

# IRS DUE PROCESS MEETING WORKSHEET

by: Christopher M. Hansen.  
<http://familyguardian.tzo.com/>

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES  
PART I - THE AGENCIES GENERALLY  
CHAPTER 5 - ADMINISTRATIVE PROCEDURE  
SUBCHAPTER II - ADMINISTRATIVE PROCEDURE

Sec. 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(d) Except as otherwise provided by statute, **the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received,** but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. **A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.** The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

---

**U.S. Supreme Court in U.S. v. Mersky, 361 U.S. 41, 1960:**

"An administrative regulation, of course, is not a "statute." While in practical effect regulations may be called "little laws," 7 they are at most but offspring of statutes. Congress alone may pass a statute, and the Criminal Appeals Act calls for direct appeals if the District Court's dismissal is based upon the invalidity or construction of a statute. See *United States v. Jones*, 345 U.S. 377 (1953). This Court has always construed the Criminal Appeals Act narrowly, limiting it strictly "to the instances specified." *United States v. Borden Co.*, 308 U.S. 188, 192 (1939). See also *United States v. Swift & Co.*, 318 U.S. 442 (1943). Here the statute is not complete by itself, since it merely declares the range of its operation and leaves to its progeny the means to be utilized in the effectuation of its command. But it is the statute which creates the offense of the willful removal of the labels of origin and provides the punishment for violations. The regulations, on the other hand, prescribe the identifying language of the label itself, and assign the resulting tags to their respective geographical areas. Once promulgated, [361 U.S. 431, 438] these regulations, called for by the statute itself, have the force of law, and violations thereof incur criminal prosecutions, just as if all the details had been incorporated into the congressional language. **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.**"

1 Tax IRS says I am liable for and I.R.C. section number where imposed: \_\_\_\_\_

2

Tax	Sub title	Tax Imposed Statute/ regulation	Liability statute/ regulation	Enforcing agency	ENFORCEMENT STATUTE AND ACCOMPANYING REGULATIONS			
					Assessment statute/regulation	Record keeping	Collection statute/ regulation	Penalty statute/ regulation
Income tax	A	<a href="#">26 U.S.C. §1</a> 26 CFR §1.1-1	26 U.S.C. § _____ 26 CFR § _____	IRS	<a href="#">26 U.S.C. §6201(a)(1)</a> 26 CFR §1. _____	No statute 26 CFR §1. _____	<a href="#">26 U.S.C. §6331</a> 26 CFR §1. _____	<a href="#">26 U.S.C. §6672</a> 26 CFR §1. _____
Estate and Gift Taxes	B	<a href="#">26 U.S.C. §2001</a> 26 CFR § _____	<a href="#">26 U.S.C. §2002</a> (executor) 26 CFR § _____	IRS	<a href="#">26 U.S.C. §6201(a)(1)</a> 26 CFR §1. _____	No statute	<a href="#">26 U.S.C. §6331</a> 26 CFR § _____	<a href="#">26 U.S.C. §6672</a> 26 CFR § _____
Social Security Tax	C	<a href="#">26 U.S.C. §3101</a> 26 CFR § _____	26 U.S.C. § _____ 26 CFR § _____	IRS	<a href="#">26 U.S.C. §6201(a)(1)</a> 26 CFR §31. _____	No statute 26 CFR §31. _____	<a href="#">26 U.S.C. §6331</a> 26 CFR §31. _____	<a href="#">26 U.S.C. §6672</a> 26 CFR §31. _____
Employment Taxes	C	<a href="#">26 U.S.C. §3401</a> 26 CFR § _____	26 U.S.C. § _____ 26 CFR § _____	IRS	<a href="#">26 U.S.C. §6201(a)(1)</a> 26 CFR §31. _____	No statute 26 CFR §31. _____	<a href="#">26 U.S.C. §6331</a> 26 CFR §31. _____	<a href="#">26 U.S.C. §6672</a> 26 CFR §31. _____
Insurance policies of foreign insurers	D	<a href="#">26 U.S.C. §4371</a> 26 CFR § _____	<a href="#">26 U.S.C. §4374</a> 26 CFR § _____	IRS	<a href="#">26 U.S.C. §6201(a)(1)</a> 26 CFR §1. _____	None	<a href="#">26 U.S.C. §6331</a> No regulations	
Wagering tax	D	<a href="#">26 U.S.C. §4401(a)</a> 26 CFR § _____	<a href="#">26 U.S.C. §4401(c)</a> 26 CFR § _____	BATF	<a href="#">26 U.S.C. §6201(a)(1)</a> <a href="#">27 CFR §70.71</a>	<a href="#">26 U.S.C. §4403</a>	<a href="#">26 U.S.C. §6331</a> <a href="#">27 CFR §70.51</a>	<a href="#">26 U.S.C. §6672</a> <a href="#">27 CFR §70.96</a> thru- §70.103 <a href="#">27 CFR §70.509, 610</a>
Distilled spirits	E	<a href="#">26 U.S.C. §5001(a)(1)-(a)(2)</a>	<a href="#">26 U.S.C. §5005</a> 26 U.S.C. §5043(a)(1)(A)	BATF	<a href="#">26 U.S.C. §6201(a)(2)</a> <a href="#">27 CFR §70.71</a>	<a href="#">26 U.S.C. §5114(a)(1)</a> <a href="#">26 U.S.C. §5124(a)</a>	<a href="#">26 U.S.C. §6331</a> <a href="#">27 CFR §70.51</a>	<a href="#">26 U.S.C. §6672</a> <a href="#">27 CFR §70.96</a> thru- §70.103 <a href="#">27 CFR §70.509, 610</a>
Tobacco tax	E	<a href="#">26 U.S.C. §5701</a>	<a href="#">26 U.S.C. §5703(a)</a>	BATF	<a href="#">26 U.S.C. §6201(a)(2)</a> <a href="#">27 CFR §70.71</a>	<a href="#">26 U.S.C. §5741</a>	<a href="#">26 U.S.C. §6331</a> <a href="#">27 CFR §70.51</a>	<a href="#">26 U.S.C. §6672</a> <a href="#">27 CFR §70.96</a> thru- §70.103 <a href="#">27 CFR §70.509, 610</a>

3

**NOTES:**

4

1. The only “persons” liable for penalties related to ANY tax are federal corporations or their employees.

5

2. 26 U.S.C. §6201 is the only statute authorizing assessment instituted by the Secretary, and this assessment may only be accomplished under 6201(a)(2) *for taxes payable by stamp* and not on a return, all of which are tobacco and alcohol taxes.

6

7

3. The only statutory collection activity authorized is under 26 U.S.C. §6331, and 6331(a) of this section only authorizes levy against elected or appointed officers of the U.S. government. The only other type of collection that can occur must be the result of a court order and NOT either a Notice of Levy or a Notice of Seizure.

8

9

1 26 U.S.C., Subchapter D - Seizure of Property for Collection of Taxes

2 [Sec. 6331](#). Levy and distraint

3 (a) Authority of Secretary

4 *If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for*  
5 *the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all*  
6 *property and rights to property (except such property as is exempt under section [6334](#)) belonging to such person or on which there is*  
7 *a lien provided in this chapter for the payment of such tax. **Levy may be made upon the accrued salary or wages of any officer,***  
8 ***employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or***  
9 ***the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or***  
10 ***elected official.** If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate*  
11 *payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be*  
12 *lawful without regard to the 10-day period provided in this section.*

13 (b) Seizure and sale of property

14 *The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in*  
15 *subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the*  
16 *Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or*  
17 *personal, tangible or intangible).*

- 18 4. The only IRS agents who are authorized to execute any of the enforcement activity listed above must carry a pocket commission which  
19 designates them as "E" for enforcement rather than "A" for administrative.  
20 5. For the purposes of all taxes above, the term "employee" is defined as follows:

21 26 U.S.C. Sec. 3401(c )

22 *Employee*

23 *For purposes of this chapter, the term "employee" includes [is limited to] an officer, employee, or elected official of the United States,*  
24 *a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the*  
25 *foregoing. The term "employee" also includes an officer of a corporation.*

26 \_\_\_\_\_  
27 *26 CFR §31.3401(c ) Employee: "...the term [employee] includes officers and employees, whether elected or appointed, of the United*  
28 *States, a [federal] State, Territory, Puerto Rico or any political subdivision, thereof, or the District of Columbia, or any agency or*  
29 *instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a corporation."*  
30 \_\_\_\_\_

1                   8 Federal Register, Tuesday, September 7, 1943, §404.104, pg. 12267

2                   **Employee:** “The term employee **specifically includes** officers and employees **whether elected or appointed**, of the United States, a  
3                   state, territory, or political subdivision thereof or the District of Columbia or any agency or instrumentality of any one or more of the  
4                   foregoing.”

5    In accordance with 28 U.S.C. §1746(1), I do hereby attest and affirm, under the penalties of perjury from *without* the “United States”, under the laws of the United  
6    States *of America* that to the best of my/our knowledge and belief, the facts recorded by me in the above table are true, correct, and complete.

7    Printed name of IRS Agent: \_\_\_\_\_

8    Signature of IRS Agent: \_\_\_\_\_ Date: \_\_\_\_\_

9    Signature of Witness: \_\_\_\_\_ Date: \_\_\_\_\_