorization.

The Supreme Court, in reversing a conviction that did not identify the defendant as the guilty culprit, stated: "*It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged violates due process*." Vachon v New Hampshire, 414 US 478 (1973) citations omitted. The instant application is not to mere evidence as in the Vachon case; it is to accusing the defendant of violating a law, and that accusation is never made. It is inconceivable that there is a more '*crucial element of the offense*.' Without a claim of a lawful duty being violated, there is no offense; the requirement for evidence is superfluous. A substantive violation of due process nullifies any claim to lawful action.

In condemning an ambiguous indictment, the court declared: "*A cryptic form of indictment in cases of this kind requires the defendant to go to trial with the chief issue undefined. It enables his conviction to rest on one point* [law] *and the affirmance of the conviction to rest on another. It gives the prosecution free hand on appeal to fill in the gaps of proof* [law] *by surmise or conjecture. The Court has had occasion before now to condemn just such a practice.*" Russell v United States, 369 US 749, 766. We have seen the circuit courts in the income tax cases listed above cite whatever statute they choose to 'fill in the gaps' and conclude a law has been violated. The practice is not compatible with Supreme Court holdings.

The Supreme Court again reversed a conviction of a crime that was not charged in the indictment. "*No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. If, as the State Supreme Court held, petitioners*

were charged with a violation of §1 [and convicted of §2]*, it is doubtful both that the information fairly informed them of that charge and that they sought to defend themselves against such a charge; it is certain that they were not tried for or found guilty of it. It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made*." Cole v Arkansas, 333 US 196, 201 (1947), citations omitted.

The present situation is not of charging the defendant under one statute and convicting him under another as in the Cole case; it is a situation of convicting him under an unidentified statute---of "*a charge that was never made*." The IRS has not charged the defendant with being legally responsible for an income tax. The present situation is precisely the example envisioned by the court as a most egregious violation of due process. Defendant must be given adequate notice of the offense charged against him and for which he is to be tried. Smith v O'Grady, 312 US 329 (1941). "*This Court has repeatedly stated that criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law*." Jordan v De George, 341 US 223, 230 (1951). And again: "*Conviction upon a charge not made would be sheer denial of due process*." De Jonge v Oregon, 299 US 353, 362. (1937); Dunn v US, 442 US 100, 106; Thornhill v Alabama, 310 US 88, 96.

In the Vachon v New Hampshire case, the court determined that a substantive violation of due process merely invalidated the judgment of the court. Other cases cited above involve the lack of a law in the indictment and failure to allege a crime. The courts therein made a clear usurpation of power by wrongfully extending its jurisdiction beyond the scope of their authority. Stoll v Gottlieb, 305 US 165, 171. That renders the adjudication a nullity and void, not merely voidable. Lubben v Selective Service Board, 453 F2d 645. A void judgment, as opposed to an erroneous one, is one that from its inception was legally ineffective. Williams v North Carolina, 325 US 226; Kalb v Feuerstein, 308 US 433.

Would the lack of a statute averring legal liability constitute harmless error? Again, let the Supreme Court address the issue. In Smith v US, 360 US 1, the court held the Fifth Amendment right to an indictment for a capital offense, as restated in Federal Rule of Criminal Procedure 7(a), could not be waived *by the defendant* and that a proceeding in violation of this constitutional requirement negated the jurisdiction of the court. (The Supreme Court could not have returned the case for a new trial if jeopardy had attached in the first trial.) In US v Miller, 471 US 130, @140, the court quoted approvingly: "Deprivation of such a basic right (to be tried only on charges presented in an indictment) is far too serious to be treated as nothing more than a variance and then dismissed as harmless error." from Stirone v US, 361 US 212, 217.

Would an individual wish to suggest the contemporary claim that a minor irregularity, in the eye of a skeptic beholder, would not 'prejudice' the petitioner? The status of such a claim, as an issue relevant to a challenge to jurisdiction, already been declared a non sequitur. Kelly v US, 29 F3d 1107, 1113-1114; Harris v US, 149 F3d 1304, 1308; Patton v US, 281 US 276, 292.

The constitutional right to be left alone unless charged with violating a law (the essence of due process) is no less a constitutional right than being indicted for an infamous crime as in the Smith case. The Magna Carta's declaration of protection by "law of the land" (the historic origin of due process) arguably predates the origin of the indictment.

While all legal theory and case history given herein focus on the absence of a law within the indictment, a reflection on the history of the Magna Carta's protection in the frame of the instant application underscores why the safeguard was demanded by the Barons so many years ago. Without a requirement that the law be cited to justify the King's seizure of the peasant's goodies, there can be no meaningful defense to arbitrary confiscation under color of law. If there is no law requiring an affirmative declaration of the law imposing the tax, the dispossessed must carry the burden of proof to show the theft is illegal; i.e., that the seizure cannot be justified under some unidentified law. This reversal of our traditional placement of the burden of proof is impossible to overcome; it is impossible to prove that a law does not exist. It is plain that where the burden of proof lies may be decisive of the outcome. Cities Service Oil Co v Dunlap, 308 US 208. It is a violation of due process to require a defendant to prove exclusion from a tax. Unitarian Church v Los Angeles, 357 US 545. The burden of proof must be on the party levying the tax to comply with due process. Speiser v Randall, 357 US 513, 529 (1958).

The court has said it very well: "*It is not permissible to shift the burden by arbitrarily making one fact, which has no relevance to guilt of the offense, the occasion of casting on the defendant the obligation of exculpation.*" Tot v US, 319 US 463, 469. Applied in the instant case, it could be read: The acknowledgement that the IRS collects taxes cannot be automatically converted into indisputable proof that anyone accused by the IRS is inherently legally responsible for an unidentified tax. "*The power to create presumptions is not a means of escape from constitutional restrictions.*" Bailey v Alabama, 219 US 219, 239.

To be denied the opportunity to present a defense to a (supposed) criminal charge is a reversion to the barbaric days of the Salem (and continental) witch trials and the Inquisitions. The IRS has a lengthy and consistent track record of adamant refusal to declare in court documents and in testimony, in correspondence to private citizens, and to members of congress, a law that imposes an income tax and exposing it to a challenge in court while carrying the burden of proof as required by due process. The statutes, prior to the 1954 revision, repeatedly required the defendant be shown "liable by law." It is not mere oversight on the part of the IRS to not allege a statute that imposes a legal liability on the citizen. It is a deliberate and premeditated institutional practice of more than 40 years.

"*...notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused...*" Cole v Arkansas, id 201, emphasis added. In reflecting on Star Chamber proceedings, the Supreme Court quoted J. Stephen: *"There is something specially repugnant to justice in using rules of practice in such a manner as to* (prevent a defendant) *from defending himself, especially when the professed object of the rules so used is to provide for his defense."* Faretta v. California, 422 U.S. 806, 822-823 (1975). The object in the instant procedure of the IRS "*to prevent a defendant from defending himself* " may be even less meritorious: to expedite the confiscation of revenue.

The ultimate question before this court is whether 800 years advancement of civilized jurisprudence must yield to the whim of the IRS for expedited extortion of revenue under color of law. We cannot use the phrase "collection of taxes" until the citizen is confronted with a statutory duty to pay a tax and an opportunity to challenge that contention.

"*...compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty. If this requirement of the* (Bill of Rights) *is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus.*" Johnson v Zerbst, 304 US 458, 467, 468 (1938). The right to be notified of a law allegedly violated and the opportunity to defend against the charge is of no less constitutional moment than the right to counsel in the Zerbst case. Since the indictment failed to state an offense and a crime has not been charged, the judgment must be vacated and set aside. US v Osiemi, 980 F2d 344 (1993). A challenge to the jurisdiction of the court is not waived by failure to raise the issue in trial court or on direct appeal. Kaufman v US, 394 US 217, 222.

Even the IRS is required to conform their prosecutions to actions that are clearly defined in the statutes or face dismissal of indictments. US v Carroll, 345 US 457 (1953). There may be a heavy presumption against validity where a right is explicitly secured by the constitution. Harris v McRae, 448 US 297 (1979); Capital Cities Media v Toole, 463 US 1301 (1983).

An indictment is an emissive of the grand jury; it cannot have substantive issues altered by the prosecuting attorney. Rabe v Washington, 405 US 313 (1972). Nor can a bill of particulars save an invalid indictment. Russell v United States, 369 US 749, 770; US v Norris, 281 US 619. A bill of particulars relates only to issues of fact--it is not relevant to issues of law. Nor does the lack of an appeal prevent a challenge to a defective indictment. FRCrP 12 (b)(2).

Habeas corpus will lie where no offense has been committed. Strauss v US, 516 F2d 980; Martency v US, 216 F2d 760; Robinson v US, 313 F2d 817; Roberts v US, 331 F2d 502; Martyn v US, 176 F2d 609. An indictment that does not charge an offense can be discharged by habeas corpus. Roberts v Hunter, 140 F2d 38; Brock v Hudspeth, 111 F2d 447; White v Levine, 40 F2d 502. Lack of a valid indictment is cause for release by habeas corpus. Ex parte Bain, 121 US 1; Ex parte Wilson, 114 US 417. The court has a responsibility in a habeas corpus

action to review the record and, if the record shows a violation of a constitutional mandate, declare the trial was absolutely void. Moore v Dempsey, 261 US 86; Patton v US, 281 US 276.

[signed and dated ??]

COMMENTS AND NOTATIONS

Statutory federal habeas corpus procedure is codified at 28 USC §§2241 to 2255. Extensive analysis can be found in **Federal Practice and Procedure** by Wright {KF9619, W7} Criminal Procedure, volume 3, Habeas Corpus §589-602. The one hundred pages include copious annotations. **Federal Procedure, Lawyers Edition** {KF 8835, F43} volume 16 Habeas Corpus §§41.372 to 41.544 is also informative. Hard core students will find **Moore's Federal Practice** {KF8820, A313} volume 28, chapter 672, contains detailed citations. More information is at **39AmJur2d** Habeas Corpus §§145-154 {KF154 A42}.

A motion filed by a federal prisoner is pursuant to §2255 rather than §2241. Hey, this modern method of filing a motion in the court that imposed sentence as a continuation of the old case rather than filing a Petition for a Writ does not require a filing fee. A habeas corpus motion is a continuation of the criminal prosecution. US v Levi, 111 F3d 955; McIntosh v US Parole, 115 F3d 809. However, the court will immediately initiate a civil case and issue a case number.

The district court judge may transfer the case to a magistrate judge. The magistrate will make a finding and recommendation to the district court judge. If so, the petitioner has 10 days to file objections to the recommendations. If no objections are filed, the district court judge will accept the findings and the petitioner is virtually curtailed from challenging the district court's order. An appeal from a magistrate's finding is improper.

The 'file at any time provision' of §2255 was changed to a one year period of limitation for relief in 1996. 28 USC §2255(4) tolls the period from the event when facts supporting the claim could have been discovered through the exercise of due diligence. If the violation has been a standing procedure by the IRS for 40 years and recently discovered, the time could be claimed to have just started. 28 USC §2255(3) alternatively starts the time when the right asserted was initially recognized by the Supreme Court. The future will tell if this provision is applicable. Since §2255 is extensively used to challenge grand jury composition, prosecutorial misconduct, prison conditions, unconstitutional searches, etc., the limitation can be understandable for those conditions. In a challenge to jurisdiction where the evidence is in the court file and does not deteriorate with age, and goes to a fundamental constitutional right, it is reasonable to push the issue a bit.

No court has a right to imprison a citizen (or to remove civil rights) who has violated no law Such restraint, even if exercised by a court under the guise and form of law, is as subversive of the right of the citizen as if it were exercised by a person not clothed with authority. Ex Parte Siebold, 100 US 371; 39 AmJur2d Habeas Corpus §28. Courts have held the one year limitation for relief can be equitably tolled in extraordinary circumstances. US v Kelly, 235 F3d 1238 (out of a concern for fairness); US v Patterson, 211 F3d 927 (for actively misleading the defendant); Dunlap v US, 250 F3d 1001. A statute of limitations on a question of jurisdiction would have the effect of making legal what was an illegal procedure, in addition to running counter to supreme court holdings. A jurisdictional defect can never be waived. Freytag v CIR, 501 US 868, 896.

If the time restraints of §2255 are ruled to prevent review by a motion for habeas corpus, a Petition for a Writ of habeas corpus pursuant to the provisions of §2241 can be filed.

It is additionally noted that FRCrP 12(b)(2) authorizes "defenses that (the) indictment or information fail to show jurisdiction or to charge an offense shall be noticed by the court at any time." Jurisdictional questions are never waived; they can be made at any time. Waley v Johnston, 316 US 101 (1942); Thor v US, 554 F2d 759.

The custody requirement for §2255 has vacillated. Suspended sentences have been included (Evitts v Lucey, 469 US 387) and also probation. US v Condit, 621 F2d 1096; US v Span, 75 F3d 1383.

A guilty plea can be challenged at any time if the court did not have jurisdiction. Machibroda v US, 368 US 487. Jurisdiction is acquired by statutory authorization and valid process but not by a plea. A plea of guilty when the court does not have jurisdiction does not vest jurisdiction in the court nor does it bar a challenge to jurisdiction. Without jurisdiction, all orders are void (not merely voidable) and fines, penalties, restitution, etc., are refundable.

On multiple count indictments, the punishment for §7203 counts may be removed.

Photocopies of the government websites mentioned and the Congressional Report can be attached as exhibits for the convenience of the court if they are available. Any attachments should be footnoted in the Motion and the number of pages should be identified; i.e., 1 of 15, 2 of 15, etc., to prevent inadvertent loss.

A motion such as this with memorandum may be attached to a habeas form available from the warden or clerk of the court to make application for a Writ. There is some indication the form does not appear to be mandatory (Whittemore v US, 986 F2d 575) but don't count on it. The original and two conforming copies are filed in the sentencing court. If the clerk finds the paper work to be improper, it is to be returned with a note of the flaw. The court should notify you within a week that a civil case has been initiated and give you the new number. The clerk will serve the DA if the court orders a hearing.

It is not unknown for a district court to ignore a filing from a prisoner, even in a transcript to the circuit court, until confronted with a photocopy of a green return receipt. A prisoner cannot even obtain a receipt from a guard/post office that a package has been mailed to the court nor do prisoners have access to word processors nor are legal resources above basic. A friend can be useful for reproducing documents and filing papers if inconvenient for the prisoner and for obtaining a file-marked copy either by return mail or by physical filing with the clerk.

28 USC 2242 requires the application be "signed and verified by the person for whose relief it is intended or by someone acting in his behalf." Rule 11 of FRCvP, as amended, requires parties to sign the pleadings and motions. An inmate might consider a 'next friend' or might grant a power of attorney to 'next friend' authorizing the filing of papers and signing of motions. "Next friend' habeas actions have been received by the Supreme Court. US ex rel Toth v Quarles, 350 US 11. The court will insist that only members of the bar may represent inmates. The position is not supported by the Supreme Court. The status of 'next friend' is clearly accepted by the Supreme Court for non-lawyers. Whitmore v Arkansas, 495 US 149; Demosthenes v Baal, 495 US 731. The Whitmore court documented the practice of non-lawyers representing inmates for more than three centuries. Do not anticipate the court will readily accept the signature of a non-lawyer, but they should. It has only been the last 15 years that Rule 11 required non-lawyers to sign motions. The court will try to slow the habeas action in any way they can. Legislation in congress, unless changed, will allow non-lawyers to sign habeas actions.

The Supreme Court has declared that prisoners have the right to unfettered access to the courts. To hold otherwise would be to offend the traditional notions of justice and fair play that underlie the due process clause. Hannah v Larche, 363 US 420, 422. The court has declared that habeas corpus relief may not be denied because of a four dollar filing fee. Smith v Bennett, 365 US 708. To restrict access to the courts by an inmate to membership in a labor union that has successfully lobbied for exclusive privileges to a dues-paying membership in a quasi-governmental state controlled agency, demanding from $5000 to $80,000 to assert a basic fundamental constitutional right, would make the Smith v Bennett holding pale in comparison. Access to the fundamental right of a trial by jury cannot be conditioned to payment of a fee for the trial; neither can the basic right to habeas corpus be restricted to a monopolistic trade group.

The Supreme Court has addressed situations where 'laws' restricted assistance in situations of habeas corpus to lawyers and they have rejected the restrictions. "There is no higher duty than to maintain [access to habeas corpus] unimpaired." Bowen v Johnston, 306 US 19, 26. The court has declared that restricting habeas corpus assistance only to lawyers may result in the unacceptable practice of denial of access to the courts. Gibbs v Hopkins, 10 F3d 373, 378 (6th. Circuit). "The right of the (individuals) to advice concerning the need for legal assistance…is an inseparable part of this constitutionally guaranteed right (of habeas corpus) to assist and advise each other. Brotherhood of R. Trainmen v Virginia State Bar, 377 US 1, 6.

The practice of jail-house lawyers was declared indispensable to provide access to the courts, with the limited legal resources in prisons and lack of legal experience of inmates: “This Court has constantly emphasized the fundamental importance of the writ of habeas corpus in our constitutional scheme…” Johnson v Avery, 393 US 487, 485. The meager legal resources available to an inmate, when compared to a library of digests, annotations, legal encyclopedias, Hornbooks, journals, commercial professional publications, and online resources that are available to adverse governmental agencies reduces the ‘fair play’ between parties to a figment of the imagination. Is a spouse to be prevented from assisting an inmate because she is only on the other side of the prison wall? Such a position would be clearly incongruous with Supreme Court holdings that have not involved jail-house lawyers. “Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics.” Brotherhood of R. Trainmen v Virginia State Bar, 377 US 1, 7. Citations omitted.

The court is required to rule on a habeas motion “forthwith” and “immediately” (Barefoot v Estelle, 463 US 880; Ruby v US, 341 F2d 585; Granberry v Greer, 481 US 129; Wingo v Wedding, 418 US 461; Harris v Nelson, 394 US 286; Price v Johnston, 334 US 266; Townsend v Sain, 372 US 293) but will delay until prodded. A motion to expedite? The court is also required to grant or deny a Certificate of Appealability (COA). Denial of habeas relief (the Writ) cannot be appealed but the denial of a COA (the usual claim is lack of a constitutional issue) can be appealed. Hohn v US, 524 US 236 (1998). The procedure is to request a COA from the circuit court in the Memorandum detailing the constitutional issue as an integral component of the Notice of Appeal filed in the district court. 28 USC §2253, recently revised.

Prisoners with informa pauperis status are not required to file the $100 and $5 fees for appeal. Initial application for IFP should be made to the district court. The mandatory payments from prisoner accounts (28 USC §1915(b)(4)) apply to civil rights actions only. US v Levi, 111 F3d 955. It could also be challenged that a fee to pursue a habeas action is the exacting of a charge for a constitutional right. Constitutional rights cannot be conditioned upon the exacting of a fee. U.S. v Texas, 252 FSup 234, 255; affirmed 384 US 155; Smith v Bennett, 365 US 708.

It is noteworthy that the IRS claims to prosecute about 2000 criminal cases per year but the published trial court opinions appear to be about ten per year. Courts have now started citing unpublished opinions. This is justice when even their selected cases are not available? How does a person rebut an unavailable case? Are the cases being deliberately hidden from review?

The above information is mentioned to show an interested individual the academic information available in the library and the procedural options that are available. Generic motions must be adapted to fit circumstances. For legal advice, consult your friendly franchised barrister. Union busting is not allowed.

4. COMMENTS ON "ESSENTIALS FOR PROSECUTION OF FEDERAL TAX CRIMES"

Early this year Peter Kay Stern of North Carolina, who is now serving time in a federal prison located in Kentucky, sent a brief on the necessity for implementing regulations being cited for prosecution of § 7212 criminal tax cases. According to Pete, the regulations attack has been successful in several tax cases.

As many other things, I've had Pete's memorandum for several months but haven't had time to give it attention it needs. Last week I had Carol, my secretary, type it up. Friday I went through it and did some major reorganization and renovation. It isn't complete; I haven't written a conclusion or addressed use, but I want to post the in-process work as I have other things that need attention.

Where Pete's original memorandum was limited to consideration of 26 U.S.C. § 7212, I expanded the scope to §§ 7201-7212, which includes most criminal sections in the Internal Revenue Code. Pete also limited consideration to the need for indictments to cite regulations in order to be legitimate; I moved focus to the complaint required by the Fourth Amendment and took the opportunity to expand my own work on proper indictment process. Also, I added Richard Cornforth research on subject matter jurisdiction of inferior courts and the need for a competent witness.

Pete is responsible for case cites in the first part. I'm familiar with most of the cases but haven't looked them up to make certain they are cited properly. That will be done as time permits; anyone using the material should verify cites and quotes. I haven't verified Richard's cites, either, but I assume they are correct as they are from his workshop book, *Secrets of the Legal Industry*. I'm responsible for most of the actual Code sections and regulations reproduced in text and all the information on proper indictment process.

It is common for U.S. Attorneys and Department of Justice attorneys to argue that penalty statutes are self-executing – they don't need implementing regulations. That isn't what the U.S. Supreme Court says, and it isn't what the law says. I fleshed out Pete's position, which was based on ruling case law, by adding U.S. Code sections and regulations that verify the Supreme Court position.

In the past I've pretty well limited consideration of proper indictment process to Rules 3-6 of the Federal Rules of Criminal Procedure, but I've expanded consideration in this incomplete memorandum by emphasizing key clauses in the Fourth, Fifth and Sixth Amendments and using portions of Title 28 sections that govern grand and petit jury selection.

With an amount of revision, this memorandum can also apply to civil forums as the only implementing regulations for liens (§§ 6321, et seq.) and levies (§§ 6331, et seq.) are also in Title 27 of the Code of Federal Regulations – there are no Title 26 regulations that are within IRS subject matter jurisdiction.

Pete used the Parallel Table of Authorities and Rules to support the conclusion that there are no Title 26 regulations for § 7212. As a rule, judges ignore pleadings that cite the PTAR. I added the applicable statutory authority and cited Federal Rules of Evidence that require judicial notice. This is an area that needs to be supported by case law – mandatory judicial notice. The PTAR and other finding aids published in the Index volume of the Code of Federal Regulations are there because of chronic encroachment by FDR and his successors. After revision of the Federal Register Act, the Office of the Federal Register began publishing a table of contents rather than a comprehensive index. It was ineffective and incomplete so an attorney sued via mandamus to compel the Director of the Office of the Federal Register to produce a comprehensive index with ancillaries required by 44 U.S.C. § 1510. I incorporated this information to support the PTAR as prima facie correct, but still need case law to support mandatory judicial notice.

Subject matter jurisdiction of inferior courts can be challenged at any time.

If someone is fortunate enough to know what's happening before the train gets too far down the track, Civil & Criminal Rule 12 motions accommodate subject matter jurisdiction attacks; post-judgment relief from void judgments is available for both civil & criminal under Rule 60(b) Federal Rules of Civil Procedure motions. Habeas corpus should also be available, assuming judges will comply with law.

I'm posting this incomplete memorandum as-is so people who need the information will have it available and other researchers can help flesh it out.

Dan Meador

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5. ESSENTIALS FOR PROSECUTION OF FEDERAL TAX CRIMES

STATEMENT OF POSITION: There must be an implementing regulation, in harmony with the statute and Code section allegedly violated, in order for the court to have subject matter jurisdiction to prosecute criminal offenses classified in Part I, Chapter 75 of the Internal Revenue Code, and prosecution must preserve substantive rights secured by the Fourth, Fifth and Sixth Amendments.

RESTATEMENT: Absent an implementing regulation in harmony with the statute and Code section allegedly violated, and in the event procedure does not preserve substantive rights secured by the Fourth, Fifth, and Sixth Amendments, the court lacks subject matter jurisdiction to prosecute criminal offenses classified in Part I, Chapter 75 of the Internal Revenue Code.

CODE SECTIONS AT ISSUE: 26 U.S.C. §§ 7201-7212

6. MEMORANDUM OF POINTS AND AUTHORITIES

FIRST QUESTION: Does ruling case law support the conclusion that there must be implementing regulations for penalty statutes classified in Chapter 75 of the Internal Revenue Code?

"For Federal tax purposes, the Federal Regulations govern. *Lyeth v. Hoey*, 1938, 305 U.S. 188, 59 S.Ct. 155, 83 L.Ed. 119," quoted in *Dodd v. U.S.*, 223 F.Supp. 785 (1963), which goes on to state that the implementing regulations, 26 CFR § 20.2056(b)-4(c) has to be consistent with the statute.

"*** Construction may not be substituted for legislation.', *U.S. v. Missouri P.R. Co.*, 278 U.S. 269, 277, 49 S.Ct. 133, 136, 73 L.Ed. 322. Another rule often overlooked in construing a revenue statute is that in a doubtful situation the taxpayer is entitled to the benefit of the doubt. As was said by the court in *U.S. v. Merriam, supra*, 263 U.S. at page 188, 44 S.Ct. at 71, 68 L.Ed. 240, 29 A.L.R. 1547: 'If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.'" quoted in *Busse v. C.I.R.*, 479 F.2d 1147 (1973).

To support the assertion that it is mandatory for implementing regulations to be promulgated by the Secretary (Commissioner in past times), we look to *California Bankers Assn. v. Schultz*, 39 L.Ed. 2d 812 at 820: "Because it has a bearing on some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone." In *U.S. v. Murphy*, 809 F.2d 1427 at 1430 (9th Cir. 1987), following California Bankers Association rationale, the court said "The reporting act is not self-executing; it can impose no reporting duties until implementing regulations have been promulgated." In *U.S. v. Reinis*, 794 F.2d 506 at 508 (9th Cir. 1986) the court said, "An individual cannot be prosecuted for violating this Act unless he violates an implementing regulation … The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other." *U.S. v. Mersky*, 361 U.S. 431, 4 L.Ed. 2d 423, 80 S.Ct. 459 (1960), agreed with in *Leyeth v. Hoey, supra, U.S. v. $200,00 in U.S. Currency*, 590 F.Supp. 866; *U.S. v. Palzer*, 745 F.2d 1350 (1984); *U.S. v. Cook*, 745 F.2d 1311 (1984); *U.S. v. Gertner*, 65 F.3d 963 (1st Cir. 1995); *Diamond Ring Ranch v. Morton*, 531 F.2d 1397, 1401 (1976); *U.S. v. Omega Chemical Corp.*, 156 F.3d 994 (9th Cir. 1998); *U.S. v. Corona*, 849 F.2d 562, 565 (11th Cir. 1988); *U.S. v. Esposito*, 754 F.2d 521, 523-24 (1985); *U.S. v. Goldfarb*, 643 F.2d. 422, 429-30 (1981).

Ruling case law dictates that there must be implementing regulations supporting penalty statutes, and that the requirement applies to numerous titles of the United States Code including the Internal Revenue Code. As will be shown in the next section, implementing regulations for taxing, liability and penalty statutes must be in evidence to support criminal prosecution of tax-related offenses.

SECOND QUESTION: What authorities require promulgation of implementing regulations?

The Federal Register Act, particularly 44 U.S.C. § 1505(a), *infra*, the Administrative Procedures Act (5 U.S.C. §§ 552 & 553) and the Internal Revenue Code (26 U.S.C. §§ 6001 & 7805(a)) all require the Secretary of the Treasury to promulgate regulations for Internal Revenue Code sections that materially affect anybody liable for or liable for collecting taxes imposed by internal revenue laws of the United States. The core requirement to promulgate regulations, or provide direct written notice of liability under internal revenue laws, is codified at 26 U.S.C. § 6001:

> § 6001. Notice or regulations requiring records, statements, and special returns.
>
> Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a). [Underscore added for emphasis]

Absent direct written notice that includes findings of fact and conclusions of law, the Secretary of the Treasury must promulgate regulations for both taxing and liability statutes in order to provide notice of duties imposed by internal revenue laws of the United States. As is the case for sales taxes, the person responsible for collecting income and employment taxes may be liable for the taxes whether or not they are collected. That is the case for both withholding agents (26 U.S.C. §§ 1441 et seq.) and disbursement officers (26 U.S.C. §§ 3403 & 3404).

An example from the Code of Federal Regulations clarifies the liability issue. Per 26 CFR §§ 31.6001-1(c) & (d), an employee other than a disbursement officer isn't required to keep books and records and file returns unless he wishes to submit refund claims:

> (c) Records of claimants. Any person (including an employee) who, pursuant to the regulations in this part, claims a refund, credit or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by § § 31.6001-2 to 31.6001-5, inclusive, which relate to the claim.
>
> (d) Records of employees. While not mandatory (except in the case of claims), it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by the regulations in this subpart to be kept by employers, and the statements furnished in accordance with the provisions of § 31.6051-1.

In the event an employer withholds more income and employment taxes from wages than the employee owes, the employee may recover overpayments from the employer, per 26 CFR § 31.6413(a)-2:

> § 31.6413(a)-2 Adjustment of overpayments.
>
> (a) Taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act--(1) Employee tax. After an employer repays or reimburses an employee in the amount of an overcollection, as provided in paragraph (b)(1) of § 31.6413(a)-1, the employer may claim credit for such amount in the manner, and subject to the conditions, stated in § 31.6402(a)-2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on a return for a period ending on or before the last day of the return period following the return period in which the error was

ascertained. No credit or adjustment in respect of an overpayment shall be entered on a return after the filing of a claim for refund of such overpayment.

(2) Employer tax. If an employer pays more than the correct amount of employer tax under section 3111 or section 3221, or a corresponding provision of prior law, the employer may claim credit for the amount of the overpayment in the manner, and subject to the conditions, stated in § 31.6402(a)-2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on the same return on which the employer adjusts, pursuant to subparagraph (1) of this paragraph, a corresponding overpayment of employee tax.

(b) Income tax withheld from wages. If, pursuant to paragraph (b)(2) of § 31.6413(a)-1, an employer repays or reimburses an employee in the amount of an overcollection of tax under section 3402, the employer may adjust the overcollection, without interest, by entering the amount thereof as a deduction on a return of tax under section 3402, filed by the employer for any return period in the calendar year in which the employer repays or reimburses the employee. The return on which the adjustment is entered as a deduction shall have attached thereto a statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations in this subpart and by the instructions relating to the return.

Regulations in 26 CFR Part 31 also require employers to recover additional income and employment taxes from employees in the event sums previously withheld aren't adequate to cover liabilities imposed by Subtitle A and Chapters 21-23 of the Internal Revenue Code. Whether or not the sums are recovered from employees, the employer, through the disbursement officer (26 U.S.C. § 3402), not the employee, remains liable for reporting and paying the proper amount of income and employment taxes.

Liability and procedure prescribed by 26 CFR §§ 31.6001-1(c) & (d) and § 31.6413(a)-2 is contrary to "everybody knows doctrine," which assumes that any individual within jurisdiction of the United States who earns wages or otherwise receives in excess of minimum amounts of income of any nature is required to file a Form 1040 federal income tax return. Particularly see *United States v. Menk*, 260 F. Supp. 784. The complex federal tax scheme works somewhat like a milk stool. In order to sustain prosecution of a criminal case, taxing, liability and penalty statutes must all be disclosed as they work together. More particularly, implementing regulations for each must be in evidence to prove application. The mandate for implementing regulations is recited in Internal Revenue Service procedural regulations at 26 CFR § 601.702(a):

§ 601.702 Publication and public inspection.

(a) Publication in the Federal Register--(1) Requirement. Subject to the application of the exemptions described in paragraph (b)(1) of § **601**.701 and subject to the limitations provided in subparagraph (2) of this paragraph, the Internal Revenue Service is required under 5 U.S.C. 552(a)(1) to separately state and currently publish in the Federal Register for the guidance of the public the following information:

(i) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, from the Service;

(ii) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures which are available;

(iii) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(iv) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Service; and

(v) Each amendment, revision, or repeal of matters referred to in subdivisions (i) through (iv) of this subparagraph.

Pursuant to the foregoing requirements, the Commissioner publishes in the Federal Register from time to time a statement, which is not codified in this chapter, on the organization and functions of the Internal Revenue Service, and such amendments as are needed to keep the statement on a current basis. In addition, there are published in the Federal Register the rules set forth in this part (Statement of Procedural Rules), such as those in Subpart E of this part, relating to conference and practice

> requirements of the Internal Revenue Service; the regulations in Part 301 of this chapter (Procedure and Administration Regulations); and the various substantive regulations under the Internal Revenue Code of 1986, such as the regulations in Part 1 of this chapter (Income Tax Regulations), in Part 20 of this chapter (Estate Tax Regulations) and, in Part 31 of this chapter (Employment Tax Regulations).
>
> (2) Limitations--(i) Incorporation by reference in the Federal Register. Matter which is reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the Federal Register for purposes of subparagraph (1) of this paragraph when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Internal Revenue Service, may not be incorporated in the Federal Register by reference. Matter may be incorporated by reference in the Federal Register only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.
>
> (ii) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in subparagraph (1) of this paragraph which is required to be published in the Federal Register, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to subdivision (i) of this subparagraph. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights. [Underscore added for emphasis]

Per the last sentence of Rule 6(c)(1) of the Federal Rules of Criminal Procedure, "The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated."

The Sixth Amendment to the Constitution of the United States secures the defendant's right "…to be informed of the nature and cause of the accusation…" Where Congress has imposed the duty of promulgating implementing regulations for taxing and liability statutes classified in the Internal Revenue Code in order to inform those subject to or responsible for collecting any given tax imposed by internal revenue laws of the United States (26 U.S.C. §§ 6001 & 7805(a)), identification of applicable regulations is mandated to satisfy requirements of Rule 6(c)(1) of the Federal Rules of Criminal Procedure and the Sixth Amendment for an indictment or information to be valid.

Where tax crimes are concerned, the antecedent matter is whether or not an act or omission is contrary to obligations and duties imposed by law. For example, consider 26 U.S.C. § 7212, attempts to interfere with administration of internal revenue laws. The Internal Revenue Service agent or officer responsible for submitting an affidavit of complaint in a probable cause hearing conducted by a magistrate (See 28 U.S.C. § 3045, Rules 3 & 4 of the Federal Rules of Criminal Procedure and Fourth Amendment mandates, *infra*) would be required to affirmatively identify his regulatory authority for administering any given internal revenue law and demonstrating how the defendant failed to perform a duty prescribed by regulation or otherwise interfered with the officer or agent's duty. Per ruling case law cited *supra*, general allegations that reference a naked penalty statute, without also disclosing regulations that establish standing of the complaining party and obligations of the defendant, whether affirmative or prohibitive, are wholly inadequate. See *Warth et al v. Seldin et al*, 422 U.S. 490 at 498. Standing is the threshold issue to establish subject matter jurisdiction and must affirmatively appear in record.

Per 5 U.S.C. § 553(d), "The required publication or service of a substantive rule shall be made not less than 30 days before its effective date…" This mandatory statement is related back to 5 U.S.C. § 552(a)(1)(D). See U.S. *v. $200,000 in U.S. Currency*, *supra*, at page 866. See also, Reporter's Note 2, *Administrative Law and Procedure*, Key 382, "For agency statement or requirement to be considered a valid 'rule', three conditions must be satisfied: 'rule must be within the agency's granted power, it must be issued pursuant to proper administrative procedures, and it must be reasonable as a matter of due process.'" Also see *Rowell v. Andrus*, 631 F.2d 699 (10th Cir. 1980), holding that 5 U.S.C. §§ 552 & 553 specifically require, in explicit terms, "the publication of proposed rules as opposed to their mere filing in the Office of Federal Register."

The above conclusively demonstrates that for federal courts to have subject matter jurisdiction for prosecution of offenses prescribed by internal revenue laws of the United States, the information or indictment must recite or otherwise identify implementing regulations for taxing, liability and penalty statutes.

THIRD QUESTION: Are there implementing regulations under Internal Revenue Service subject matter jurisdiction, applicable to Subtitles A & C of the Internal Revenue Code, for penalty statutes classified as 26 U.S.C. §§ 7201-7212?

To answer the question consult the Parallel Table of Authorities and Rules, published in the Index volume of the Code or Federal Regulations or available as a PDF document on the Government Printing Office web page. This finding aid, and its standing as prima facie evidence that warrants judicial notice (Rules 201(b) & (d) and Rule 902(5) & (10), Federal Rules of Evidence), is authorized by 44 U.S.C. § 1510:

> § 1510. Code of Federal Regulations
>
> **(a)** The Administrative Committee of the Federal Register, with the approval of the President, may require, from time to time as it considers necessary, the preparation and publication in special or supplemental editions of the Federal Register of complete codifications of the documents of each agency of the Government having general applicability and legal effect, issued or promulgated by the agency by publication in the Federal Register or by filing with the Administrative Committee, and are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions, and are in effect as to facts arising on or after dates specified by the Administrative Committee.
>
> **(b)** A codification published under subsection (a) of this section shall be printed and bound in permanent form and shall be designated as the "Code of Federal Regulations." The Administrative Committee shall regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Administrative Committee may require. A general index to the entire Code of Federal Regulations shall be separately printed and bound.
>
> **(c)** The Administrative Committee shall regulate the supplementation and the collation and republication of the printed codifications with a view to keeping the Code of Federal Regulations as current as practicable. Each book shall be either supplemented or collated and republished at least once each calendar year.
>
> **(d)** The Office of the Federal Register shall prepare and publish the codifications, supplements, collations, and indexes authorized by this section.
>
> **(e)** The codified documents of the several agencies published in the supplemental edition of the Federal Register under this section, as amended by documents subsequently filed with the Office and

published in the daily issues of the Federal Register shall be prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of publication.

(f) The Administrative Committee shall prescribe, with the approval of the President, regulations for carrying out this section.

(g) This section does not require codification of the text of Presidential documents published and periodically compiled in supplements to Title 3 of the Code of Federal Regulations. [Underscore added for emphasis]

The Parallel Table of Authorities and Rules was one of the Index ancillary finding aids that resulted from an attorney filing a writ of mandamus to compel the Office of the Federal Register to comply with requirements of 44 U.S.C. § 1510(b) by producing a comprehensive Index that is useful and reliable. See *Cervase v. Office of the Federal Register*, 580 F.2d 1166 (3rd Cir. 1978). The purpose of the Code of Federal Regulations, including a comprehensive index and ancillary finding aids such as the Parallel Table of Authorities and Rules, according to the Third Circuit ruling, is to prevent executive agencies from operating under "secret law" by providing clear and adequate notice to those subject to federal regulation of one kind or another.

To assure accuracy of the Parallel Table of Authorities and Rules and other ancillary finding aids included in the Index of the Code of Federal Regulations, the Director of the Office of the Federal Register published general regulations for maintaining them at 1 CFR Part 6. Additionally, particulars concerning the Parallel Table of Authorities and Rules are specified at 1 CFR § 8.5(a):

§ 8.5 Ancillaries.

The Code shall provide, among others, the following-described finding aids:

(a) Parallel tables of statutory authorities and rules. In the Code of Federal Regulations Index or at such other place as the Director of the Federal Register considers appropriate, numerical lists of all sections of the current edition of the United States Code (except section 301 of Title 5) which are cited by issuing agencies as rulemaking authority for currently effective regulations in the Code of Federal Regulations. The lists shall be arranged in the order of the titles and sections of the United States Code with parallel citations to the pertinent titles and parts of the Code of Federal Regulations.

Through their respective representatives (liaison officers, certifying officers, etc.), each agency is responsible for maintaining accuracy of matter published in the Federal Register and the Code of Federal Regulations. See particularly 1 CFR Chapter 1, Subchapter E, concerning preparation, transmittal, and processing of documents. Given the responsibility of the agency, the agency bears the burden of proof in the event that the Parallel Table of Authorities and Rules and other ancillary finding aids included in the Code of Federal Regulations are in error.

The following citations, with captions for Internal Revenue Code sections added, appear in the current edition of the Parallel Table of Authorities and Rules. Code section citations followed by "no regulation" do not appear in the ancillary finding aid.

26 U.S.C. (1986 I.R.C.)

7201	Attempt to evade or defeat tax	No regulations
7202	Willful failure to collect or pay over tax	No regulations
7203	Willful failure to file return, supply information, or pay tax	No regulations
7204	Fraudulent statement or failure to make statement to employees	No regulations
7206	Fraud and false statements	No regulations
7207	Fraudulent returns, statements, or other documents	27 Part 70

7208	Offenses relating to stamps	No regulations
7209	Unauthorized use or sale of stamps	27 Part 70
7210	Failure to obey summons	No regulations
7211	False statement to purchasers or lessees relating to tax	No regulations
7212	Attempts to interfere with administration of internal revenue laws	27 Parts 170, 270, 275, 290, 295, 296

Per 1 CFR § 8.5(a), *supra*, regulations promulgated under authority of 5 U.S.C. § 301 do not have to be classified in the Parallel Table of Authorities and Rules. Regulations and other administrative rules promulgated under authority of 5 U.S.C. § 301 are applicable exclusively to government agencies and personnel; they do not have general application. The only regulations listed in the Parallel Table of Authorities and Rules for criminal Code sections 26 U.S.C. §§ 7201-7212 are from Title 27 of the Code of Federal Regulations.

Title 27 of the Code of Federal Regulations is under Bureau of Alcohol, Tobacco and Firearms (ATF) administration, not Internal Revenue Service administration. Per 5 U.S.C. § 558(b), an agency may enforce only provisions for which it has administrative authority:

> § 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses
>
> (a) This section applies, according to the provisions thereof, to the exercise of a power or authority.
>
> (b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

By way of Treasury Order #120-01 of June 6, 1972, the Secretary of the Treasury segregated ATF from the Internal Revenue Service, and thereafter ATF regulations were classified in Title 27 of the Code of Federal Regulations and have since been under exclusive ATF jurisdiction.

The requirement to publish implementing regulations for all statutes that have general effect, including penalty statutes, is affirmatively stated in 44 U.S.C. § 1505(a):

> § 1505. Documents to be published in Federal Register
>
> **(a) Proclamations and Executive Orders; documents having general applicability and legal effect; documents required to be published by Congress.** There shall be published in the Federal Register--
>
> **(1)** Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof;
>
> **(2)** documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and
>
> **(3)** documents or classes of documents that may be required so to be published by Act of Congress.
>
> For the purposes of this chapter every document or order which prescribes a penalty has general applicability and legal effect. [Underscore added for emphasis]

Implementing regulations for the Internal Revenue Code are mandated by 5 U.S.C. § 552(a) and 26 U.S.C. §§ 6001 & 7805(a). The Parallel Table of Authorities and Rules, authorized by 44 U.S.C. § 1510, creates the rebuttable presumption that the Internal Revenue Service does not have regulatory authority to prosecute penalty statutes classified as 26 U.S.C. §§ 7201-

7212. Per ruling case law previously cited, statutes and implementing regulations must both be in evidence to establish the basis of criminal conduct.

FOURTH QUESTION: When must authority governing criminal prosecution be established?

Substantive rights secured by the Constitution of the United States are cumulative; one does not cancel or substitute for another. Thus, the Fourth, Fifth and Sixth Amendments must be considered to answer this question:

> Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a 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.
>
> Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crimes shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. [Underscore added for emphasis]

When properly applied, Rules 3 through 6 of the Federal Rules of Criminal Procedure preserve original intent of the Fourth, Fifth and Sixth Amendments. Since 28 U.S.C. § 2072(b) prohibits rules promulgated by the Supreme Court from abridging substantive rights, Federal Rules of Criminal Procedure must be understood in the context of the Fourth, Fifth and Sixth Amendments.

Per Rule 3, “The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate judge.” Rule 4(a) then specifies, “If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, a warrant for the arrest of the defendant shall issue…” Rule 4(c)(1) specifies that the warrant “… shall describe the offense charged in the complaint…” Per the Sixth Amendment, the warrant, if not attached to a copy of the original complaint, must be adequate to inform the defendant of the “nature and cause of the accusation…”

Authorization for complaints arising under internal revenue laws is codified at 18 U.S.C. § 3045:

> § 3045. Internal revenue violations
>
> Warrants of arrest for violations of internal revenue laws may be issued by United States magistrate judges upon the complaint of a United States attorney, assistant United States attorney, collector, or deputy collector of internal revenue or revenue agent, or private citizen; but no such warrant of arrest shall be issued upon the complaint of a private citizen unless first approved in writing by a United States attorney.

Rule 6(b)(1) is useful for understanding proper process:

(b) Objections to Grand Jury and to Grand Jurors

(1) Challenges. The attorney for the government or a defendant who has been held to answer in the district court may challenge the arrant of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to be jurors and shall be tried by the court. [Underscore added for emphasis]

All elements of the offense, including applicable statutes and implementing regulations, must be affirmatively established in an original complaint submitted to a magistrate in a probable cause hearing, per the Fourth & Sixth Amendments, Rules 3 & 4 of the Federal Rules of Criminal Procedure, and 18 U.S.C. § 3045. Per Rule 8, joinder of offenses and defendants, a grand jury may expand an original complaint to include additional offenses and/or defendants, but the original complaint a grand jury considers must be against "…a defendant who has been held to answer in the district court…" If this weren't the case, a defendant's attorney wouldn't be entitled to challenge grand jury array and qualifications of prospective jurors "before the administration of the oath to be jurors and shall be tried by the court." Except where there is already an indictment, as might be the case for a defendant joined to an action under Rule 8, the defendant is then entitled to a preliminary hearing (Rule 5(c)), at which the defendant may cross-examine adverse witnesses and introduce evidence (Rule 5.1(a)).

It is common for United States Attorneys to unilaterally seat grand juries for periods of up to eighteen months then submit case after case for consideration without there having been original complaints and probable cause hearings, as required by the Fourth Amendment and Rules 3 & 4 of the Federal Rules of Criminal Procedure. This practice effectively makes grand juries auxiliaries of the prosecution rather than the court. The practice has led numerous U.S. Attorneys to conclude that *defacto* grand juries under their control would indict ham sandwiches if asked to do so.

Chapter 121 of Title 28, 28 U.S.C. §§ 1861-1878, governs selection and seating of both grand and petit juries. These Title 28 sections proper procedure for jury selection.

Each district court is supposed to develop a jury selection plan. The first step in the procedure is to develop a list of qualified jurors in the district, the list known as the master jury wheel. Periodically the court clerk or a district judge is supposed to make random selections from the master jury wheel. Those selected are then qualified as the jury pool for that particular term. Then per 28 U.S.C. § 1866(a), "From time to time, the jury commission or the clerk shall publicly draw at random from the qualified jury wheel such number of names of persons may be required for assignment to grand and petit jury panels…" Per § 1866(b), "When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summonses for the required number of jurors."

A jury panel – not petit and grand juries – may be established for eighteen months or whatever term is prescribed by the court plan. As Rule 6(b)(1) implies by specifying that attorneys for the government or the defendant may challenge grand jury array and individual juror qualifications "before the administration of the oath to the jurors," a new grand jury must be selected from the grand jury panel for each original complaint. Once selected and sworn in, the grand jury then begins its investigation based on the original complaint

considered at the probable cause hearing and testimony and evidence introduced in the preliminary examination. The investigation may enlarge on original charges by adding new offenses and/or defendants, per Rule 8, but the work of that particular grand jury is complete when all elements of the original case have been exhausted. The same grand jury doesn't consider an infinite number of cases any more than a petit trial jury does.

Content of the complaint required by Rule 3 and the Fourth Amendment obviously corresponds with content of indictments required by Rule 7(e)(1): "… The indictment or information [complaint in this case] shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated."

Inferior courts, including district courts of the United States and United States District Courts, have no inherent jurisdiction. Jurisdiction of first-level courts is established by sufficiency of pleadings. A party seeking to invoke jurisdiction of inferior courts bears the burden of establishing that such jurisdiction exists. See *Scott v. Sandord*, 60 U.S. 383 (1856), *Security Trust Company v. Black Riber National Bank*, 187 U.S. 211, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178 (1936), *Hague v. Committee for Industrial Organization, et al*, 307 U.S. 496 (1939), *United States v. New York Telephone Co.,* 434 U.S. 159 (1977), *Chapman v. Houston Welfare Rights Organization, et al*, 441 U.S. 600 (1979), *Cannon v. University of Chicago, et al*, 441 U.S. 677 (1979), *Patsy v. Board of Regents of the State of Florida,* 457 U.S. 496 (1982), *Merrill Lynch v. Curran, et al* 456 U.S. 353 (1982), *Insurance Corporation Ireland v. Compagnie Des Bauxites De Guinee,* 456 U.S. 694 (1982), and *Matt T. Kokkonen v. Guardian Life Insurance Company of America,* 128 L.Ed. 2d 492 (1994).

A complaint submitted to a magistrate at a probable cause hearing commences the criminal prosecution process the same as a complaint or petition filed in a civil case invokes jurisdiction of the court. The substance and content of civil and criminal complaints are essentially the same; the criminal complaint must be supported by testimony of one or more competent witnesses.

It is also useful to know that statements of attorneys, whether in pleadings or oral statements before a court, do not constitute testimony. See *United States v. Lovasco* 431 U.S. 783 (1977), *Gonzales v. Buist*, 224 U.S. 126, and *Holt v. United States*, 218 U.S. 245. Statements of counsel in brief or in argument are not sufficient for motion to dismiss or for summary judgment, *Trinsley v. Pagliaro*, 229 F.Supp. 647 (D.C. Pa. 1964).

To satisfy requirements of the Fourth Amendment, 18 U.S.C. § 3045 and Rules 3 & 4 of the Federal Rules of Criminal Procedure, (1) there must be a complaint that sets forth facts and law sufficient to invoke jurisdiction of the court, which in the context of tax offenses requires citation if not actual recitation of statutes and implementing regulations, and (2) there must be a competent witness to verify the complaint with testimony given under oath or affirmation. State and federal law both require testimony under oath or affirmation via affidavit, deposition or direct oral examination. A stand-alone criminal complaint that isn't supported by testimony of a competent witness is of no consequence.

CONCLUSION: [Not written]

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