From: Gerard N. Dumont

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Date: 3 February 2005

Mark S. Kaizen,
Designated Federal Officer

The President's Advisory Panel on Federal Tax Reform

1440 New York Avenue Suite 2100

Washington, DC 20220

RE: Tax Hearings and January 28, 2005 Court Filing, Class Action, Charles F. Conces et al. vs. INTERNAL REVENUE SERVICE, Case number 5: 04CV0101, U.S. District Court of Western Michigan against Internal Revenue Service and 21 page Liability Report.

Dear Mark S. Kaizen and The President's Advisory Panel on Federal Tax Reform:

I am a member of the Lawman Group and a Plaintiff in the above mentioned Class Action lawsuit, Case Number 5: 04 CV 0101 against the Internal Revenue Service, Mark Everson, Jeffery Eppler, et al.

We have been collecting evidence to present against certain IRS agents and judges. I personally can provide you with evidence of illegal activities of 3 Agents and as a group the Lawmen can provide you with evidence of illegal activities of other IRS agents or alleged IRS agents. These agents have all committed felonies cognizable in law. The need to be removed or suspended from their positions immediately, according to IRS 7214 and prosecuted for crimes.

The felonies that I am referring to are:

> Violations of IRC 7214; knowingly and deliberately attempting to collect a debt that is not owed from our membership by means of threats to employers and banks, and illegal seizures of property,
>
> Filing false documents; knowingly and deliberately entering false information into alleged "accounts" of our members,

Extortion; promulgating threats to employers, banks, and other institutions, in violation of due process as contained in the U.S. Constitution and U.S. Supreme Court rulings,

Fraud, deliberately and knowingly, refusing to answer queries on legitimate tax matters,

Mail Fraud, sending false and misleading documents through the U.S. Postal Service,

Fraud; deliberately and knowingly misapplying the tax laws under "color of law", such as misapplying the word "income" and falsely stating the effect of the 16th Amendment,

Fraud; deliberately and knowingly misapplying the Code of Federal Regulations, that is, "under color of law" using regulations that were promulgate in 27 CFR for the collection of alcohol, tobacco, and fire arms, to collect "income taxes", when, in fact, the regulations for "income taxes" fall under 26 CFR and have no force or effect of law on our general membership,

Threatening and intimidating witnesses in our class action lawsuit,

Depriving our membership of our protections under the U.S. Constitution, such as a) protection against a direct tax without "apportionment", b) due process protections, and c) the lawful protections as ruled by the U.S. Supreme Court and as applied to the meaning of the 16th Amendment, and

Violation of the RICO laws; racketeering by means of collusion among numerous IRS agents to commit extortion, etc.

Our organization has determined that the following agents have involved themselves in said illegal activities, but are not limited to the following:

Dan Myers, Cincinnati IRS office,

Regina Owens, Cincinnati IRS office,

Jeffrey D. Eppler, Kansas City IRS office,

Dennis Parizek, Ogden, Utah IRS office,

Susan Meredith, Fresno IRS office,

Larry Leder, Philadelphia IRS office,

Thomas D. Mathews, Ogden, Utah IRS office,

Timothy A. Towns, Ogden, Utah IRS office,

Karen W. Gardner, Revenue Officer, Fort Worth, Texas IRS office,

M. McHugh, Revenue Officer, Morton Grove, Illinois IRS office,

Kenneth Campagna, Morton Grove, Illinois IRS office,

Anthony J. Aguiar, Las Vegas IRS office,

Debra K Hurst, Kansas City, Mo. IRS office,

Sandy Charter, Kalamazoo, Mich. IRS office,

Mary Jo Fedewa, Lansing, Mich. IRS office,

Miss Breher, Employee number 5400174, Taxpayer Advocate, phone 1-877-777-4778,

Miss Mosely, Employee number 5401149, Taxpayer Advocate, phone 1-877-777-4778.

Whenever I, or other members of our organization, ask for a statute and implementing regulation to determine our liability, or if we ask for information or provide information on Constitutional requirements of direct taxes being "apportioned", the IRS agents refuse to respond or hang up on us and refused to speak any further. This appears to be the standard practice of the Taxpayer Advocate's office personnel also. I, personally, have never been presented with a statute and regulation that makes me, or our membership, liable for any "income tax" as would be provided in 26 USC and 26 CFR. Further, an exhaustive search has revealed none.

These agents have continued their illegal activities even though we have demanded that they cease and desist, and we have demanded a showing of their lawful authority and credentials. They all refuse to answer. **These actions can only be equated with fraud**, as ruled in U.S. v. Tweel, 550 F.2d 297, 299, U.S. v. Prudden, 424 F.2d 1021, 1032, and Carmine v. Bowen, 64 A. 932. I personally, and our membership continues to receive threatening letters from multiple IRS "service centers", some without any signature or printed name on the documents.

We demand that you present the enclosed **21 page Liability Report** and **Court Filing, Class Action, Case number 5: 04 CV 0101** in the U.S. District Court of Western Michigan, to each member of The Presidents Advisory Panel. The prosecutorial power is invested in the DOJ. It is the duty of the DOJ to examine the evidence and sworn statements of myself and the complainants (the Lawmen in generally) and they must convene a Grand Jury so that we may be witnesses against these agents. At a minimum, these agents must be suspended from their duties until such time that they are cleared of all wrongdoing. See IRC 7214.

If you do not believe that our membership has a criminal case against these IRS agents, then schedule a meeting with our Chairman, Charles F. Conces, to explain your determination. If you or the IRS can provide the implementing regulations for 26 USC 6321, 6323, and 6331 and rebut

the Summary Points in the 21 Page report, that make us liable for "individual income taxes", then I will stand corrected. Otherwise, it would be a wise decision to move forward promptly so as not to delay justice. I expect each member of Congress to uphold the Constitution and laws of the United States or vacate their Offices.

Let me know that you have received my letter and send your response to the above address. To save you trouble and time, you may wish to correspond with our Chairman: Charles F. Conces, 9523 Pine Hill Dr., Battle Creek, Mich. 49017. His phone number is 1-269-964-7025. I wish to remind you that you are also required by 26 USC 7214 (8) to report this to the Secretary of the Treasury.

Sincerely,

Gerard N. Dumont

REPORT CONCERNING LIABILITY OF CERTAIN US CITIZENS IN REGARD TO FEDERAL INCOME TAXES.

The First Consideration – The Constitution

The Constitution of the United States forbids the imposition by the federal government, a direct tax without apportioning it in accordance with the census. The first thing to consider then is what constitutes a direct tax and what apportionment means.

The subject of what constitutes a direct tax has been addressed by the Supreme Court in several cases. We'll examine these cases and examine what the Court said concerning the 16th Amendment.

It must first be understood that there are some basic principles of law. One important principle is that because a case is old, does not mean that it is invalid or not reliable. It is exactly the opposite. An old case, which has never been successfully challenged nor overturned, is the best of all cases as having withstood the test of time.

There are other principles, which must be considered...such as... a person does not have to do what an IRS agent tells him to do; he only has to do what the law tells him to do. The law is expressed by Constitution, court ruling, statute, and regulation. The lowest on the pecking order is regulation. In order for a regulation to have the force and effect of law, it must cite a statute on which it is based.

"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. The charges in the information are founded on 1304 and its accompanying regulations and the information was dismissed solely because its allegations did not state an offense under 1304, as amplified by the regulations. When the statute and

regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute." UNITED STATES v. MERSKY, 361 U.S. 431 (1960).

Sometimes a regulation is overturned by a court ruling on the basis that the regulation did not properly reflect the statute. There are 3 types of regulations; Interpretive, Procedural, and Legislative. An agency can have a regulation demanding that employees shine their shoes or wash their hands. These obviously would not have the force and effect of law but would only be a condition of employment. There are also interpretive regulations that guide the employees in their work. The last type of regulation is the legislative regulation, which has the force and effect of law by the citation of a statute or ruling on which it is based. At the end of each regulation, you will see a number of citations, such as a Treasury Department Decision, etc. The regulation must cite a statute, such as IRC sec. 6331, in order to have the force and effect of law and application to the general public.

So one of the main considerations which must become a part of your thinking would be to question any statement made by an IRS agent or government official as to whether a regulation has the force and effect of law. A Supreme Court case states a principle which, you would do well to remember...that is, if you accept an agent's statement concerning the law and if his statement is incorrect or deceptive, then you are taking a risk. DON'T take that risk!! Always ask to be shown the statute and regulation!!! That ruling was given in Federal Crop Insurance Corp. v Merrill, 332 US 380, 384 (1947) and has never been overturned:

"Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. See, e.g., Utah Power & Light Co. v.

United States, 243 U.S. 389, 409 , 391; United States v. Stewart, 311 U.S. 60, 70 , 108, and see, generally, In re Floyd Acceptances, 7 Wall. 666."

The prohibitions against a direct tax are in Article 1, sec. 2, "Representatives and direct taxes shall be apportioned among the several States which may be included in this union, according to their respective Numbers..." and also in Article 1, sec. 9, "No Capitation, or other direct, Tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken." These 2 prohibitions were never repealed and remain in force in the main body of the Constitution. The income tax is a direct tax on an individual and must be levied under the rule of apportionment, according to the Supreme Court. However, there actually was levied an excise tax on corporations, in 1909 and later, which was measured by the size of their incomes and limited by their profits. That tax cannot be levied on an individual.

"Direct Taxes bear upon persons, upon possession and the enjoyment of rights; Indirect Taxes are levied upon the happening of an event." ***Knowlton v. Moore, 178 US 41, 47 (1900).***

A person's possessions include the money and assets in his possession, and thus would include his labor, as being his property and as ruled by the U.S. Supreme Court. The Court also ruled that a man's labor is inviolable and is a guaranteed right.

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in them selves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the

poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him." Butcher's Union Co. v. Cresent City Co., 111 US 746 (1884).

"That the right to conduct a lawful business, and thereby acquire pecuniary profits, is property, is indisputable." TRUAX v. CORRIGAN, 257 U.S. 312, 348 (1921).

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." ***MURDOCK v. COMMONWEALTH OF PENNSYLVANIA, 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943).***

Just what is an excise tax? **"A tax laid upon the happening of an event, as distinguished from its tangible fruit, is an Indirect Tax which Congress undoubtedly may impose."** ***[Tyler et. al., Administrators v. United States, 281 US 497, 502 (1930)].***

It must be further said at this point that if the tax were being imposed as an excise tax on a natural person, why is the tax imposed not listed in subtitle E (Alcohol, tobacco, and certain excise taxes)?

There are more statements by the rulings of the Supreme Court but before we get into those, let me state the following... Excise taxes used to be commonly referred to as luxury taxes. The basis for that was that an excise tax was levied on an item of consumption or a privilege, which could be avoided by the buyer or subscriber. Very few people refer to excise taxes as luxury taxes anymore because the establishment would not want this concept to take root in the public mind. There are an awful lot of citizens who would disagree with the notion that the telephone or gasolines are not necessities of life and can be avoided, thereby rendering them as luxuries.

We will now look into the 16th Amendment. You most likely will be surprised at what you will discover.

The Second Consideration – The 16th Amendment

The IRS claims that the 16th Amendment to the Constitution authorizes an income tax without apportionment. Well, that is only partially true. The Amendment only applies to corporate profits, not to an unincorporated individual.

After the 16th Amendment was passed in 1913, there were many cases that came before the US Supreme Court and various issues were decided concerning its legitimacy. See Note 1. The big question was whether the Amendment had overturned the limitations against a direct tax without apportionment, since the limitations on direct taxes remain in the Constitution. There was the Pollock case that had set precedent before the 16th Amendment was passed. Pollock came before the court in 1895 and argued what indirect and direct taxes were. It overturned the 1894 income tax act because of lack of apportionment. So you can see that the apportionment provision is very important.

"Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states." Pollock vs. Farmers' Loan and Trust Co., 157 US 429, 582 (1895).

"Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises." Pollock, 157 US 429, 556 (1895).

"From the foregoing it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution and those who adopted it; (2) that, under the state system of taxation, all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes; (3) that the rules of apportionment and of uniformity were adopted in view of that distinction and those systems..." Pollock, 157 US 429, 573.

"The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation." Pollock, 157 US 429, 595.

In 1909, a corporate excise tax was passed and was ruled as meeting the requirement of uniformity for excise taxes. The court said that the apportionment requirement was not needed because it was an excise tax on the privilege of incorporating, and the size of the excise tax was measured by the size of the corporate profit. Therefore, it was ruled that it was not a tax on the income of the corporation and was, in actuality, an indirect or excise tax. Note here that it was a privilege to incorporate and that privilege carried some advantages with it. Therefore the excise tax could be avoided by not incorporating. That allowed it to fall into the category of excise or LUXURY tax. Also note that the tax was only allowed on corporations and not on individuals. Corporate officers were obligated to ensure that the corporation paid the tax but the tax was not imposed on the individual officers.

STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399, 417 (1913):

"Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In Flint v. Stone Tracy Co. 220 U.S. 107, 165 , 55 S. L. ed. 107, 419,

31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from <u>property which, considered by itself, was not taxable</u>."

In FLINT v. STONE TRACY CO., 220 U.S. 107, 165 (1911), this is also stated:
"It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, <u>property which, as such, could not be directly taxed.</u> See, in this connection, Maine v. Grand Trunk R. Co. <u>142 U.S. 217</u>, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163, as interpreted in Galveston, H. & S. A. R. Co. v. Texas, <u>210 U.S. 217, 226</u>, 52 S. L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638."

So now it can be seen that Property (a person's labor or wages), considered by itself, is not taxable.

The Sixteenth Amendment states, "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." If you are not aware of the definition of the word "income" given by the US Supreme Court, it will appear as though the 16th Amendment cancelled out the two taxing clauses in the main body of the Constitution.

In <u>Brushaber</u>, the Court stated the several contentions being made in the case and ruled:

"... the contentions under it (the 16th Amendment), if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. ... This result, instead of simplifying the situation and making clear the limitations on the taxing power ... would create radical and destructive changes in our constitutional system and multiply confusion."

The High Court was faced with coming up with a resolution between the apparent conflict between the two taxing clauses in the main body of the Constitution and the 16th Amendment. It didn't have the power to overturn those two taxing clauses but it did have the power to overturn the 16th Amendment as being unconstitutional. It chose to limit the authority of the 16th Amendment by placing limitations on the word "income" in the 16th Amendment. You will see in the following cases where the Court made this limitation as being an indirect tax (excise tax) placed on an activity or privilege of incorporation and consequent activities as a corporation, the size of such excise tax being measured by the size of the corporate profit. The word "income" was ruled as having no other meaning than as being an indirect (excise) tax, the same as was levied by the 1909 corporate tax act.

A number of other cases came up after the 16th Amendment was allegedly passed in 1913, and <u>they all remained consistent</u> and only had to reconcile minor differences, such as mining as opposed to manufacturing. This is where the crux of the matter lies for us and the income tax. All these courts clearly ruled, especially MERCHANT'S LOAN & TRUST CO. v SMIETANKA, 255 US 509 (1921), that the word "income" had a specific legal meaning in the 16th Amendment. They further pointed to STRATTON'S INDEPENDENCE, LTD. v HOWBERT, 231 US 399 (1913) as the ruling that defined the word "income" in the 16th Amendment.

Here is what <u>STRATTON'S</u> says:

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and <u>was invalid because not apportioned according to populations</u>, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation."

In U S v. WHITRIDGE, 231 U.S. 144, 147 (1913), the Court ruled:

"As repeatedly pointed out by this court, the corporation tax law of 1909-enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment-imposed an excise or privilege tax, and not in any sense a tax upon property or upon income merely as income. <u>It was enacted in view of the decision of this court in Pollock v. Farmers' Loan & T. Co. 157 U.S. 429 , 39 L. ed. 759, 15 Sup. St. Rep. 673, 158 U.S. 601 , 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law (act of August 27, 1894, 28 Stat. at L. chap. 349, pp. 509, 553, 27 etc. U. S. Comp. Stat. 1901, p. 2260) to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument.</u>"

The important key is* "upon the conduct of business in a corporate capacity". *So the court is saying that

1) ***income taxes are direct taxes because they tax the income of the individual,***
2) ***corporate income taxes are not taxes on the corporation's income but an excise tax measured by the size of the corporation's income, and***
3) ***Any true federal income tax would be unconstitutional, if not apportioned.***

The only way they could levy a tax on corporations would be to levy an excise and not an income tax. Well ... Can they levy an excise tax, measured by the size of your earnings, on your salary? Do you have the same choice that is required to levy an excise tax that a corporation has, that is, to work or not to work? No. You have to work to feed yourself and your family, etc. and, in no way, is the right to work a privilege. Remember that government officials and their official literature state that the income tax is voluntary. Further, the head of the ATF officially testified, under oath before Congress in 1954, that the income tax was 100% voluntary. He was never charged with perjury nor did any member of Congress challenge his statement under oath.

Next, we'll deal more in these court cases and the 16th Amendment.

THE THIRD CONSIDERATION

THE INCOME TAX and THE 16TH AMENDMENT

Next, we get into some Supreme Court rulings and a discussion of direct vs. indirect taxes. These rulings are a part of our "common law".

POLLOCK v FARMERS' LOAN & TRUST CO., 157 US 429 (1895) made the following rulings:

Quoting the Constitution **– "No capitation, or other direct, tax shall be laid, unless in proportion to the census...."** ***We discussed this previously.***

"If", ***ruled Chief Justice Marshall,*** **"both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case."** ***And the chief justice added that the doctrine*** **"that courts must close their eyes on the constitution, and see**

only the law, would subvert the very foundation of all written constitutions." Thus, the Constitution must govern the law.

Speaking *of the 1894 tax, POLLOCK stated,* "...that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated." *Second,* "That the law is invalid, because imposing indirect taxes in violation of the constitutional requirement of uniformity, and therein also in violation of the implied limitation upon taxation that all tax laws must apply equally, impartially, and uniformly to all similarly situated."

Comment: As the court ruled, there are two great classes of taxation authorized under the constitution, direct – under the rule of apportionment and indirect – under the rule of uniformity. The corporate income tax is an indirect (excise) tax while the individual income tax is a direct tax, which must be apportioned. The two differ in nature, character, and application. Since the 1894 tax and the present individual income tax are both done without apportionment, they are unconstitutional if they are direct taxes AND IF THEY ARE MANDATORY. The 1894 tax was ruled invalid, so how about our present day individual income tax. We will look at the Supreme Court's rulings on the 16th Amendment and whether it had any effect on the Apportionment requirement. The IRS is obliged, therefore, to answer this question in specific detail and without evasive answers.

***Pollock** further stated:* **"As to the states and their municipalities, this (contributions to expense of government) is reached largely through the imposition of direct taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows." *And* "If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property."**

Comment: This ruling maintains the distinction between types of state and federal taxation as being important and necessary. Also notice the description of excise (indirect) taxes as taxes on "luxuries and consumption." I mentioned previously that these indirect taxes fall on the sales of luxuries and consumer goods, which can be avoided. Also the ability to avoid these indirect taxes by not purchasing taxed products or by not seeking a corporate privilege is necessary to the conditions required by Pollack. Also privileges, such as incorporation, are taxable because they are avoidable and are therefore voluntary. Where have we heard that word "voluntary" before? The IRS gives notice to you each time that it refers to "voluntary compliance".

FLINT v STONE TRACY, 220 US 107 (1911):

This case defines excise taxes, in case you wonder if the government can impose an excise tax on your salary or wages. **"Excises are 'taxes laid upon the manufacture, sale, or consumption of <u>commodities</u> within the country, upon <u>licenses</u> to pursue certain occupations, and upon <u>corporate privileges</u>.' Cooley, Const. Lim. 7th ed. 680."**

In U S v. WHITRIDGE, 231 U.S. 144, 147 (1913), the Court ruled:

"As repeatedly pointed out by this court, <u>the corporation tax law of 1909</u>-enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment-imposed <u>an excise or privilege tax</u>, <u>and not in any sense a tax upon property or upon income merely as income</u>.

MERCHANTS' LOAN & TRUST CO. v SMIETANKA, 255 US 509, 519 (1921):

Now let's zip forward to Smietanka in 1921, 8 years after the 16th Amendment was passed. Its ruling is only 5 pages and is very clear.

"The Corporation Excise Tax Act of August 5, 1909, was not an income tax law, but a definition of the word 'income' was so necessary in its administration..."

"It is obvious that these decisions in principle rule the case at bar if the word '<u>income</u>' has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in Southern Pacific v Lowe..., where it was assumed for the purpose of decision that there was no difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. When we add to this, Eisner v Macomber...the definition of '<u>income</u>' which was applied was adopted from Stratton's Independence v Howbert, supra, arising under the Corporation Excise Tax Act of 1909... there would seem to be no room to doubt that <u>the word must be given the same meaning in all the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act</u>, and that what that meaning is has now become definitely settled by decisions of this Court."

Comment: So the word "income" has the same meaning after the 16th Amendment was passed as it did prior to passage in 1913. Since that time, has there ever been an overturning of this decision which was definitely settled by that Supreme Court decision in 1921? If the IRS cannot show that the decision of the Court was overturned, then its claim fails.

All these rulings were made to establish to the meaning of the word 'income' in the 16th Amendment. We're not yet done. We have to look to Stratton's. We have, however, learned that it has the same meaning as applied to an EXCISE tax and it somehow has to do with corporations.

STRATTON'S INDEPENDENCE, LTD. v HOWBERT, 231 US 399 (1913):
Stratton's is very important in that it puts a firmer definition on the word <u>income</u>.

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this

difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation, with certain qualifications prescribed by the act itself."
"Moreover, the section imposes 'a special excise tax with respect to the carrying on or doing business by such corporation,' etc..."
"Corporations engaged in such business share in the benefits of the federal government, and ought as reasonably to contribute to the support of that government as corporations that conduct other kinds of profitable business."
"... the annual gains of such corporations are certainly to be taken as <u>income</u> for the purpose of measuring the amount of the tax."

Comment: So you see, the word 'income' only applied to corporations, acting in a corporate capacity, which freely entered into a contract with the federal government to incorporate and were free to not incorporate or to rescind their incorporation. It was an excise tax and was indirect and was imposed on a privilege or luxury.

Does the government claim that the 16th Amendment with its word 'income' imposes the same conditions on your wages and salaries? Yes and no. It has never claimed to be imposing an excise tax on your earnings, measured by the size of your wages. Excise taxes cannot be imposed on an individual or his property. They do claim, however that they are imposing a voluntary tax on your earnings. That voluntary tax cannot fall under indirect or excise tax definitions. It, therefore, must be imposed as a direct tax, without the apportionment provision, which would make it unconstitutional or outside of the limitations provided, except in the case of an American citizen working overseas or a foreigner working in the US ...OR... a US citizen who voluntarily pays the tax. Your withholding does not fall under either class of federal taxation under the constitution but is legal only if you volunteer.

The Apportionment provision of the Constitution has never been repealed and still stands in the main body of the Constitution. When

Prohibition was repealed, the Congress actually passed a measure repealing it, and they did not do anything similar to repeal in regard to Apportionment.

Understanding that the income tax is voluntary is crucial to the understanding as to why it is constitutional, that is, not authorized by the constitution but simply permitted if it is voluntarily undertaken between government and citizen.

Fourth Consideration – SUPREME COURT CASES

Previously, we focused on 3 court rulings; Pollock, Stratton's Independence, and Smietanka. Those 3 rulings, alone, destroy the federal government's claim that the 16th Amendment authorized an income tax on individuals and unincorporated businesses. Now, some of you may object on the grounds that perhaps we're not telling the whole story or perhaps we have been reading these cases wrongly. Now it is time to lock that argument up. Let's look at numerous other US Supreme Court cases.

EVANS v GORE, 253 US 245 (1920):

"If the tax in respect of his compensation be prohibited, it can find no justification in the taxation of other income as to which there is no prohibition; for, of course, doing what the Constitution permits gives no license to do what it prohibits."

"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore accepted? The court below answered in the negative; and counsels for the government say: 'It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before'."

Comment: Even the government is not claiming, in view of those recent decisions, that it can levy a direct tax without apportionment. Remember that this was 7 years after the 16th Amendment was passed.

FLORA v US, 362 US 145 (1960):

"Our system of taxation is based upon voluntary assessment <u>and</u> payment, not upon distraint."

Comment: Definition of distraint in the legal dictionary, "to seize a person's goods as security for an obligation."

STANTON v BALTIC MINING CO., 240 US 103 (1916):

"Not being within the authority of the 16th Amendment, the tax is therefore, within the ruling of Pollack... a direct tax and void for want of compliance with the regulation of apportionment."

"...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation..."

"...it was settled in Stratton's Independence... that such tax is not a tax upon property... but a true excise levied on the result of the business..."

Comment: The first quote here deals with the fact that the 16th Amendment authorizes an excise tax on corporations and that the Apportionment provision was still active after the passage of the 16th Amendment. In other words, if the tax had been an excise tax covered under the 16th Amendment, it could be considered Constitutional for that reason.

BRUSHABER v UNION PACIFIC R. CO., 240 US 1 (1916):

"...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this <u>erroneous</u> assumption *will be made clear by generalizing the many contentions advanced in argument to support it..."*

"...the whole purpose of the Amendment was to relieve all income taxes <u>when imposed from apportionment</u> from a consideration of the source..."

"...on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation."

Comment: The first quote states that it is erroneous to believe that a power to levy an income tax, without Apportionment, was granted by the 16th Amendment.

PECK v LOWE, 247 US 165 (1918):

"As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..."

Comment: Here the Court is not only saying that the 16th Amendment conferred no new powers of taxation, but also that the 16th Amendment did not authorize that taxing powers be extended to any new persons.

EISNER v MACOMBER, 252 US 189 (1920):

"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."

"As repeatedly held, this did not extend the taxing power to new subjects..."

"...it becomes essential to distinguish between what is and is not 'income', as the term is there used..."

"...we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909... (Stratton's and Doyle)"

Doyle v. Mitchell Bros., 247 U.S. 179, 183 (1918):

"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

Comment: The "conversion of property" mentioned, applied to work/property converted to remuneration/compensation.

Smietanka as in the 3rd consideration of my Report states:

"There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."

Bowers v. Kerbaugh-Empire, 271 U.S. 170 (1926):

"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

Helvering v. Edison Brothers' Stores 8 Cir. 133 F2d 575 (1943):

"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, <u>nor can Congress, without apportionment, tax that which is not income</u> within the meaning of the 16th Amendment."

Southern Pacific Co. v. Lowe, 247 U.S. 330 (1918):

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."

Comment: If the word "income" in the 16th Amendment has a strictly limited meaning, stated in Stratton's Independence, then the 16th Amendment cannot be properly understood unless that definition, with its limitations, is taken into account.

Now I wish to explain one set of claims that the IRS makes. They say that section 61 or section 63 of the Internal Revenue Code provides the definition of "income" that applies equally to individuals and corporations. Could it ever be possible that the same definition would apply to a

corporation excise tax and equally so to a direct tax on an individual's wages? Since the tax imposed on a corporation was ruled to be an indirect tax and an excise tax imposed on a corporate activity, the question must be raised as to which of the two classes of taxation authorized by the Constitution is imposed on an individual? Is it an excise tax imposed on a privilege of incorporation? An individual does not partake in that privilege. And since the tax imposed on corporations' income, as a direct tax, was invalid due to lack of Apportionment and applies equally to the individual, the individual and his property also cannot be taxed directly due to lack of Apportionment.

Further, the Supreme Court affirmed the previous cases in 1976, in ***U.S. v. Ballard****, 535 F2d 400:* **"Gross income and not 'gross receipts' is the foundation of income tax liability..."** *Here the Court makes a distinction between the two and the distinction is based on the word "income" as previously decided by the Court.*

There is also the fact that the Supreme Court has ruled that "income" is not defined in the Internal Revenue Code, as stated below:
EISNER v MACOMBER, 252 US 189, 206 (1920):
"In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not 'income,' as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

This can be explained by the "sources of income" rulings by the Court. It is not necessary to go into those arguments in depth. It is only necessary

to understand that 'income' is a separate item from the sources of that income. A source of income can be wages, by which an employer derives an income. As an example, an employer may earn a profit from the leasing out of his employees or using his employees to earn an income.

Ballard gives us two useful explanations:

At 404, **"The general term 'income' is not defined in the Internal Revenue Code."** *This is so because the only legal definition of "income" was given by the U.S. Supreme Court in previous rulings.*

At 404, Ballard further ruled that **"... 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources."** *(For illustrative purpose, suppose you worked for an employer and received wages for producing widgets, and shortly after you began working there, there was a fire, destroying all the widgets that you had produced. Thereafter, the company went out of business, and it is obvious that there was no "gross income" under this Ballard ruling, because there were no sales.)*

The above Court rulings leave us with only the one alternative. The individual income tax, unless it is imposed from the rule of Apportionment, falls outside the authorized taxation powers granted by the Constitution, it being a direct tax on an individual's property. The only way it can possibly be legal is if it is voluntary.

Dwight E. Avis, Head of the Alcohol, Tobacco, and Firearms Bureau of Internal Revenue testified under oath before Congress (2/3/53 – 2/13/53) "Let me point this out now. This is where the structure differs. Your income tax is a 100% voluntary tax and your liquor tax (A.T.F.) is a 100% enforced tax. Now the situation is as different as night and day. Consequently, your same rules simply will not apply."

These cases are all a person would need to be exempt from the income tax if he didn't volunteer. It can be shown that the statutes reflect the voluntary nature of the income tax. The mandatory nature of the statutes, which are listed in the Internal Revenue Code, are missing and have been missing since 1954. There is no statute that causes the average individual to be liable for the income tax and no regulation that implements any such alleged statute.

A final court ruling is in order at this point.

"(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).***

We are left, inescapably, with these conclusions. The federal income tax is imposed as a 100% voluntary tax, except in regard to corporations, which are engaged in a taxable corporate activity. The individual is free to volunteer or not volunteer to pay the direct tax imposed without apportionment. The income tax is constitutional, but only because it is voluntary. The income tax on the individual, who lives and works in the 50 states, is not authorized by the Constitution and falls into the category of permitted taxation, done freely and voluntarily.

SUMMARY POINTS

- **The individual income tax is a direct tax subject to apportionment.**
- **The corporate 'income' tax is an indirect tax, not subject to apportionment.**
- **The 16th amendment only applies to 'income' as defined by the US Supreme Court, as pertaining only to corporations.**
- **The word 'income' is not defined in the Internal Revenue Code.**
- **The 16th amendment did not authorize any new taxing powers.**
- **The taxing powers of the federal government were the same after the passage of the 16th amendment as were existent before the passage.**

▶ **The 16th amendment kept the corporate excise tax in the category of indirect tax and did not affect the apportionment requirement of the Constitution.**

Note 1 - ***There is a large group that is claiming that the 16th Amendment was never properly ratified and that argument is hard to dispute, but is a moot point in light of the Supreme Court's rulings. A man named Bill Benson from South Holland, Ill. went to every state in the union and got sworn affidavits on those who voted to ratify and those who didn't. Remember, in those days communications were slow and poor, so it was easy in 1913 to make honest mistakes and just as easy to deceive the public. Kentucky was listed as ratifying and according to the state records there was a switch in the numbers, something like 9 to 16 and these numbers were switched and Kentucky became listed as ratifying. You can get Benson's book – "The Law That Never Was".***

There were many irregularities such as the change of punctuation or slight changes in wording in some states in order to get their legislators to ratify. Any change in wording or punctuation would have nullified ratification. In any case, there is a large group of people who are challenging the ratification process.

We can use this in our arguments but in court it would require that you produce all the necessary documents to prove your case. That's why we don't rely on it. (Note: The federal government cannot admit to their "mistake" because they have been fraudulently collecting the tax and fraudulently putting people in prison for many years. Fraud has no statute of limitations, and therefore people could demand their money back, going all the way back to the 2nd World War.)

End of Report

Research and conclusions have been done by Charles F. Conces and are based in part on research done by others who have studied these issues and case laws. Mr. Conces can be reached at (269) 964-7025 if any questions arise. Mr. Conces knows that this report is being widely circulated and asks that anyone who has knowledge of a contrary nature, contact Mr. Conces so that any necessary changes can be incorporated into this report.

THE UNITED STATES DISTRICT COURT

OF WESTERN MICHIGAN

Case Number _____

Hon. _____

Charles F. Conces, et al.

Plaintiffs,

Jointly and Severally,

vs.

INTERNAL REVENUE SERVICE,

A private corporation,

Acting through agents, Mark Everson,

Jeffrey D. Eppler et al.,

Defendant

_____/

Contact Pro Se Plaintiff,
acting group spokesperson,
Charles F. Conces,
9523 Pine Hill Dr.,
Battle Creek, Michigan 49017,
County of Calhoun,
Phone 1-269-964-7025

_____/

COMPLAINT, DEMAND FOR JURY TRIAL,

BRIEF IN SUPPORT, and EXHIBITS A THRU F

NOW COME THE PLAINTIFFS, Charles F. Conces, et al., presenting the following Complaint, Affidavits Of Fact, Demand for Jury Trial, and Exhibits to this Honorable Court, and presenting the following:

1) Charles F. Conces, living at 9523 Pine Hill Dr., Battle Creek, Michigan, in Calhoun County, is the first of the numbered Plaintiffs in this class action lawsuit. Charles F. Conces is joined in this action, by other parties, each of whom has filled out an affidavit, and thereby witnessing the misdeeds of the Defendant, and stating the cause of damage and damages suffered by unlawful actions by the Internal Revenue Service. Plaintiffs' affidavits are to be presented to this Honorable Court as soon as possible. Each Plaintiff is a natural person and an individual and not acting in any corporate capacity as pertains to this lawsuit. Each Plaintiff is entitled to the protections and benefits conferred by the United States Constitution. Each Plaintiff is a Pro-Se Plaintiff, acting jointly and severally against Defendants. See list of Pro-se Plaintiffs listed in exhibit "D". Each of the Plaintiffs is entitled to be held to a less stringent standard than professional attorneys. See **Haines v Kerner, 404 US 519-521 (1972): "...** ***allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers..."***

Plaskey v. CIA, 953 F.2nd 25, ***"Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings."***

2) The Internal Revenue Service, a private corporation, is the principal Defendant.

CHRYSLER CORP. v. BROWN, 441 U.S. 281 (1979): [Footnote 23] "There was virtually no Washington bureaucracy created by the Act of July 1, 1862, ch. 119, 12 Stat. 432, the statute to which the present Internal Revenue Service can be traced."

The Internal Revenue Service (hereafter referred to as IRS) acts by and through its agents. Principal agents include but are not limited to: 1) Jeffrey D. Eppler, 2) Mark Everson, 3) Dennis Parizek, 4) Regina Owens, 5) Susan Meredith, 6) Christi Arlinghause-Clem, and 7) Dan Myers. The Internal Revenue Service does not have immunity from civil suit since a private corporation does not have any form of sovereign immunity.

"Thus the guaranty was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class however limited, having the effect to deprive another class however limited of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." **TRUAX v. CORRIGAN, 257 U.S. 312, 332 (1921).**

3) The amount in controversy exceeds the sum of $140,000,000.00 for each count, exclusive of interest, costs and attorneys' fees that may be incurred. Damages are being sought from the Internal Revenue Service and not from the individual IRS agents in this lawsuit. Individual IRS agents may be sued in their individual and personal capacity, acting under "color of law", in other lawsuits as may be appropriate.

4) Plaintiffs demand trial by jury under the 7th Amendment to the US Constitution. This action is not necessarily classed as a 1983 action and the Plaintiffs are entitled to a jury trial under tort action for damages at common law. **See PATTON v US, 281 US 276, 288 and DUNCAN v LOUISIANA, 391 US 145, 149 (1968).**

The Supreme Court ruled in City of Monterey vs. Del Monte Dunes at Monterey, Ltd., 119 S.Ct. 1624 (1999), whereby Justice Scalia concluded:

1. The Seventh Amendment provides respondents with a right to a jury trial on their Section 1983 Claim. All Section 1983 actions must be treated alike insofar as that right is concerned— This Court has concluded that all Section 1983 claims should be characterized in the same way, Wilson vs. Garcia, 471 U.S. 261, 271-272, as tort actions for the recovery of damages for personal injuries, id, at 276, Pp. 1-5.

2. It is clear that a Section 1983 cause of action for damages is a tort action <u>for which jury trial would have been provided at common law</u>. See, e.g., Curtis vs. Loether, 415 U.S. 189, 195. Pp. 5-8.

5) Jurisdiction of this Court is under Article III, section 2, of the U.S. Constitution. Jurisdiction is conferred by the controversy established by the sufficiency of these pleadings. Additionally, the laws of the United States and the U.S. Supreme Court rulings are central to the questions involved in this action. Most of the records that may be subpoenaed are located in Michigan, therefore, in the interest of expediency and other reasons, this action should proceed within the state of Michigan.

"The jurisdiction of the District Court in a civil suit of this nature is definitely limited by statute to one-'where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) <u>arises under the Constitution or laws of the United States</u>, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects.' Jud.Code, 24(1), 28 U.S.C. 41(1), 28 U.S.C.A. 41(1)." **MCNUTT v. GENERAL MOTORS ACCEPTANCE CORP. OF INDIANA, 298 U.S. 178, 182 (1936).**

6) The controversy in this case concerns three major issues of fraud, perpetrated by the IRS in its official literature. The controversy in this case also concerns the silence of the named IRS agents and the refusal to answer, when they had a moral or legal duty to speak. Such silence can only be construed as fraud perpetrated by the individual agents. Our witnesses will present testimony to the court on this

matter. Plaintiffs have given the IRS, and its agents, numerous opportunities to respond and they have refused. See Exhibit "C" for letters sent to Mark Everson, IRS commissioner. Mr. Everson refused to respond. This lawsuit was also sent to Mark Everson as a final attempt to obtain an administrative remedy or rebuttal, and Mr. Everson refused to respond.

7) Plaintiffs rely on the impartiality of this Honorable Court and ask that the presiding judge disqualify himself if he cannot honestly say that he will act in a fair and unbiased way toward the Pro-se Plaintiffs. The judge must set aside any personal or professional prejudices when presiding over this case. Plaintiffs are certain of their cause and will rely on a fair and unbiased jury decision.

28 U.S. Code 455:*"Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned... He shall disqualify himself in the following circumstances: Where he has a personal bias or prejudice concerning a party..."*

8) Plaintiffs file this Complaint, relying on the "common law" and Constitution of the United States. Plaintiffs seek protection of their due process rights and redress for injuries from this Honorable Court under the rulings and protections of the 14th Amendment. Plaintiffs are citizens who have had their lives, families, reputations, and property injured without due process under "color of law", by the Internal Revenue Service. This complaint is not against the United States, unless it shall be shown and sworn to, by IRS officials, that officials of the United States were complicit in the fraud.

"We concluded that <u>certain fundamental rights, safeguarded by the first eight amendments</u> against federal action, were also safeguarded against state action <u>by the due process of law clause of the Fourteenth Amendment</u>, and among them the

fundamental right of the accused to the aid of counsel in a criminal prosecution." **Grosjean v. American Press Co., 297 U.S. 233, 243 -244 (1936).**

"We think the Court in Betts had ample precedent for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. This same principle was recognized, explained, and applied in Powell v. Alabama, 287 U.S. 45 (1932)", **GIDEON v. WAINWRIGHT, 372 U.S. 335, 341 (1963).**

"The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Hurtado v. California, 110 U.S. 516, 535 , 4 S. Sup. Ct. 111. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the Congress or the Legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws." **TRUAX v. CORRIGAN, 257 U.S. 312, 332 (1921).**

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. Frost & Frost Trucking Co. v. Railroad Comm'n of California, 271 U.S. 583 . "Constitutional rights would be of little value if they could be . . . indirectly denied," Smith v. Allwright, 321 U.S. 649, 664 , or "manipulated out of existence." Gomillion v. Lightfoot, 364 U.S. 339, 345 .

"...constitutional deprivations may not be justified by some remote administrative benefit to the State. Pp. 542-544." **HARMAN v. FORSSENIUS, 380 U.S. 528, 540 (1965).**

9) Plaintiffs have exercised the right to work and sustain their lives and the lives of those dependent on them by means of exchange of their property (labor) for wages (property), as ruled by the United States Supreme Court. A right cannot be hindered by any law or ruling. Plaintiffs have not knowingly or willingly converted their right to work into a privilege, nor have Plaintiffs willingly or knowingly sought to obtain a privilege from the government, that would convert the right to work into a privilege. The following Court rulings speak for themselves:

" The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. <u>The property that every man has is his personal labor</u>, as it is the original foundation of all other property so it is the most sacred and inviolable…to hinder his employing [it]…in what manner he thinks proper, without injury to his neighbor, is a plain violation of the most sacred property". **Butcher's Union Co. v. Cresent City Co., 111 US 746, 757 (1884).**

"That <u>the right to conduct a lawful business</u>, and thereby acquire pecuniary profits, <u>is property</u>, is indisputable." **TRUAX v. CORRIGAN, 257 U.S. 312, 348 (1921).**

The "liberty" guaranteed by the Constitution "must be interpreted in light of the common law, the principles and history of which were familiarly known to the framers of the Constitution." **U.S. v. Wong Kim Ark, 169 U.S. 649, 654 (1898).**

In Meyer vs. Nebraska, which was decided in 1923, 10 years after the 16th Amendment was passed, the Court cited numerous cases upholding the right to work without let or hindrance:

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. Slaughter-House Cases, 16 Wall. 36; Butchers' Union Co. v. Crescent City Co ., 111 U.S. 746 , 4 Sup. Ct. 652; Yick Wo v. Hopkins, 118 U.S. 356 , 6 Sup. Ct. 1064; Minnesota v. Bar er, 136 U.S. 313 , 10 Sup. Ct. 862; Allegeyer v. Louisiana, 165 U.S. 578 , 17 Sup. Ct. 427; Lochner v. New York, 198 U.S. 45 , 25 Sup. Ct. 539, 3 Ann. Cas. 1133; Twining v. New Jersey 211 U.S. 78 , 29 Sup. Ct. 14; Chicago, B. & Q. R. R. v. McGuire, 219 U.S. 549 , 31 Sup. Ct. 259; Truax v. Raich, 239 U.S. 33 , 36 Sup. Ct. 7, L. R. A. 1916D, 545, Ann. Cas. 1917B, 283; Adams v. Tanner, 224 U.S. 590 , 37 Sup. Ct. 662, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U.S. 357 , 38 Sup. Ct. 337, Ann. Cas. 1918E, 593; Truax v. Corrigan, 257 U.S. 312 , 42 Sup. Ct. 124; Adkins v. Children's Hospital (April 9, 1923), 261 U.S. 525 , 43 Sup. Ct. 394, 67 L. Ed. --; Wyeth v. Cambridge Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, 23 L. R. A. (N. S.) 147." **MEYER v. STATE OF NEBRASKA, 262 U.S. 390 (1923).**

The Supreme Court explained in Stratton's and other cases, just what was taxable; that being the privilege of incorporating, and at the same time restated the old principle that a man's property is his labor, which by itself was not taxable.

STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399, 417 (1913):

"Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit

presumably derived by such corporations from the current operations of the government. In Flint v. Stone Tracy Co. 220 U.S. 107, 165 , 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable."

The Supreme Court also recognized and stated the difference between the taxation of a corporation and the taxation of a private company or individual:

"In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the 14th Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual." **FLINT v. STONE TRACY CO., 220 U.S. 107, 161 (1911).**

"A monopoly is defined 'to be an institution or allowance from the sovereign power of the state, by grant, commission, or otherwise, to any person or corporation, for the sole buying, selling, making, working, or using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty they had before or hindered in their lawful trade,' All grants of this kind are void at common law, because they destroy the freedom of trade, discourage labor and industry, restrain persons from getting an honest livelihood, and put it in the power of the grantees to enhance the price of commodities. They are void because they interfere with the liberty of the individual to pursue a lawful trade or employment." **Butcher's Union Co. v. Cresent City Co., 111 US 746, 756 (1884).**

"A law which operates to make lawful such a wrong as is described in plaintiffs' complaint deprives the owner of the business and the premises of his property without due process, and cannot be held valid under the Fourteenth Amendment." **TRUAX v. CORRIGAN, 257 U.S. 312, 328 (1921).**

Redfield v. Fisher, 135 Or. 180, 292 P. 813, 819 (Ore. 1930): ***"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."***

Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699, 705 (1930): ***"A man is free to lay hand upon his own property. To acquire and possess property is a right, not a privilege ... The right to acquire and possess property cannot alone be made the subject of an excise .... nor, generally speaking, can an excise be laid upon the mere right to possess the fruits thereof, as that right is the chief attribute of ownership."***

Jack Cole Co. v. MacFarland, 337 S.W.2d 453, 455-56 (Tenn. 1960): ***"Realizing and receiving income or earnings is not a privilege that can be taxed...Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege."***

"Income is necessarily the product of the joint efforts of the state and the recipient of the income, the state furnishing the protection necessary to enable the recipient to produce, receive, and enjoy it, and a tax thereon in the last analysis is simply a portion cut from the income and appropriated by the state as its share..." Sims v. Ahrens et al., 271 SW Reporter at 730.

10) This action is brought against the IRS on the basis that the IRS has officially, and on a regular basis, been engaging in three instances of fraud.

In re Benny, 29 B.R. 754, 762 (N.D. Cal. 1983): ***"[A]n unlawful or unauthorized exercise of power does not become legitimated or authorized by reason of habitude."***
See also Umpleby, by and through Umpleby v. State, 347 N.W.2d 156, 161 (N.D. 1984).

IRS agents, employed by the IRS, have defrauded Plaintiffs and misapplied the law. By means of the fraud and misinformation conveyed by the IRS (see exhibits "A" and "B"), IRS agents carried out wholly unlawful actions, including

harassment, seizures, issuing notices of lien and levy, defamation of character, prosecution, and imprisonment of innocent people, including the Plaintiffs.

11) Plaintiffs have complied with the decisions of many court rulings, that they should check the authority of the IRS agents, and subsequently found such authority wanting. See Internal Revenue Code section 7608 and section 6331 (a).

***Continental Casualty Co. v. United States*, 113 F.2d 284 (5th Cir. 1940):**
"Public officers are merely the agents of the public, whose powers and authority are defined and limited by law. Any act without the scope of the authority so defined does not bind the principal, and all persons dealing with such agents are charged with knowledge of the extent of their authority."

In **Federal Crop Insurance v. Merrill, 332 U.S. 380**, the Supreme Court ruled: ***"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes a risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority."*** Also see **Utah Power & Light Co. v. United States, 243 U.S. 389; United States v. Stewart, 311 U.S. 60 *; and generally, in re Floyd Acceptances, 7 Wall. 666.**

12) Plaintiffs wish to make it perfectly clear, at the outset, that Plaintiffs do not dispute the taxing laws and do not claim that the taxing laws are "unconstitutional". Plaintiffs can show that the taxing laws are fraudulently misapplied by the IRS in many instances.

13) Exhibit "B" is evidence that IRS agents act on the basis of the fraudulent information provided in official literature of the IRS. Plaintiffs will also file affidavits to establish certain facts for the record, in this action.

Haines v Kerner, 404 US 519-521 (1972): "... *allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence.*

1rst Issue Of Fraud: 16th Amendment Claim

14) The IRS, in its official papers, documents, and mailings, claims that the 16th Amendment, to the U.S. Constitution, authorizes an "income" tax on the Plaintiffs' earnings, wages, compensation, and remuneration. This claim is fraudulent, misleading, and false. Such false claim is based on the wording of the 16th Amendment, but ignores the U.S. Supreme Court rulings, which define and clarify the meaning and intent of said Amendment. See exhibit "A".

15) Exhibit "A" is a copy of official literature conveyed to the general public through mailings and other means. Exhibit "A", and other literature produced by the IRS, contains similar false and misleading statements. Exhibit "A" is Publication 2105 (Rev. 10-1999), Catalog Number 23871N. Number 2 statement is as follows: ***"The Sixteenth Amendment to the Constitution, ratified on February 3, 1913, states, 'The Congress shall have the power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration'."*** While the statement by itself may contain truth pertaining to corporate or other privileges, the statement is false and misleading in that it infers that the 16th Amendment authorizes federal taxation on Plaintiffs' wages, compensation, or remuneration without the requirement of "apportionment", as constitutionally required for all direct taxation.

16) Exhibit "A" goes further than the false and misleading statement as stated in the preceding paragraph and further contradicts the U.S. Supreme Court.

A) Concerning the "Sixteenth Amendment" portion of the fraudulent statement numbered 3 in exhibit "A", it states, ***"Congress used the power granted by the Constitution and the Sixteenth Amendment and made laws requiring all individuals to pay tax."*** Said statement is entirely false, fraudulent, and misleading, as shown by the following court rulings. The 16th Amendment conferred no new powers of taxation on the federal government. The 16th Amendment unquestionably did not require all individuals to pay tax. See rulings on the force and authority of the 16th Amendment presented in the brief, i.e.:

STANTON v BALTIC MINING CO., 240 US 103, 112 (1916):
"...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation.."

BOWERS v. KERBAUGH-EMPIRE CO., 271 U.S. 170, 174 (1926):
"The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, 'from whatever source derived' without apportionment among the several states, and without regard to any census or enumeration. It was not the purpose or effect of that amendment to bring any new subject within the taxing power."

BRUSHABER v UNION PACIFIC R. CO., 240 US 1. 11 (1916):
"... the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."

PECK v LOWE, 247 US 165, 173 (1918):

"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects,..."

DOYLE v. MITCHELL BROS., 247 U.S. 179, 183 (1918):

"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

EISNER v MACOMBER, 252 US 189, 205, 206 (1920):

"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."

"As repeatedly held, this did not extend the taxing power to new subjects..."

EVANS v GORE, 253 US 245, 259 (1920):

"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and counsel for the government say: 'It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before'."

B) Concerning "the Constitution" portion of the fraudulent statement, numbered 3, in exhibit "A", stating that, ***"Congress used the power granted by the Constitution and the Sixteenth Amendment and made laws requiring all individuals to pay tax."*** As to the powers conferred or limited on taxation in the Constitution, i.e., the powers existing before the passage of the 16th Amendment, **POLLACK v FARMERS' LOAN & TRUST CO., 157 US**

429, 583 (1895), addressed the issue of direct taxes and quoting the Constitution – ***"No capitation, or other direct, tax shall be laid, unless in proportion to the census...."***

"As to the states and their municipalities, this (contributions to expense of government) is reached largely through the imposition of direct taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows."

POLLACK v FARMERS' LOAN & TRUST CO., 157 US 429, 436 - 441 (1895) on apportionment:

'Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.' This was amended by the second section of the fourteenth amendment, declared ratified July 28, 1868, so that the whole number of persons in each state should be counted, Indians not taxed excluded, and the provision, as thus amended, remains in force. The actual enumeration was prescribed to be made within three years after the first meeting of congress, and within every subsequent term of ten years, in such manner as should be directed."

The enjoyment of the right to work and earn a living existed long before the establishment of governments, and was not taken away from citizens by this government.

Knowlton v. Moore, 178 US 41, 47 (1900):

"Direct Taxes bear upon persons, upon possession and the enjoyment of rights"

Butcher's Union Co. v. Cresent City Co., 111 US 746, 756 (1884):

"It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and

inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and <u>to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property</u>. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him."

The taxing powers granted by the Constitution and the intention of the signers of the Constitution could not be made clearer than expressed in POLLOCK:

Pollock vs. Farmers' Loan and Trust Co., 157 US 429, 583 (1895):

"Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states."

... In the construction of the constitution, we must look to the history of the times, and examine the state of things existing when it was framed and adopted. 12 Wheat 354; 6 Wheat 416; 4 Peters 431-2; to ascertain the old law, the mischief and the remedy. State of Rhode Island v. The State of Massachusetts, 37 U.S. 657 (1938).

The "income tax" alleged to be imposed by law on the Plaintiffs, does not fall under the category of excise tax, as the corporate "income" tax does.

FLINT v STONE TRACY, 220 US 107, 151 (1911):

"Excises are 'taxes laid upon the manufacture, sale, or consumption of <u>commodities</u> within the country, upon <u>licenses</u> to pursue certain occupations, and upon <u>corporate privileges</u>.' Cooley, Const. Lim. 7th ed. 680."

Pollock vs. Farmers' Loan and Trust Co., 157 US 429, 629 (1895):

"Excise' is defined to be an inland imposition, sometimes upon the consumption of the commodity, and sometimes upon the retail sale; sometimes upon the manufacturer, and sometimes upon the vendor."

The licenses of bar licensed attorneys and judges, and corporate privileges might be taxable under excise taxes, but no excise tax would be authorized on the salary, wage or compensation of occupations of "common right".

Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720, 733 (1925):
"[T]he Legislature has no power to declare as a privilege and tax for revenue purposes occupations that are of common right, but it does have the power to declare as privileges and tax as such for state revenue purposes those pursuits and occupations that are not matters of common right..."

MURDOCK v. COMMONWEALTH OF PENNSYLVANIA, 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943):
"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

"`[T]his Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a "right" or as a "privilege."'" Sugarman v. Dougall, 413 U.S. 634, 644 (1973) (quoting Graham v. Richardson, 403 U.S. 365, 374 (1971)). **ELROD v. BURNS, 427 U.S. 347, 362 (1976).**

The U.S. Supreme Court ruled on the intent of Congress in 1913 after the 16th Amendment was passed:

STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399, 417 (1913):
"Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In Flint v. Stone Tracy Co. 220 U.S. 107, 165 , 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was not debarred by the Constitution from measuring the taxation by the

total income, although derived in part from property which, considered by itself, was not taxable."

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation."

"Whatever difficulty there may be about a precise and scientific definition of 'income,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities." **DOYLE v. MITCHELL BROS. CO. , 247 U.S. 179, 185 (1918).**

Further confirmation of these rulings occurred in 1918 SOUTHERN PACIFIC case, stating that, an individual could only be taxed on the portion of earnings by the corporation and received by the individual.

SOUTHERN PAC CO. v. LOWE, 247 U.S. 330, 336 (1918):

"(The) Income Tax Act of June 30, 1864 (chapter 173, 13 Stat. 223, 281, 282), under which this court held, in Collector v. Hubbard, 12 Wall. 1, 16, that an individual was taxable upon his proportion of the earnings of the corporation although not declared as dividends. That decision was based upon the very special language of a clause of section 117 of the act (13 Stat. 282) that 'the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise.'"

In BRUSHABER, the Court remarked on the confusion that would multiply if the contentions of radical new taxing powers were acceded to:

BRUSHABER v UNION PACIFIC R. CO., 240 US 1, 12 (1916):

"... the contentions under it (the 16th Amendment), if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. ... This result, instead of simplifying the situation and making clear the limitations on the taxing power ... would create radical and destructive changes in our constitutional system and multiply confusion."

It can only be concluded that the Supreme Court had only allowed that an indirect tax or excise tax was authorized on corporate privileges and licensed occupations, but nowhere allowed the imposition of a direct tax on occupations of "common right" without apportionment. That was the taxation power of the federal government, before and after the passage of the 16th Amendment.

17) The Table Of Parallel Authorities, updated by the government agencies several times a year, shows that some Statutes or Code sections do not have the force or effect of law, since said statutes or code sections have not been implemented by the Secretary of the Treasury, by reason of an implementing regulation. The IRS falsely and fraudulently claims that IRC section 6012 requires every individual, with income above certain minimums, to file a return. Also see exhibit "B".

A publication by the IRS called "Just the Facts" (see Exhibit "A") states, ***"The Truth: The tax law is found in Title 26 of the United States Code, Section 6012 of the Code makes clear that only individuals whose income falls below a specified level do not have to file returns."***

Yet, the Table Of Parallel Authorities does not contain an implementing regulation for IRC section 6012 as the following excerpt shows.

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6001.....................................26 Parts 1, 31, 55, 156
                                   27 Parts 19, 53, 194, 250, 296
6011.....................................26 Parts 31, 40, 55, 156, 301
                                              27 Parts 25, 53, 194
6020.............................................27 Parts 53, 70
6021.............................................27 Parts 53, 70
6031.....................................................26 Part 1
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The U.S. Supreme Court has ruled that regulations and statutes are so intertwined that the enactment of one does not impose any duty on any person unless the other is enacted or implemented.

"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. The charges in the information are founded on 1304 and its accompanying regulations, and the information was dismissed solely because its allegations did not state an offense under 1304, as amplified by the regulations. When the statute and regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute." **UNITED STATES v. MERSKY, 361 U.S. 431, 438 (1960).**

In Bankers Assn. v. Shultz, 416 U.S. 21, 26, 94 S.Ct. 1494 (1974), the Court noted that the statutes entirely depended upon regulations:

"[W]e 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."

See also United States v. Reinis, 794 F.2d 506, 508 (9th Cir. 1986) (a person cannot be prosecuted for violating the currency reporting law unless he violates an implementing regulation); and United States v. Murphy, 809 F.2d 1427, 1430 (9th

Cir. 1987) (the reporting act is not self-executing and can impose no reporting duties until implementing regulations have been promulgated).

18) It can also be shown that the fraudulent statements contained in the IRS literature are false as shown by the Statutes At Large research by Charles F. Conces. There are no Statutes At Large that make every individual liable for the income tax. If it is necessary to produce additional evidence, Mr. Conces will present that research to this Honorable Court.

Additionally, the language of IRC section 6331 (a) specifically excludes Plaintiffs from levy authority, under that Code section. Plaintiffs rely on the U.S. Supreme Court ruling:

"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen. United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690; American Net & Twine Co. v. Worthington, 141 U.S. 468, 474 , 12 S. Sup. Ct. 55; Benziger v. United States, 192 U.S. 38, 55 , 24 S. Sup. Ct. 189." **GOULD v. GOULD , 245 U.S. 151, 153 (1917).**

The burden is on the IRS to prove the material fact that there is, in fact, a Statute At Large that every individual is made liable by law for the income tax.

Davila v Shalala: ***"The law creates a presumption, where the burden is on a party to prove a material fact peculiarly within his knowledge and he fails without excuse to testify, that his testimony, if introduced, would be adverse to his interests."*** **citing Meier v CIR, 199 F 2d 392, 396 (8th Cir. 1952) (quoting 20 Am Jur, Evidence Sec 190, page 193.**

2nd Issue Of Fraud: Definition Of "income"

19) The word "income" is fraudulently and misleadingly used by the IRS, as meaning all wages, earnings, compensation, and remuneration of Plaintiffs.

"Income is necessarily the product of the joint efforts of the state and the recipient of the income, the state furnishing the protection necessary to enable the recipient to produce, receive, and enjoy it, and a tax thereon in the last analysis is simply a portion cut from the income and appropriated by the state as its share..." Sims v. Ahrens et al., 271 SW Reporter at 730.

20) The Supreme Court ruled that the meaning of the word "income" had been definitely settled as late as 1921, 8 years after the passage of the 16th Amendment.

MERCHANTS' LOAN & TRUST CO. v SMIETANKA, 255 US 509, 519 (1921):
"There would seem to be no room to doubt that the word 'income' must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and what that meaning is has now become definitely settled by decisions of this Court."

"A reading of this portion of the statute (1909 corporation tax act) shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat from corporations, have many of their attributes and enjoy many of their privileges." **FLINT v. STONE TRACY CO., 220 U.S. 107, 144 (1911).**

BOWERS vs. KERBAUGH-EMPIRE, 271 U.S. 170 (1926):
"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

HELVERING v. EDISON BROTHERS' STORES, 8 Cir. 133 F2d 575 (1943):
"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax that which is not income within the meaning of the 16th Amendment."

SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330, 335 (1918):

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."

21) The word "income" cannot have any greater meaning than that meaning employed in the 1909 Corporate Excise Tax Act. The word "income" can not be employed as having any greater meaning in regard to federal taxing authority than that specified in **SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330, 335 (1918), HELVERING v. EDISON BROTHERS' STORES, 8 Cir. 133 F2d 575 (1943), BOWERS vs. KERBAUGH-EMPIRE, 271 U.S. 170 (1926), Sims v. Ahrens et al., 271 SW Reporter at 730, and MERCHANTS' LOAN & TRUST CO. v SMIETANKA, 255 US 509 (1921).**

22) Plaintiffs have not received "income" as ruled by the U.S. Supreme Court, the highest authority in the land. Plaintiffs cannot state under oath that they received "income", such as required by a 1040 form, without perjuring themselves, unless Plaintiffs are engaged in a corporate activity.

23) It can be shown that regulations promulgated by the Secretary of the Treasury do not, in themselves, create a legal obligation on the general public. Such regulations could only have the force and effect of law on the general public if they authoritatively reference an Internal Revenue Code section or Statute At Large.

"... we sympathize with the taxpayer who in fact relies upon what he accepts as an authoritative interpretation of the laws and of Treasury Publications. But

nonetheless it is for Congress and the courts and not the Treasury to declare the law applicable to a given situation." (Carpenter v. United States 495 F 2d 175 at 184).

24) Additionally it can be shown, for instance, that IRC section 6331, the section that authorizes collection by the IRS, does not have a corresponding regulation in Title 26 of the Code Of Federal Regulations. Without such a regulation, the Internal Revenue Service has no authority to take collection actions under IRC 6331, as has been done to Plaintiffs. Additionally, paragraph (a) of IRC 6331 shows that only federal employees are subject to levy under that code section.

"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...When the statute and regulations are so inextricably intertwined, the dismissal must be held to involve the construction of the statute." **UNITED STATES v. MERSKY, 361 U.S. 431, 438 (1960).**

3rd Instance Of Fraud and Equivalence Of Fraud

25) The Internal Revenue Service (also referred to as the IRS), acting through its agents, engaged in a fraud and extortion scheme against the Plaintiffs. IRS acted outside of its lawful authority (ultra vires), and when Defendant's agents were confronted with such unlawful actions, Defendant's agents refused to respond to Plaintiffs, and consequently created the equivalence of wrongdoing and fraud. See exhibit "B" for evidence of false and misleading statements by agents and agents' refusal to respond.

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v. Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

Fraud. Deceit, deception, artifice, or trickery operating prejudicially on the rights of another, and so intended, by inducing him to part with property or surrender some legal right. 23 Am J2d Fraud § 2. Anything calculated to deceive another to his prejudice and accomplishing the purpose, whether it be an act, a word, silence, the suppression of the truth, or other device contrary to the plain rules of common honesty. 23 Am J2d Fraud § 2. An affirmation of a fact rather than a promise or statement of intent to do something in the future. Miller v Sutliff, 241 111 521, 89 NE 651.

Additionally, IRS agents ignored the collection procedures of the Internal Revenue Manual, as quoted below, and thus violated the Plaintiffs' administrative Due Process through deception, fraud, and silence. See exhibit "E" for proof of fraud and deception, by the omissions of selected paragraphs from IRC 6331. The most notable omissions were paragraph (a) (limiting collections to federal employees) and paragraph (h) (limiting continuous levies to 15%) of IRC 6331. No assessments were made against the Plaintiffs and IRS agents refused to provide any certificates of assessment to Plaintiffs.

"Before any seizure action is considered, the assessment will be fully explained and verified with the taxpayer. Also, any adjustments will be fully explained, and the taxpayer will be informed of his/her rights."
"If the taxpayer claims the assessment is wrong or has additional information that could impact the assessment, it should be thoroughly investigated and resolved prior to proceeding with enforcement action."

26) The IRS and its agents consistently refused to honor the U.S. Supreme Court rulings that were presented to them, as presented in Exhibit "B", in disregard of the instruction in the Internal Revenue Manual 4.10.7.2.9.8 (05-14-1999):

"Importance of Court Decisions

1. **"Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.**

   "Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code."

27) The IRS has the burden to refute the material fact of fraud presented by the Plaintiffs. The IRS must do that by affidavit and admissible evidence. The IRS has refused to refute or dispute the facts presented by the Plaintiffs. Plaintiffs show in Exhibit "C" that such is the case.

Davila v Shalala: ***"The law creates a presumption, where the burden is on a party to prove a material fact peculiarly within his knowledge and he fails without excuse to testify, that his testimony, if introduced, would be adverse to his interests."*** **citing Meier v CIR, 199 F 2d 392, 396 (8th Cir. 1952) (quoting 20 Am Jur, Evidence Sec 190, page 193.**

28) The IRS, acting through its employees, used the anonymity of the agency to send threatening and harassing unsigned letters to Plaintiffs, in an attempt to provide deniability for itself and its unlawful actions.

Independent School District #639, Vesta v. Independent School District #893, Echo, 160 N.W.2d 686 (Minn. 1968):

"To allow one to take official action simply by giving oral approval to a letter which does not recite the action and which does not go out under one's name is to extend permissible delegation beyond reasonable bounds," 160 NW 2d, at 689.

"The petitioners stand in this litigation as the agents of the State, and they cannot assert their good faith as an excuse for delay in implementing the respondents' constitutional rights, when vindication of those rights has been rendered difficult or impossible by the actions of other state officials. Pp. 15-16." **COOPER v. AARON, 358 U.S. 1 (1958)**

29) The IRS and its agents did not act as a reasonable person would act if confronted with allegations of fraud and equivalence of fraud. A reasonable person would dispute or explain the actions alleged to be fraudulent. Silence by IRS agents in the face of allegations of fraud is the equivalence of consent. Under the rules of presumption:

Rule 301 of the Federal Rules of Evidence states; ***"... a presumption imposes on the party against whom it is directed the burden of proof [see Section 556(d)] of going forward with evidence to rebut or meet the presumption."***

Damages

30) The actions of the IRS and its agents, acting on the false and fraudulent information provided in the official literature propagated by the IRS, was the proximate cause of damage to each Plaintiff. Plaintiffs will testify to this fact in the affidavits that will be provided.

31) Damages to Plaintiffs and their families were, generally speaking, but not necessarily limited to:

    a) pain,

    b) suffering,

c) emotional distress,

d) anxiety,

e) seizure of property rights,

f) illegal seizure of wages or property under "color of law",

g) encumbrance of property,

h) public humiliation,

i) public defamation of character,

j) encumbrance on Plaintiffs' freedom of movement, and

k) loss of consortium.

Each Plaintiff has filled out or will fill out an affidavit in which damages are stated in regards to said Plaintiff. These affidavits will be supplied to this Honorable Court.

FIRST CAUSE OF ACTION

VIOLATION OF PLAINTIFFS' 4th AMENDMENT RIGHTS

32) Plaintiffs incorporate by reference paragraphs 1 through 31 into this cause of action as if they were fully stated herein.

33) Plaintiffs have been deprived of the Constitutional protections afforded to them, under the 4th Amendment to the U.S. Constitution, i.e., the right to be secure in their persons, houses, papers, and effects, by the Internal Revenue Service, which is a private corporation. Plaintiffs have been continually harassed, threatened with imprisonment, imprisoned, received illegal summons, and had their property taken, all under "color of law", for violation of a law that does not exist. The agents performing such actions did not have authority under law, to act in such a

manner. The agents often pretended to have the authority of law (see exhibit "E") to force Plaintiffs to file a W-4 withholding agreement with their employers, when no such law or requirement exists (see exhibit "F"). The agents did not have a delegation of authority from the Secretary of the Treasury to do such things. This was accomplished by means of fraud, fear, threats, and intimidation forced on employers who feared the IRS.

34) The IRS and its agents knowingly allowed the continuing illegal seizure of Plaintiffs' property rights in violation of Plaintiffs' unalienable Constitutional protections and rights under the 4th Amendment, after being fully informed by the Plaintiffs as to the requirements, restrictions, and violations of US Constitutional taxing authority as expressed by the US Supreme Court rulings.

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." **COOPER v. AARON, 358 U.S. 1 , 18 (1958).**

35) The IRS and its agents had a duty to act and to speak when these violations were brought to their attention. **See US v Tweel, 550 F.2d 297, 299. Also see US v Prudden, and Carmine v Bowen**. The IRS and its agents did not act as a reasonable person would act. A reasonable person would respond by denying allegations of fraud and extortion if the person thought he or the corporation was innocent. A reasonable person would present the documentation to show his authority. A reasonable person would have sought counsel from the attorneys or other responsible officials. The IRS and its agents remained silent and such silence is equivalent to fraud under such duty. Plaintiffs' constitutional rights and

protections were clearly established during the time of correspondence and before any correspondences occurred.

"... the Defendant then bears <u>the burden of establishing that his actions were reasonable</u>, even though they might have violated the plaintiff's constitutional rights."

Benigni v. City of Hemet, *879 F.2d 473, 480 (9th Cir. 1988).*

36) **WHEREFORE, PLAINTIFFS REQUEST** the following of this Honorable Court; 1) Allow a reasonable period of Discovery to determine the full extent of violation of laws by Defendants, 2) Allow a reasonable period of Discovery to determine whether there were any accomplices to the Defendants, 3) Allow a reasonable period of Discovery to determine the motives and/or explanations of Defendants. 4) Schedule a jury trial in this action, after Discovery, so that such jury (a) may determine the liability of Defendants, (b) make a determination as to the reasonableness of the claim of each Plaintiff for damages, punitive damages, plus expenses, costs, and lawyer fees that have been suffered by each Plaintiff and Plaintiff's family, and (c) make any necessary modifications to each Plaintiff's claim for damages as the jury may see as fit and proper. 5) Order the immediate removal of all liens and levies placed on all Plaintiffs' property by the IRS. 6) Order that the Internal Revenue Service immediately dismiss the offending IRS agents from employment without retirement or other benefits. 7) Order that all false documents be corrected. 8) In the event of the failure of the Defendants to answer the complaint within the required 20 days, order that the Defendants must pay each Plaintiff the amounts requested in each Plaintiff's affidavit.

SECOND CAUSE OF ACTION

DEPRAVATION OF PLAINTIFFS' 5th and 14th AMENDMENT DUE PROCESS

37) Plaintiffs incorporate by reference paragraphs 1 through 31 into this cause of action as if they were fully stated herein.

38) The IRS and its agents violated the Due Process requirements of the 5th and 14th Amendments by seizure of Plaintiffs' property and property rights, imprisonment and threats of imprisonment, lacking authority of law to do so.

"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." **COOPER v. AARON, 358 U.S. 1 , 18 (1958).**

39) The IRS and its agents violated the Due Process requirements of the 5th and 14th Amendments by refusing to answer the question of liability and other questions raised by Plaintiffs. See Exhibits "C" and "B".

40) The IRS and its agents knowingly violated Plaintiffs' Due Process by continuing to make threatening statements and false allegations and allowing the continuing seizure of Plaintiffs' property rights in violation of Plaintiffs' unalienable Constitutional protections and rights under the 5th and 14th Amendment Due Process requirement, after being fully informed by the Plaintiffs as to 1) Plaintiffs' underlying liability and 2) the unlawful procedures used in the filing of Notices of Federal Tax Lien on Plaintiffs' property title and consequent encumbrance and seizures of property.

41) Plaintiffs, in some instances, as stated in affidavits, had their primary residences taken by the actions of IRS agents acting without a court order. Affidavits for such unlawful seizures will be provided.

42) Plaintiffs, in some instances as stated in most of the affidavits, had their property and wages taken without a court order or writ from a court. Plaintiffs rely on the following U.S. Supreme Court rulings:

SNIADACH v. FAMILY FINANCE CORP., 395 U.S. 337, 342 (1969):

"Held: Wisconsin's prejudgment garnishment of wages procedure, with its obvious taking of property without notice and prior hearing, violates the fundamental principles of procedural due process. Pp. 339-342." The Court goes on to say, "The idea of wage garnishment in advance of judgment, of trustee process, of wage attachment, or whatever it is called is a most inhuman doctrine. It compels the wage earner, trying to keep his family together, to be driven below the poverty level." "The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall. Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing (cf. Coe v. Armour Fertilizer Works, 237 U.S. 413, 423) this prejudgment garnishment procedure violates the fundamental principles of due process."

FUENTES v. SHEVIN, 407 U.S. 67, 68 (1972): Held:

"1. The Florida and Pennsylvania replevin provisions are invalid under the Fourteenth Amendment since they work a deprivation of property without due process of law by denying the right to a prior opportunity to be heard before chattels are taken from the possessor. Pp. 80-93.

(a) Procedural due process in the context of these cases requires an opportunity for a hearing before the State authorizes its agents to seize property in the possession of a person upon the application of another, and the minimal deterrent effect of the bond requirement against unfounded applications for a writ constitutes no substitute for a pre-seizure hearing. Pp. 80-84.

(b) From the standpoint of the application of the Due Process Clause it is immaterial that the deprivation may be temporary and nonfinal during the three-day post-seizure period. Pp. 84-86."

"Neither the history of the common law and the laws in several states prior to the adoption of the Bill of Rights, nor the case law since that time, justifies creation of a broad exception to the warrant requirement for intrusions in furtherance of tax enforcement." **G. M. LEASING CORP. v. UNITED STATES, 429 U.S. 338, 339 (1977).**

"Our conclusion that the Court of Appeals correctly reversed the judgment of the District Court and remanded for further proceedings is fortified by the fact that construing the Act to permit the Government to seize and hold property on the mere good-faith allegation of an unpaid tax would raise serious constitutional problems in cases, such as this one, where it is asserted that seizure of assets pursuant to a jeopardy assessment is causing irreparable injury. This Court has recently and repeatedly held that, at least where irreparable injury may result from a deprivation of property pending final adjudication of the rights of the parties, the Due Process Clause requires that the party whose property is taken be given an opportunity for some kind of predeprivation or prompt post-deprivation hearing at which some showing of the probable validity of the deprivation must be made. Here the Government seized respondent's property and contends that it has absolutely no obligation to prove that the seizure has any basis in fact no matter how severe or irreparable the injury to the taxpayer and no matter how inadequate his eventual remedy in the Tax Court." **COMMISSIONER v. SHAPIRO, 424 U.S. 614, 630 (1976).**

"The taxpayer can never know, unless the Government tells him, what the basis for the assessment is and thus can never show that the Government will certainly be unable to prevail. We agree with Shapiro." **COMMISSIONER v. SHAPIRO, 424 U.S. 614, 627 (1976).**

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. Frost & Frost Trucking Co. v. Railroad Comm'n of California, 271 U.S. 583. "Constitutional rights would be of little

value if they could be . . . indirectly denied," Smith v. Allwright, 321 U.S. 649, 664 , or "manipulated out of existence." Gomillion v. Lightfoot, 364 U.S. 339, 345 .

"...constitutional deprivations may not be justified by some remote administrative benefit to the State. Pp. 542-544." **HARMAN v. FORSSENIUS, 380 U.S. 528, 540 (1965).**

43) Plaintiffs, in some instances as stated in affidavits, had bank accounts illegally seized without a writ or warrant. This was accomplished by the use of fear and implied threats against third party banks.

In **U.S. vs. O'Dell, 160 F2d 304**, the court ruled, ***"The method for accomplishing a levy on a bank account is the issuing of warrants of distraint, the making of the bank a party, and the serving with notice of levy, copy of the warrants of distraint, and notice of lien."***

44) Other rulings relied on by the Plaintiffs concerning the deprivation of Due Process by the IRS follow:

"We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution." Grosjean v. American Press Co., 297 U.S. 233, 243 -244 (1936).

"We think the Court in Betts had ample precedent for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. This same principle was recognized, explained, and applied in Powell v. Alabama, 287 U.S. 45 (1932)", **GIDEON v. WAINWRIGHT, 372 U.S. 335, 341 (1963).**

"The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only

after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Hurtado v. California, 110 U.S. 516, 535, 4 S. Sup. Ct. 111. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the Congress or the Legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws." **TRUAX v. CORRIGAN, 257 U.S. 312 (1921).**

"It is true that no one has a vested right in any particular rule of the common law, but it is also true that the legislative power of a state can only be exerted in subordination to the fundamental principles of right and justice which the guaranty of due process in the Fourteenth Amendment is intended to preserve, and that a purely arbitrary or capricious exercise of that power whereby a wrongful and highly injurious invasion of property rights, as here, is practically sanctioned and the owner stripped of all real remedy, is wholly at variance with those principles." **TRUAX v. CORRIGAN, 257 U.S. 312, 330 (1921).**

45) The IRS has no immunity as per the following court ruling:

"Thus the guaranty was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does so. Immunity granted to a class however limited, having the effect to deprive another class however limited of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." **TRUAX v. CORRIGAN, 257 U.S. 312, 332 (1921).**

46) **WHEREFORE, PLAINTIFFS REQUEST** the following of this Honorable Court; 1) Allow a reasonable period of Discovery to determine the full extent of violation of laws by Defendants, 2) Allow a reasonable period of Discovery to

determine whether there were any accomplices to the Defendants, 3) Allow a reasonable period of Discovery to determine the motives and/or explanations of Defendants. 4) Schedule a jury trial in this action, after Discovery, so that such jury (a) may determine the liability of Defendants, (b) make a determination as to the reasonableness of the claim of each Plaintiff for damages, punitive damages, plus expenses, costs, and lawyer fees that have been suffered by each Plaintiff and Plaintiff's family, and (c) make any necessary modifications to each Plaintiff's claim for damages as the jury may see as fit and proper. 5) Order the immediate removal of all liens and levies placed on all Plaintiffs' property by the IRS and the return of homes that were seized illegally. 6) Order that the Internal Revenue Service immediately dismiss the offending IRS agents from employment without retirement or other benefits. 7) Order that all false documents be corrected. 8) In the event of the failure of the Defendants to answer the complaint within the required 20 days, order that the Defendants must pay each Plaintiff the amounts requested in each Plaintiff's affidavit.

THIRD CAUSE OF ACTION

DEPRIVATION OF PLAINTIFFS' CONSTITUTIONAL PROTECTIONS AND PROTECTIONS UNDER U.S. LAWS AGAINST ILLEGAL USE OF POSTAL SYSTEM

47) Plaintiffs incorporate by reference paragraphs 1 through 31 into this cause of action as if they were fully stated herein.

48) Plaintiffs were injured by the illegal use of the Constitutionally authorized Postal system. Plaintiffs have a right to honest usage of the Postal system by all users. The Constitution and laws of the United States do not authorize the use of the Postal system for fraud and extortion, and forbids such use. Plaintiffs were deprived of Constitutional guarantees of lawful usage of the Postal system, by the commission of fraud by IRS.

49) Defendants attempted to commit extortion by the use of U.S. Postal service communications, which contained threatening, false, and fraudulent documents.

50) Defendants violated 18 USC 41 (Extortion and Threats), 18 USC 47 (Fraud and False Statements), and 18 USC 63 (Mail Fraud) and used the United States Postal Service to commit such acts.

51) Defendants used the United States Postal Service to convey threats and demands for payment for an alleged debt that was not owed by Plaintiffs. Defendants violated 18 USC 47 and 18 USC 41 by conveying false documents through the mail and by making demands and threatening statements to Plaintiffs under the false pretense that Defendants had the authority to make such demands and threats to Plaintiffs, and under the false pretense that such authority was given to Defendants by the Secretary of the U.S. Treasury.

52) **WHEREFORE, PLAINTIFFS REQUEST** the following of this Honorable Court; 1) Allow a reasonable period of Discovery to determine the full extent of violation of laws by Defendants, 2) Allow a reasonable period of Discovery to determine whether there were any accomplices to the Defendants, 3) Allow a reasonable period of Discovery to determine the motives and/or explanations of

Defendants. 4) Schedule a jury trial in this action, after Discovery, so that such jury (a) may determine the liability of Defendants, (b) make a determination as to the reasonableness of the claim of each Plaintiff for damages, punitive damages, plus expenses, costs, and lawyer fees that have been suffered by each Plaintiff and Plaintiff's family, and (c) make any necessary modifications to each Plaintiff's claim for damages as the jury may see as fit and proper. 5) Order the immediate removal of all liens and levies placed on all Plaintiffs' property by the IRS. 6) Order that the Internal Revenue Service immediately dismiss the offending IRS agents from employment without retirement or other benefits. 7) Order that all false documents be corrected. 8) In the event of the failure of the Defendants to answer the complaint within the required 20 days, order that the Defendants must pay each Plaintiff the amounts requested in each Plaintiff's affidavit.

FOURTH CAUSE OF ACTION

DEFAMATION OF CHARACTER and DEPRIVATION OF ORDINARY BUSINESS TRANSACTIONS

53) Plaintiffs incorporate by reference paragraphs 1 through 31 into this cause of action as if they were fully stated herein.

54) Plaintiffs have suffered continual defamation of character by the IRS under "color of law" and have consequently been deprived of their good names and reputation, which are necessary for the conduct of everyday activities. Employers, neighbors, friends, acquaintances, businesses, banks, business associates, and others have been fraudulently told that Plaintiffs are violating law. Plaintiffs' privacy has been violated by placing Plaintiffs' names on the public record as being outside the

law. The Protections of the Constitution and the laws of the United States forbid the taking of Plaintiffs' lives, livelihood, and good names under "color of law".

55) Plaintiffs have a right to maintain their good names, which are necessary for their livelihood, and have protections, under the laws of the United States and their respective states, against defamation of character. The IRS in willful and callous disregard of those laws, did defame the characters and reputations of Plaintiffs, and thereby deprived Plaintiffs of their livelihood. The IRS had a duty to observe the laws of the United States and the several states, in regards to defamation of character.

56) **WHEREFORE, PLAINTIFFS REQUEST** the following of this Honorable Court; 1) Allow a reasonable period of Discovery to determine the full extent of violation of laws by Defendants, 2) Allow a reasonable period of Discovery to determine whether there were any accomplices to the Defendants, 3) Allow a reasonable period of Discovery to determine the motives and/or explanations of Defendants. 4) Schedule a jury trial in this action, after Discovery, so that such jury (a) may determine the liability of Defendants, (b) make a determination as to the reasonableness of the claim of each Plaintiff for damages, punitive damages, plus expenses, costs, and lawyer fees that have been suffered by each Plaintiff and Plaintiff's family, and (c) make any necessary modifications to each Plaintiff's claim for damages as the jury may see as fit and proper. 5) Order the immediate removal of all liens and levies placed on all Plaintiffs' property by the IRS. 6) Order that the Internal Revenue Service immediately dismiss the offending IRS agents from employment without retirement or other benefits. 7) In the event of

the failure of the Defendants to answer the complaint within the required 20 days, order that the Defendants must pay each Plaintiff the amounts requested in each Plaintiff's affidavit.

FIFTH CAUSE OF ACTION

DEPRIVATION OF RIGHT TO WORK AND SUSTAIN THEIR FAMILIES

57) Plaintiffs incorporate by reference paragraphs 1 through 31 into this cause of action as if they were fully stated herein.

58) Plaintiffs had their rights to unhindered and unfettered employment taken from them or seriously compromised by use of fraud and deception.

"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him." Butcher's Union Co. v. Cresent City Co., 111 US 746, 757 (1884).

"It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. Frost & Frost Trucking Co. v. Railroad Comm'n of California, 271 U.S. 583 . "Constitutional rights would be of little

value if they could be . . . indirectly denied," Smith v. Allwright, 321 U.S. 649, 664 , or "manipulated out of existence." Gomillion v. Lightfoot, 364 U.S. 339, 345 .
"...constitutional deprivations may not be justified by some remote administrative benefit to the State. Pp. 542-544." **HARMAN v. FORSSENIUS, 380 U.S. 528, 540 (1965).**

59) Plaintiffs have had their right to support and sustain their families and dependent children, taken away completely or seriously compromised by the IRS through fraud, deception, and threats under "color of law". Plaintiffs and their helpless spouses and children were denied the services and support of the right to engage in occupations of "common right" to sustain their lives. The Constitution affords protections of our lives and property and rights. The Internal Revenue Manual also states that there is no requirement to withhold by private employers and other entities (see exhibit "F"). The IRS transgressed these protections.

Redfield v. Fisher, 135 Or. 180, 292 P. 813, 819 (Ore. 1930): ***"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but <u>the individual's rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.</u>"***

Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699, 705 (1930): ***"A man is free to lay hand upon his own property. To acquire and possess property is a right, not a privilege ... The right to acquire and possess property cannot alone be made the subject of an excise .... nor, generally speaking, can an excise be laid upon the mere right to possess the fruits thereof, as that right is the chief attribute of ownership."***

Jack Cole Co. v. MacFarland, 337 S.W.2d 453, 455-56 (Tenn. 1960): ***"Realizing and receiving income or earnings is not a privilege that can be taxed...Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as a privilege."***

"Income is necessarily the product of the joint efforts of the state and the recipient of the income, the state furnishing the protection necessary to enable the recipient to produce, receive, and enjoy it, and a tax thereon in the last analysis is simply a portion cut from the income and appropriated by the state as its share..." Sims v. Ahrens et al., 271 SW Reporter at 730.

60) **WHEREFORE, PLAINTIFFS REQUEST** the following of this Honorable Court; 1) Allow a reasonable period of Discovery to determine the full extent of violation of laws by Defendants, 2) Allow a reasonable period of Discovery to determine whether there were any accomplices to the Defendants, 3) Allow a reasonable period of Discovery to determine the motives and/or explanations of Defendants. 4) Schedule a jury trial in this action, after Discovery, so that such jury (a) may determine the liability of Defendants, (b) make a determination as to the reasonableness of the claim of each Plaintiff for damages, punitive damages, plus expenses, costs, and lawyer fees that have been suffered by each Plaintiff and Plaintiff's family, and (c) make any necessary modifications to each Plaintiff's claim for damages as the jury may see as fit and proper. 5) Order the immediate removal of all liens and levies placed on all Plaintiffs' property by the IRS. 6) Order that the Internal Revenue Service immediately dismiss the offending IRS agents from employment without retirement or other benefits. 7) In the event of the failure of the Defendants to answer the complaint within the required 20 days, order that the Defendants must pay each Plaintiff the amounts requested in each Plaintiff's affidavit.

SIXTH CAUSE OF ACTION

DEPRAVATION OF CONSTITUTIONAL PROTECTIONS AGAINST A DIRECT TAX WITHOUT APPORTIONMENT

61) Plaintiffs incorporate by reference paragraphs 1 through 31 into this cause of action as if they were fully stated herein.

62) Plaintiffs were deprived of their rightful protections against having a direct tax levied on them without the "apportionment" provision. This deprivation was accomplished by means of threats and implied threats to third parties, such as employers. Under "color of law", the IRS claimed the authority to levy a direct tax on Plaintiffs without "apportionment" as being authorized by the 16th Amendment. This was in direct contradiction to U.S. Supreme Court rulings such as the following:

"Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises." Pollock, 157 US 429, 556 (1895).

BRUSHABER v UNION PACIFIC R. CO., 240 US 1 (1916):

"...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, <u>a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes</u>. And the far-reaching effect of this <u>erroneous assumption</u> will be made clear by generalizing the many contentions advanced in argument to support it..."

63) **WHEREFORE, PLAINTIFFS REQUEST** the following of this Honorable Court; 1) Allow a reasonable period of Discovery to determine the full extent of violation of laws by Defendants, 2) Allow a reasonable period of Discovery to determine whether there were any accomplices to the Defendants, 3) Allow a reasonable period of Discovery to determine the motives and/or explanations of Defendants. 4) Schedule a jury trial in this action, after Discovery, so that such jury (a) may determine the liability of Defendants, (b) make a determination as to the reasonableness of the claim of each Plaintiff for damages, punitive damages, plus expenses, costs, and lawyer fees that have been suffered by each Plaintiff and Plaintiff's family, and (c) make any necessary modifications to each Plaintiff's claim for damages as the jury may see as fit and proper. 5) Order the immediate removal of all liens and levies placed on all Plaintiffs' property by the IRS. 6) Order that the Internal Revenue Service immediately dismiss the offending IRS agents from employment without retirement or other benefits. 7) In the event of the failure of the Defendants to answer the complaint within the required 20 days, order that the Defendants must pay each Plaintiff the amounts requested in each Plaintiff's affidavit.

Signatures of Plaintiffs will be provided in the affidavits, giving their acknowledgement and willing participation in this class action lawsuit. Plaintiffs all are agreed that an appointed spokesperson shall speak on their behalf, whenever required. Plaintiffs chose not to be represented by a lawyer at this time.

<u>Bursten v. US</u>, 395 f 2d 976, 981 (5th. Cir., 1968), *"We must note here, as matter of judicial knowledge, that most lawyers have only scant knowledge of the tax laws."*

Plaintiffs are all agreed that the appointed spokesperson shall be Charles F. Conces.

Signature of Plaintiff, Charles F. Conces, is affixed herein, as confirmation that this complaint and brief are done with full intent to observe court rules and as confirmation that the information contained herein is true and correct to the best of his knowledge.

Date: _____

Signature: _____

Charles F. Conces

Notary: The above signed has presented himself before me and has properly identified himself. The above signed presents this Complaint, Demand for Jury Trial, and Brief In Support for notarization.

BRIEF IN SUPPORT

At one point in history, most educated men believed that the world was flat. Today, many lawyers and judges believe that the 16th Amendment conferred a new taxing power on the federal government. The second erroneous belief is the subject of this lawsuit.

The taxing authorities are listed in the United States Constitution. The taxing authorities are clarified and explained by the United States Supreme Court.

In 1864, a tax act was passed that authorized taxation on an individual's portion of corporate earnings. The act did not impose a tax on the non-corporate portion of the individual's earnings.

" (The) Income Tax Act of June 30, 1864 (chapter 173, 13 Stat. 223, 281, 282), under which this court held, in Collector v. Hubbard, 12 Wall. 1, 16, that an individual was taxable upon his proportion of the earnings of the corporation although not declared as dividends. That decision was based upon the very special language of a clause of section 117 of the act (13 Stat. 282) that 'the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise." **SOUTHERN PAC CO. v. LOWE , 247 U.S. 330, 335 (1918).**

In Butcher's Union, the 10 years prior to Pollack, i.e. 1894, the U.S. Supreme Court ruled: ***"The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hinderance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright. It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the***

strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him." **Butcher's Union Co. v. Cresent City Co., 111 US 746 (1884).**

Taxation Key, West 53 – "The legislature cannot name something to be a taxable privilege unless it is first a privilege."

Taxation Key, West 933 – "The Right to receive income or earnings is a right belonging to every person and realization and receipts of income is therefore not a "privilege that can be taxed".

"The court held it unconstitutional, saying: 'The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates." **COPPAGE v. STATE OF KANSAS, 236 U.S. 1 (1915). ***

"any officer, agent, or receiver of such employer, who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, ...or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee . . . is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof . . . shall be punished for each offense by a fine...". **COPPAGE v. STATE OF KANSAS, 236 U.S. 1 (1915).**

As recently as 1943, the U.S. Supreme Court ruled:

"A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution." **MURDOCK v. COMMONWEALTH OF PENNSYLVANIA, 319 US 105, at 113; 63 S Ct at 875; 87 L Ed at 1298 (1943).**

A look at POLLOCK is crucial because, as Plaintiffs shall show this Honorable Court, the Plaintiffs in this lawsuit fall under the ruling of POLLOCK and not under the 16th Amendment.

In POLLACK v FARMERS' LOAN & TRUST CO., 157 US 429 (1895), addressed the issue of direct taxes. The Court quoting the Constitution: ***"No capitation, or other direct, tax shall be laid, unless in proportion to the census...."*** And,

"As to the states and their municipalities, this (contributions to expense of government) is reached largely through the imposition of direct taxes. <u>As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows.</u>"

POLLOCK stated, ***"...that such tax is a direct tax, and void because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated."*** It is also stated in the U.S. Constitution: ***Article 1, sec. 9, "<u>No Capitation, or other direct, Tax shall be laid, unless in proportion to the Census</u> or Enumeration herein before directed to be taken."*** These two prohibitions and limitations on federal taxing authority were never repealed and remain in force in the main body of the Constitution.

Pollock also stated the intention of the framers of the Constitution: ***"Nothing can be clearer than that what the constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states."*** **Pollock vs. Farmers' Loan and Trust Co., 157 US 429, 582 (1895).**

POLLOCK also ruled that the Constitution clearly recognized the two classes of taxation: ***"Thus, in the matter of taxation, the constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises." Pollock, 157 US 429, 556 (1895).***

"From the foregoing it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution and those who adopted it; (2) that, under the state system of taxation, all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes; (3) that the rules of apportionment and of uniformity were adopted in view of that distinction and those systems..." Pollock, 157 US 429, 573.

The notion that a federal income tax where one person pays one amount and another person pays nothing, was ruled against by POLLOCK as having violated "apportionment".

"The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of $4,000 and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation." Pollock, 157 US 429, 595.

Butcher's Union and Pollock were in complete agreement and not in contradiction. This was in sum, the relevant taxing authority that was in existence in 1895.

In 1909, the Corporate Excise Tax Act was passed and the U.S. Supreme Court ruled that this met the requirements of the U.S. Constitutional. There can be no question that the 1909 tax was passed to imposed on corporations, an "income tax", placed on the privilege

of incorporation, and fell under the category of excise tax, and therefore was an indirect tax, not subject to the rule of "apportionment". Plaintiffs are not subject to excises laid on corporate privileges.

In 1911, the U.S. Supreme Court confirmed the taxing authority on corporate privileges in FLINT v STONE TRACY, 220 US 107 (1911):

"Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' Cooley, Const. Lim. 7th ed. 680."

In 1913, STRATTON'S INDEPENDENCE addressed the intent of congress in passing the 16th Amendment, while also addressing the corporate excise tax act of 1909.

STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399, 417 (1913):

"Evidently Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In Flint v. Stone Tracy Co. 220 U.S. 107, 165 , 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise [231 U.S. 399, 417] or privilege, was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable."

"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation."

STRATTON'S went on to say that corporations receive a government conferred benefit and that such benefit could be taxed as a corporate privilege.

"Corporations engaged in such business share in the benefits of the federal government, and ought as reasonably to contribute to the support of that government as corporations that conduct other kinds of profitable business."

"... the annual gains of such corporations are certainly to be taken as <u>income</u> for the purpose of measuring the amount of the tax."

In 1916, the U.S. Supreme Court confirmed once again that the 16th Amendment conferred no new taxing powers in its ruling in STANTON v BALTIC MINING CO., 240 US 103 (1916):

"Not being within the authority of the 16th Amendment, the tax is therefore, within the ruling of Pollack... a direct tax and void for want of compliance with the regulation of apportionment."

"...it manifestly disregards the fact that by the previous ruling it was settled that the provisions of the <u>16th Amendment conferred no new power of taxation</u>.."

"...it was settled in Stratton's Independence... that such tax is not a tax upon property... <u>but a true excise levied on the result of the business</u>.."

Also in 1916, the U.S. Supreme Court confirmed prior rulings on the 16th Amendment:

BRUSHABER v UNION PACIFIC R. CO., 240 US 1 (1916):

"...the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this <u>erroneous</u> assumption will be made clear by generalizing the many contentions advanced in argument to support it..."

BRUSHABER went on to rule on the purpose of the 16th Amendment and the necessity of maintaining and harmonizing the 16th Amendment with the "apportionment" requirements:

"...the whole purpose of the Amendment was to relieve all income taxes <u>when imposed from apportionment</u> from a consideration of the source..."
"...on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation."

In 1918, the High Court confirmed prior decisions in PECK v LOWE, 247 US 165 (1918):
"As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..."

In 1918, the U.S. Supreme Court once again addressed taxation authorized under the 16th Amendment.
" (The) Income Tax Act of June 30, 1864 (chapter 173, 13 Stat. 223, 281, 282), under which this court held, in Collector v. Hubbard, 12 Wall. 1, 16, that <u>an individual was taxable upon his proportion of the earnings of the corporation</u> although not declared as dividends. That decision was based upon the very special language of a clause of section 117 of the act (13 Stat. 282) that 'the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise.' The act of 1913 contains no similar language, but on the contrary deals with dividends as a particular item of income, <u>leaving them free from the normal tax imposed upon individuals, subjecting them to the graduated surtaxes only when received as dividends</u> (38 Stat. 167, paragraph B), and subjecting the interest of an individual shareholder in the undivided gains and profits of his corporation to these taxes only in case the company is formed or fraudulently availed of for the purpose of preventing the imposition of such tax by permitting gains and profits to accumulate instead of being divided or distributed." **SOUTHERN PAC CO. v. LOWE , 247 U.S. 330 (1918).**

In Doyle v. Mitchell Bros., 247 U.S. 179 (1918):
"An examination of these and other provisions of the Act (The 16th Amendment) make it plain that the legislative purpose was not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit upon the gainful returns from their business operations."

SOUTHERN PACIFIC CO. v. LOWE, 247 U.S. 330 (1918) ruled that everything that comes in, cannot necessarily be included in "income":

"We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909, the broad contention submitted on behalf of the government that all receipts, everything that comes in, are income within the proper definition of the term 'gross income'. Certainly the term 'income' has no broader meaning in the Income Tax Act of 1913 than in that of 1909, and for the present purpose we assume there is no difference in its meaning as used in the two acts."

In EISNER v MACOMBER, 252 US 189 (1920), the High Court confirmed prior rulings:
"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."
"As repeatedly held, this did not extend the taxing power to new subjects..."
"...it becomes essential to distinguish between what is and is not 'income', as the term is there used.."
"...we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909...(Stratton's and Doyle)"
EISNER v MACOMBER also ruled that congress may not change the definition of "income":
"In order, therefore, that the clauses cited from article 1 of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not 'income,' as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. <u>Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution,</u> from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised."

In 1920, the U.S. Supreme Court ruled on the compensation as being not subject to tax in EVANS v GORE, 253 US 245 (1920):

"If the tax in respect of his compensation be prohibited, it can find no justification in the taxation of other income as to which there is no prohibition; for, of course, doing what the Constitution permits gives no license to do what it prohibits."

EVANS further ruled that the 16th Amendment did not authorize new taxing powers over subjects and the government agreed that this was so:

"Does the Sixteenth Amendment authorize and support this tax and the attendant diminution; that is to say, does it bring within the taxing powers subjects theretofore excepted? The court below answered in the negative; and counsel for the government say: 'It is not, in view of recent decisions, contended that this amendment rendered anything taxable as income that was not so taxable before'."

INCOME

In 1921, the U.S. Supreme Court ruled on the definition of the word "income" in MERCHANTS' LOAN & TRUST CO. v SMIETANKA, 255 US 509 (1921):

"The Corporation Excise Tax Act of August 5, 1909, was not an income tax law, but a definition of the word 'income' was so necessary in its administration..."

"It is obvious that these decisions in principle rule the case at bar if the word '<u>income</u>' has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in Southern Pacific v Lowe..., where it was assumed for the purpose of decision that there was no difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. When we add to this, Eisner v Macomber...the definition of '<u>income</u>' which was applied was adopted from Stratton's Independence v Howbert, supra, arising under the Corporation Excise Tax Act of 1909... there would seem to be no room to doubt that <u>the word must be given the same meaning in all the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act</u>, and that what that meaning is has now become definitely settled by decisions of this Court."

The High Court, in SMIETANKA, seemed as if it had become exasperated that the question of the definition of the word "income" had repeatedly been raised.

The word "income" has been wrongfully used by the IRS, as including the wages, compensation, or earnings of the Plaintiffs, when not engaged as a corporate enterprise. The general public, being unaware of the legal definition of "income", has been misled into a wrongful use of the word and has been also misled into believing that they had "income', although not participating in a government conferred corporate benefit.

Once again in Bowers v. Kerbaugh-Empire, 271 U.S. 170 (1926):
"Income has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the 16th Amendment, and in the various revenue acts subsequently passed."

In 1943, HELVERING v. EDISON BROTHERS' STORES, 8 Cir. 133 F2d 575 (1943) ruled on the limitation of the definition of "income":
"The Treasury cannot by interpretive regulation make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax that which is not income within the meaning of the 16th Amendment."

As late as 1960, the U.S. Supreme Court ruled in FLORA v US, 362 US 145 (1960):
"Our system of taxation is based upon voluntary assessment and payment, not upon distraint."
The definition of distraint in the legal dictionary, "to seize a person's goods as security for an obligation."

In 1976, in U.S. v. BALLARD, 535 F2d 400: ***"Gross income and not 'gross receipts' is the foundation of income tax liability..."*** BALLARD gives us two useful explanations: At 404, ***"The general term 'income' is not defined in the Internal Revenue Code."*** At 404, BALLARD further ruled that ***"... 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources."***
Thus, it is shown by these U.S. Supreme Court rulings that the Plaintiffs, in this action, did not have "income" as the meaning of the word is intended in the 16th Amendment.

INESCAPABLE CONCLUSIONS

▶*The individual income tax is a direct tax subject to apportionment.*

▶*The corporate 'income' tax is an indirect tax (excise tax), not subject to apportionment. Plaintiffs are not subject to excises laid on corporate privileges.*

▶*The 16th amendment only applies to 'income' as defined by the US Supreme Court, as pertaining only to corporations and government conferred privileges.*

▶*Occupations of "common right" cannot be hindered and are rights of freedom necessarily covered by the common law of the U.S. Constitution.*

▶ *The word 'income' is not defined in the Internal Revenue Code.*

▶ *The 16th amendment did not authorize any new taxing powers.*

▶ *The taxing powers of the federal government were the same after the passage of the 16th amendment as were existent before the passage.*

▶ *The IRS agents are guilty of fraud by refusing to respond to questions from Plaintiffs, according to court ruling precedence.*

▶ *The 16th amendment kept the corporate excise tax in the category of indirect tax and did not affect the apportionment requirement of the Constitution.*

Former IRS Agent, Tommy Henderson, testified before the Senate and this was reported by the National Center for Public Policy:

Even the Powerful Can Be Victims of Abuse

By National Center for Public Policy Research
CNSNews.com Special
May 13, 2003

(Editor's Note: The following is the 46th of 100 stories regarding government regulation from the book Shattered Dreams, *written by the National Center for Public Policy Research.* ***CNSNews.com*** *will publish an additional story each day.)*

"IRS management does what it wants, to whom it wants, when it wants, how it wants with almost complete immunity," retired Internal Revenue Service official Tommy Henderson told the U.S. Senate Finance Committee. (Empahsis Added)

One of Henderson's agents attempted to frame former U.S. Senate Majority Leader Howard Baker, former U.S. Representative James H. Quillen and Tennessee prosecutor David Crockett on money-laundering and bribery charges, apparently in an attempt to promote his own career. When Henderson attempted to correct the abuse, it was Henderson, not the agent, who lost his job.

"What I had uncovered was an attempt to create an unfounded criminal investigation on two national political figures for no reason other than to redeem this agent's own career and ingratiate himself with his supervisors," Henderson testified. Henderson attempted to reign in the rogue agent by taking away his gun and his credentials, but he failed. The agent, Henderson told the committee, had a friend in IRS upper management.

In fact, Henderson was told that management had lost confidence in him. He believed that if he

did not resign, he would be fired. Henderson resigned. "I had violated an unwritten law. I had exposed the illegal actions of another agent," Henderson testified.

Eventually, the agent was fired - but not for illegal actions within in the IRS. He was arrested on cocaine charges and subsequently fired because the arrest was public knowledge.

Sources: Testimony of Tommy Henderson to the Senate Finance Committee, the Washington Post

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Plaintiffs disagree with the conclusions of Tommy Henderson that the IRS can violate the law with impunity. This Honorable Court should agree with Plaintiffs as a matter of Constitution and law.

Signed: _____

Charles F. Conces

Dated: _____

Notary: The above signed has presented himself before me and has properly identified himself and signed in my presence.

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Signed: _____

Charles F. Conces

Dated: _____

Notary: The above signed has presented himself before me and has properly identified himself and signed in my presence.

From: _____

Address _____

City, state: Winston, OR 97496

Date: _____

Mark S. Kaizen,
Designated Federal Officer

The President's Advisory Panel on Federal Tax Reform

1440 New York Avenue Suite 2100 FEB 17 2005

Washington, DC 20220

RE: Tax Hearings and January 28, 2005 Court Filing, Class Action, Charles F. Conces et al. vs. INTERNAL REVENUE SERVICE, Case number 5: 04CV0101, U.S. District Court of Western Michigan against Internal Revenue Service and 21 page Liability Report.

Dear Mark S. Kaizen and The President's Advisory Panel on Federal Tax Reform:

I am a member of the Lawman Group and a Plaintiff in the above mentioned Class Action lawsuit, Case Number 5: 04 CV 0101 against the Internal Revenue Service, Mark Everson, Jeffery Eppler, et al.

We have been collecting evidence to present against certain IRS agents and judges. I personally can provide you with evidence of illegal activities of 3 Agents and as a group the Lawmen can provide you with evidence of illegal activities of other IRS agents or alleged IRS agents. These agents have all committed felonies cognizable in law. The need to be removed or suspended from their positions immediately, according to IRS 7214 and prosecuted for crimes.

The felonies that I am referring to are:

> Violations of IRC 7214; knowingly and deliberately attempting to collect a debt that is not owed from our membership by means of threats to employers and banks, and illegal seizures of property,
>
> Filing false documents; knowingly and deliberately entering false information into alleged "accounts" of our members,

Extortion; promulgating threats to employers, banks, and other institutions, in violation of due process as contained in the U.S. Constitution and U.S. Supreme Court rulings,

Fraud, deliberately and knowingly, refusing to answer queries on legitimate tax matters,

Mail Fraud, sending false and misleading documents through the U.S. Postal Service,

Fraud; deliberately and knowingly misapplying the tax laws under "color of law", such as misapplying the word "income" and falsely stating the effect of the 16th Amendment,

Fraud; deliberately and knowingly misapplying the Code of Federal Regulations, that is, "under color of law" using regulations that were promulgate in 27 CFR for the collection of alcohol, tobacco, and fire arms, to collect "income taxes", when, in fact, the regulations for "income taxes" fall under 26 CFR and have no force or effect of law on our general membership,

Threatening and intimidating witnesses in our class action lawsuit,

Depriving our membership of our protections under the U.S. Constitution, such as a) protection against a direct tax without "apportionment", b) due process protections, and c) the lawful protections as ruled by the U.S. Supreme Court and as applied to the meaning of the 16th Amendment, and

Violation of the RICO laws; racketeering by means of collusion among numerous IRS agents to commit extortion, etc.

Our organization has determined that the following agents have involved themselves in said illegal activities, but are not limited to the following:

Dan Myers, Cincinnati IRS office,

Regina Owens, Cincinnati IRS office,

Jeffrey D. Eppler, Kansas City IRS office,

Dennis Parizek, Ogden, Utah IRS office,

Susan Meredith, Fresno IRS office,

Larry Leder, Philadelphia IRS office,

Thomas D. Mathews, Ogden, Utah IRS office,

Timothy A. Towns, Ogden, Utah IRS office,

Karen W. Gardner, Revenue Officer, Fort Worth, Texas IRS office,

M. McHugh, Revenue Officer, Morton Grove, Illinois IRS office,

Kenneth Campagna, Morton Grove, Illinois IRS office,

Anthony J. Aguiar, Las Vegas IRS office,

Debra K Hurst, Kansas City, Mo. IRS office,

Sandy Charter, Kalamazoo, Mich. IRS office,

Mary Jo Fedewa, Lansing, Mich. IRS office,

Miss Breher, Employee number 5400174, Taxpayer Advocate, phone 1-877-777-4778,

Miss Mosely, Employee number 5401149, Taxpayer Advocate, phone 1-877-777-4778.

Whenever I, or other members of our organization, ask for a statute and implementing regulation to determine our liability, or if we ask for information or provide information on Constitutional requirements of direct taxes being "apportioned", the IRS agents refuse to respond or hang up on us and refused to speak any further. This appears to be the standard practice of the Taxpayer Advocate's office personnel also. I, personally, have never been presented with a statute and regulation that makes me, or our membership, liable for any "income tax" as would be provided in 26 USC and 26 CFR. Further, an exhaustive search has revealed none.

These agents have continued their illegal activities even though we have demanded that they cease and desist, and we have demanded a showing of their lawful authority and credentials. They all refuse to answer. **These actions can only be equated with fraud**, as ruled in U.S. v. Tweel, 550 F.2d 297, 299, U.S. v. Prudden, 424 F.2d 1021, 1032, and Carmine v. Bowen, 64 A. 932. I personally, and our membership continues to receive threatening letters from multiple IRS "service centers", some without any signature or printed name on the documents.

We demand that you present the enclosed **21 page Liability Report** and **Court Filing, Class Action, Case number 5: 04 CV 0101** in the U.S. District Court of Western Michigan, to each member of The Presidents Advisory Panel. The prosecutorial power is invested in the DOJ. It is the duty of the DOJ to examine the evidence and sworn statements of myself and the complainants (the Lawmen in generally) and they must convene a Grand Jury so that we may be witnesses against these agents. At a minimum, these agents must be suspended from their duties until such time that they are cleared of all wrongdoing. See IRC 7214.

If you do not believe that our membership has a criminal case against these IRS agents, then schedule a meeting with our Chairman, Charles F. Conces, to explain your determination. If you or the IRS can provide the implementing regulations for 26 USC 6321, 6323, and 6331 and rebut

the Summary Points in the 21 Page report, that make us liable for "individual income taxes", then I will stand corrected. Otherwise, it would be a wise decision to move forward promptly so as not to delay justice. I expect each member of Congress to uphold the Constitution and laws of the United States or vacate their Offices.

Let me know that you have received my letter and send your response to the above address. To save you trouble and time, you may wish to correspond with our Chairman: Charles F. Conces, 9523 Pine Hill Dr., Battle Creek, Mich. 49017. His phone number is 1-269-964-7025. I wish to remind you that you are also required by 26 USC 7214 (8) to report this to the Secretary of the Treasury.

Sincerely,

_____