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# COMPLIANCE CONTINUING PROFESSIONAL EDUCATION

## Tax Protestors

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Department of the Treasury  
Internal Revenue Service

Training 3203-154 (10-96)  
TPDS 85278C



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# Mission

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The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

# EXAMINATION AND COLLECTION JOINT CPE - TAX PROTESTORS

## Introduction

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### Introduction

An illegal tax protestor is an individual using illegal methods to protest the tax laws. These individuals and groups are attempting to disrupt effective tax administration. They present a potential threat to the voluntary compliance system. Some of these individuals and groups advocate the use of violence and present an ever increasing threat to employees with direct taxpayer contact. The illegal tax protestor generally advocates and/or participates in a scheme with a broad exposure that results in the underpayment of taxes.

Tax protestor returns will be considered priority cases. These examinations and collections must be completed as expeditiously as possible to achieve compliance with the tax laws by tax protestors. These cases should be coordinated between divisions.

This training will describe the schemes used by the tax protestors, their arguments, as well as the facts and references to refute their claims. We will also provide you with the tactics used by tax protestors to intimidate or harass IRS employees. Finally, we will provide guidance in the identification and examination or collection of tax protestors, fraud referral procedures, safety and security steps, and education outreach for taxpayers.

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# Introduction

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## Protest Schemes - Constitutional Arguments

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### Definition

A "Tax Protest Scheme" is any scheme without basis in law or fact for the ostensible purpose of expressing dissatisfaction with the substance, form or administration of the tax laws by either interfering with such administration or attempting to illegally avoid or reduce tax liabilities.

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### Constitutional schemes

Constitutional schemes are sometimes promoted around the country by so-called tax protest groups who present, as fact, serious misrepresentations of tax law. Generally, these promoters counsel taxpayers not to comply with return filing requirements because they violate a person's constitutional rights. Some taxpayers submit to pressure of friends, relatives, or fellow employees who claim, "I don't pay taxes and you don't have to either." It is important that you learn the general characteristics, basic arguments, and issues peculiar to constitutional protest cases because you are likely to encounter them.

Tax protestors might raise any of the amendments to, or articles of the U.S. Constitution as a defense for failure to comply with the tax laws. The constitutional issues most commonly raised are based on the 1st, 5th, 13th and 16th Amendments.

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## Constitutional Arguments - First Amendment

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### Argument

The First Amendment provides, in part, that there shall be a separation of church and state. The amendment also guarantees freedom of speech, press, and the right to peaceful assembly. The taxpayer refuses to pay income taxes, in whole or in part, on religious or moral grounds, contending that to do so would violate First Amendment rights.

The most common form of First Amendment tax objection involves an alleged church scheme whereby the taxpayer declares a vow of poverty and transfers all assets to the so-called church. Another First Amendment scheme involves a large contribution to an alleged church. In each of these schemes, the taxpayer usually receives direct benefits (payment of personal living expenses) from the church. The taxpayer's standard of living rarely suffers and may advance due to a decreased tax liability.

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### Fact

Federal Courts have held, in numerous cases, that there is no Constitutional right to refuse pay income taxes; in whole or in part, on religious or moral grounds or because the funds are used for government programs opposed by the taxpayer. The fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay taxes.

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## Constitutional Argument - Fifth Amendment

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**Argument**

The Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself or herself, nor be deprived of life, liberty, or property without due process of law.

The tax protestor claims that the filing of an income tax return violates the Fifth Amendment right against self-incrimination, and that he/she is entitled to secure a ruling on the incriminating possibility of each item on the return.

The taxpayer also asserts that various provisions of the Internal Revenue Laws violate the due process clause of the Fifth Amendment. Generally they claim that the graduated income tax scale and the fact that certain deductions or benefits allowed by the Internal Revenue Code are available to some and not to others deny, those latter persons their Constitutional rights.

TAXPAYER'S CONTENTION
1. There is a constitutional right to refuse to file because of the Fifth Amendment. (This position has been consistently rejected.)
2. Income tax laws violate the due process clause of the Fifth Amendment. (This position has been consistently rejected.)

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**Fact**

There is no Constitutional right to refuse to file an income tax return because of the Fifth Amendment. The courts have uniformly held that disclosure of the type of routine financial information required on a tax return does not, in itself, incriminate an individual and does not violate one's Fifth Amendment right against self-incrimination. **United States v. Schiff**, 612 F.2d 73, 77-83 (2d Cir. 1979). From a criminal perspective, returns containing little or no financial information from which a tax could be computed may constitute an affirmative act for the purposes of proving evasion. **See United States v. Waldeck**, 909 F.2d 555, 559 (1st Cir. 1990).

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## Constitutional Argument - Fifth Amendment, Continued

Fact, cont'd

The Fifth Amendment has no application to the statutory requirement that every citizen must report his entire income, even if a taxpayer is thereby compelled to disclose an incriminating fact. United States v. Oliver, 505 F.2d 301, 308 (7th Cir. 1974). In short, the taxpayer does not have a Fifth Amendment interest to protect when he turns information over to the IRS concerning his income. Therefore, his Fifth Amendment claim is without basis in the law.

Also related to a tax protestor's Fifth Amendment challenge is the concept of what constitutes a return. In addition to the Porth-Daly landmark cases, the following is a sample of invalid returns and the applicable court cases.

Description of Invalid Return	Court Case References
Form 1040 reporting only zeros	<u>United States v. Smith</u> , 618 F. 2d 280, 281 (5th Cir), <u>cert. denied</u> , 449 U.S. 868 (1980)
Form containing asterisks and no signature	<u>United States v. Kimball</u> , 925 F.2d 356, 357 (9th Cir. 1991)
Forms reporting nothing or small amounts in the blanks for income & expenses	<u>United States v. Edelson</u> , 604 F.2d 232, 234 (3rd Cir. 1979)
Form 1040 showing only a bottom line figure for taxable income with no information as to how the reported taxable income was derived	<u>United States v. Grabinski</u> , 727 F.2d 681, 686-76 (8th Cir. 1984)  But See <u>United States v. Long</u> , 618 F.2d 74, 75 (9th Cir. 1980) (zeros on Long's tax forms, unlike blanks, constituted information as to income from which a tax could be computed just as if the return had contained other numbers).

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## Constitutional Argument - Fifth Amendment, Continued

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Fact, cont'd

A Fifth Amendment claim may be asserted to specific line items on the tax form. United States v. Sullivan, 274 U.S. 259, 263 (1927). The amount of a taxpayer's income is not privileged but the source may be. United States v. Heise, 709 F.2d 449, 450 (6th Cir.) **cert. denied**, 464 U.S. 918 (1983).

The landmark cases in the area of Fifth Amendment protests are Daly and Porth. Returns filed with this protest are generally identified as Porth-Daly types of returns.

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References

United States v. Daly, (481 F.2d 28 (8th Cir. 1973), cert. denied, 414 U.S. 1064 (1973). In this case, a form 1040 was filed, but the form contained only the name and address and a statement objecting to furnishing further information. The opinion stated that Daly had made no reasonable showing of how the disclosure of the amount of legal fees he had received as a lawyer during the years in question could possibly incriminate him. Daly was convicted for failure to file an income tax return.

### Court Cases

United States v. Keig, 334 F.2d 823 (7th Cir. 1964)

United States v. Oaks, 527 F.2d 937 (9th Cir. 1975)

United States v. Hoopes, 545 F.2d 721 (10th Cir. 1976)

### Due Process

Brushaber v. Union Pac. RR Co., 140 U.S. 1, (1916) held that due process was not denied by discriminating between classes or by having a progressively graduated income tax scale.

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## Constitutional Argument - Thirteenth Amendment

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### Argument

Compelled compliance with the Federal income tax is a form of servitude in violation of the Thirteenth Amendment. There are several theories of servitude, each of which results in the protestors defining who is and who is not a citizen. They refer to English law concerning the Lord of the Manor and serfs. From there, they refer to the types of citizens that lived in the United States before the Thirteenth Amendment. According to the protestors, these people fell into two groups, natural enfranchised individuals and "freemen" and people who were property, "otherwise known as slaves." Following ratification of the Thirteenth Amendment, slavery was abolished. However, protestors assert taxpayers are, in effect, indentured servants of the United States government.

Protestors may also contend that the requirement of bookkeeping, records maintenance, and employer withholding requirements is in reality "involuntary servitude" and, therefore, are unconstitutional.

An extension of the citizenship argument uses the Internal Revenue Code to "prove" the protestor is not subject to income tax.

As we read definitions in the Internal Revenue Code, we find that citizens of the United States are subject to tax. We also find that the United States includes Washington, D.C., the Virgin Islands, Puerto Rico, and other territories of the United States. Accordingly, (from the protestor's interpretation) the United States does not include any of the 50 states of the Union. Thus, they are citizens of individual states and not of the United States. Hence, they do not need to file Form 1040 but must file Form 1040NR. Of course, the Form 1040NR will show that they owe no tax.

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### Fact

This argument was found to be frivolous and without merit with no basis in fact or law. Fox v. Commissioner, 969 F.2d 951 (10th Cir. 1992).

See also: U.S. v. Collins, 920 F.2d 619 (10th Cir. 1990)

Ginter v. Southern, et.al., 611 F.2d 1226 (8th Cir. 1979)

Lonsdale v. U.S., 919 F.2d 1440 (10th Cir. 1990)

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## Constitutional Argument - Sixteenth Amendment

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**Argument**

The Sixteenth Amendment provides that the Congress shall have the 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 orientation.

<b>Taxpayer' Contention</b>
1. Tax laws are unconstitutional because the Sixteenth Amendment was not properly ratified.
2. Because the State of Ohio was not properly a state at the time of ratification of the 16th Amendment, the Amendment is not valid and, therefore, income tax is unconstitutional.

---

**Fact**

This argument is unsubstantiated and without merit. The argument is overcome by looking at the history of the Sixteenth Amendment.

The Sixteenth Amendment was ratified by 40 states, including Ohio, and a proclamation issued in 1913. Shortly thereafter, two other states also ratified it. Under Article V of the Constitution, only three-fourths of the states are needed to ratify an Amendment. There were enough states ratifying this Amendment without Ohio to complete the number needed for ratification.

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**Court references**

**Porth v. Brodrick**, 214 F.2d, 925 (10th Cir. 1954).

**United States v. Porth**, 426 F.2d 519 (10th Cir. 1970)

**United States v. Whitesel**, 543 F.2d 1176 (6th Cir. 1976)

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## Constitutional Argument - Wages are not Income

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**Argument**      Wages, tips, and other compensation received for personal services are not income but rather sources of income and as such, are nontaxable because the value of the services performed equals the value of the wages received. Hence, the argument goes, there is no taxable gain when a person exchanges his labor for money.

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**Fact**              The Supreme Court has rejected the argument, based on Eisner v. Macomber, 252 U.S. 189 (1919), that the Code's definition of income is limited to gain in Commissioner v. Glenshaw Glass Co., 348 U.S. 426 75 S. Ct. 473 (1955). More recently, the Court has rejected the assumption that the current statutory definition of income (in 26 U.S.C. sec. 61) incorporated the income as gain definition of Eisner. Thus, the first assumption behind the protestor's argument is simply incorrect--income is not limited to gain or profit.

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**Reference**      Commissioner v. Kowalski, 434 U.S. 7794, 98 S. Ct, 315,325 (1977).

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## Constitutional Argument - Income Taxes are Voluntary

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### Argument

Filing a tax return is voluntary according to the law. The IRS tells you in the 1040 instruction book that the tax system is voluntary.

Protestors have used language found in Flora v. United States, 362 U.S. 145, 176 (1960), "Our system of taxation is based upon voluntary assessment and payment, not upon distraint," to support their assertion that filing returns is a voluntary matter.

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### Fact

"In assessing income taxes the Government relies primarily upon the disclosure by the taxpayer of the relevant facts." Helvering v. Mitchell, 303 U.S. 391, 399 (1938). There are several court cases that make it clear, that although our tax system relies on the taxpayer voluntarily keeping records and doing a self assessment in filing tax returns, failure to file returns and pay the proper amount of tax will result in sanctions. The word "voluntary" as used in IRS literature refers to our system of allowing the taxpayer to determine the correct amount of tax as opposed to the government determining the tax for them. The quote in Flora is taken out of context.

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### References

Lonsdale v. United States, 919 F.2d 1440 (10th Cir. 1990)  
United States v. Payne, 978 F.2d 1177 (10th Cir. 1992)

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## Constitutional Argument - Title 26 of the U.S. Code is not Law

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**Argument** Protestors use the preface of the United States Code and other references that refer to some titles as being enacted into "positive law." Since Title 26 is not listed as one of these titles enacted into "positive law," they infer that Title 26 is not the law of the land and, therefore, taxes are not legally required to be paid.

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**Fact** To understand why this conclusion is wrong, you must understand exactly how laws are compiled. After the Congress passes a bill and the President signs it, it becomes a "public law". This "public law" contains the exact language passed by Congress and is identified by its sequence in the Congress that passed it.

All the public laws passed by Congress since the beginning of the nation are collected sequentially in huge sets of volumes which vary in name from year to year (including the Revised Statutes of the United States, the Statutes at Large, the United States Compiled Statutes, the Federal Statutes, and others).

In 1925, Congress directed that all the public laws be codified into a set of convenient, easy to use volumes which we call the United States Code. Congress attempted to codify IRS laws into one complete law with the passage of Public Law No. 1 of the 76th Congress, the Internal Revenue Code of 1939. However, since there were unresolved matters with that compilation, Congress did not pass it as "Title 26 of the United States Code", but rather as the "Internal Revenue Code of 1939". In other words, it was still a "public law" of the United States, but not yet added into the compilation of laws called the United States Code. Similarly, when the 1954 Code was passed, it was denominated Public Law 591 of the 33rd Congress, passed August 16, 1954; and when the 1986 Code was passed, it was passed as P.L. 99-514; neither was passed as "Title 26 of the United States Code." The various Amendments to the Code made by each Congress are also referred to by their public law numbers.

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## Constitutional Argument - Title 26 of the U.S. Code is not Law

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Fact, cont'd

Consequently, at the present time, we continue to refer to the actual public laws passed by the Congress, i.e., the "Internal Revenue Code of 19XX, Public Law XX-XXX"--rather than to the compilation found in the United States Code. This has no effect on the validity of the tax law, but merely refers to where the underlying law may be found.

"The (taxpayer's) argument that the Internal Revenue Code was not enacted by Congress is \* \* \* meritless." Urban v. Commissioner, 47 T. C. M. (CCH) 1130, 1131 (1984). The 9th Circuit also held this contention to be frivolous. Ryan v. Bilby, 764 F.2d 1325, 1327 (9th Cir. 1985).

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## Other Arguments

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**Introduction  
Non-filers**

These schemes involve individuals who have never filed an income tax return or have simply stopped filing. These protestors are the most difficult to identify since they do not readily identify themselves by sending in protest letters or nonacceptable returns.

Unless the individual is known to the Service, it is extremely difficult to determine if the taxpayer is an illegal tax protestor. You may not be able to identify this taxpayer as a protestor, until you actually contact them and request their delinquent returns. Common schemes and meritless beliefs used by these protestors are discussed in the following pages.

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## Other Arguments - IRS is not a Government Agency

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Taxpayer's  
contention

The IRS is merely a private corporation, incorporated in Delaware in 1933, which has no authority to collect tax.

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Service position

The IRS is a government agency that was given authority to collect taxes by Congress under Title 26 of the United States Code, or more commonly known as the Internal Revenue Code.

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Fact

A company known as "The Internal Revenue and Audit Service" was incorporated in Delaware in 1933. It went out of business a few years later. It has no relationship to the IRS.

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## Other Arguments - Federal Reserve is not a Government Agency

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**Taxpayer's  
contention**

The protestor believes that the Federal Reserve Bank is privately held by 12 families (one American and eleven foreign).

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**Service position**

No Federal Reserve Bank exists as a profit-oriented business. Rather than being a corporation, the Federal Reserve Bank (FRB) is an independent agency, in corporate form, created by Congress and operated within the government for one primary reason, to keep the nation's financial system healthy and its economy growing without undue political pressures intruding on a day to day basis. The FRB is responsible to Congress, and reports annually to Congress on the results of its operations.

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## Other Arguments -Gold/Silver Standard

Based on two arguments

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The gold/silver standard protest is usually based on one of two arguments. The first states that Federal Reserve notes are not real money and do not constitute income since they are not redeemable in gold or silver, and only gold or silver may be constitutionally taxed.

The second argument is that Federal Reserve notes are actually accounts receivable and not reportable as income until redeemed for gold or silver.

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Service position

The Service's position is quite clear. Federal Reserve notes are legal tender and, therefore, constitute income to the recipient. This position has been upheld in the courts in Hatfield v. Commissioner, 68 T.C. 895 (1977), and United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976), cert. denied, 429 U.S. 818 (1976).

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## Other Arguments - Filing of False W-4 or W-8 Withholding Allowance Certificates

Protestor  
"exempt"

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The protestor will submit false W-4's or W-8's, to their employers claiming "exempt" status or excessive allowances. This eliminates or substantially reduces the amount of federal income taxes withheld from their wages. This scheme often precedes the taxpayer not filing an income tax return. The W-8 declares foreign status exemption from withholding.

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Fact

Taxpayers can only legally claim additional allowances or claim "exempt" on their W-4 if they meet certain requirements. If these requirements are not met, the taxpayer is asked to file a new W-4. If the taxpayer refuses to file a correct W-4, then their employer is instructed by the agent or the Detroit Computing Center to withhold based on a filing status of "Single" with zero allowances. The taxpayer is also notified of this change. A \$500 False Withholding Statement penalty under IRC 6682 may be applied on every false W-4 submitted by the taxpayer. Similar procedures should be used if false W-8's have been filed.

Treas. Reg. 31.3402(f)(2)-1(g) mandates that employers, who receive W-4's claiming more than 10 exemptions or claiming exempt status, when earnings are anticipated to exceed \$200 per week, must submit such W-4's to the IRS Service Center with their next Form 941. See Exhibit 1 for examples of false W-4's filed.

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## Other Arguments - Trusts

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### Introduction

Taxpayers have used trusts for many years as a means of hiding assets, and information as well as complicating examinations and the examiner's attempts to determine accurate facts. Phillip Marsh and "The Pilot Connection Society" recommended placing assets in trusts as a means of hiding income. More recently, promoters are using so called "business trusts" as the primary means of evading income tax.

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### Asset trusts

The taxpayer will place assets in multiple trusts to hide them from detection. Any number may be set up with the sole purpose to change the name of title from the taxpayers to another name that is more difficult to find in searching for assets. Sometimes a single asset, such as a home, will be transferred from trust to trust to further cloud ownership. The trust name will rarely have any connection to the name of the taxpayer. Sometimes the trusts are registered in another county or state in order to further complicate locating them. Check the taxpayer's home address first. This will help to determine if assets have been placed in these trusts.

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## Trusts

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### Business trusts

This scheme is being sold by promoters, attorneys, and tax preparers as a means of avoiding taxation. It is an illegal scheme. The taxpayer is advised to place his business "in trust". The trust then files its own tax return (Form 1041) and a "net profit" is passed on to the taxpayer. Frequently the taxpayer will "tier" several trusts and, by not reporting income and using false deductions, trickle only a fraction of the profit if any at all onto his own 1040. Exhibit 2 shows an example of how a business trust operates. This scheme has found success because traditionally IRS has examined relatively few fiduciary returns. Package audit procedures usually do not include even an inspection of these returns. This scheme has even found its way onto CEP returns with correspondingly larger numbers. The scheme has other earmarks:

- There appears to be a nationwide network where promoters exchange names and services across state lines in an effort to further obscure and insulate themselves from detection. #  
#  
#
- The taxpayer requests an EIN for the trust then provides the EIN to payers of remuneration, alleging he is not subject to 1099 requirements. If no W-2s or 1099s are filed, there will be no IRP cross checking. The taxpayer typically ceases filing 1040s or files minimal income returns. Taxpayers also escape employment taxes. #  
#  
#  
#
- Taxpayers are using the EIN to represent themselves to state taxing agencies as business trusts, to secure a sales tax number in order to make tax free purchases. #  
#  
#

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### Fact

A business entity may operate as a sole proprietorship, partnership, corporation or limited liability corporation (LLC). There is no provision in the tax law to recognize a "business trust."

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## Returns and Claims

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**Non-resident  
returns**

The Form 1040NR is filed by non-residents who have no income from U.S. sources or whose income is exempt from U.S. tax. For legitimate non-residents, it is the proper form to receive a refund of withheld income tax. The Form 1040NR is typically filed with the Philadelphia Service Center for processing.

In recent years, wage-earning protestors have attempted to file 1040NR's to receive a refund of any withheld income tax, particularly when the Service has issued a corrected Form W-4. The protestor bypasses the local Service Center, and files directly with the Philadelphia Service Center, claiming non-resident alien status. Philadelphia Service Center employees now verify these returns to prevent erroneous refunds. #  
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**Amended returns  
or claims**

Protestors file claims on either Form 1040X or Form 843, demanding a refund of all taxes paid. They contend that they never intended to relinquish their constitutional rights by filing returns and did so only because they were misled into believing that filing a return was mandatory. They will often include a statement rescinding their signature and declaring all previous returns null and void. #  
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These claims can also include a statement in which the protestor requests a refund of all Social Security contributions ever made, plus interest.

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## Tactics - Intimidation

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**Introduction** In an attempt to intimidate or harass IRS employees, protestors have been known to use one or more of the following tactics. Their intent is to prevent you from doing your job. Awareness of these tactics can keep you in control of the situation.

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**Tape recordings** When meeting with Service personnel, the protestor will produce a tape recorder to record the conversation. Tape recording is normally permitted, subject to the restrictions cited in IRM 4245.1 or IRM 5189. If the protestor wishes to record the meeting, you should also record. Typically, you should require no less than 10 days advance notification of the protestor's intent to record.

Once the decision is made to tape the interview, at a minimum, the following items, should be incorporated into the recording.

- Date, place, and time of the interview.
  - Name of persons present, and their capacity.
  - Affirmation that the interview is being recorded by the taxpayer and Government, at the taxpayer's request.
  - Clarification that the taxpayer does not object to a discussion of his/her personal tax matter in the presence of witnesses.
  - Identification of items presented by the taxpayer as substantiation by their physical characteristics (i.e., check #501, dated May 14, 1995, payer, payee, and account number).
  - Statement that the taping session is being concluded, noting the time, and possibly, the reason.
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## Tactics - Intimidation

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### Cameras and video recorders

If a tax protestor brings a camera or video recorder to an interview, ask the taxpayer to remove it as video recordings or photographs of the examination interview are not permitted per IRM 4245.1. If the protestor insists on using the equipment, terminate the interview. Under no circumstances should you try to confiscate cameras, video recorders, or other equipment brought to the interview by the protestor. If the protestor makes an unauthorized recording, or if photographs have been taken, notify your group manager.

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### Witnesses

Should the protestor arrive for the appointment with a large number of persons, contact your manager so he or she can either sit in on the interview, or assign another employee to be present.

The number of persons taking part in the discussion should be limited to the protestor and only one or two others. Try to obtain the identity and expertise of the individuals allowed to accompany the protestor. If they refuse to identify themselves they cannot be heard in the capacity of "witnesses." However, they can be allowed to observe, but must remain silent during the entire interview or they can be asked to leave.

If they do identify themselves, they can be allowed to participate in the discussion if they have direct knowledge of facts relevant to the tax liability. "Any individual who has knowledge of the facts, or who can give information which will assist in establishing the facts, is a proper source of determining the tax liability, and can be heard in the capacity of a witness." (Rev.Proc. 68-29). These witnesses should be informed that they can act in the capacity of a witness only, and cannot advocate the taxpayer's position unless they are properly authorized to practice before the Internal Revenue Service as directed in Circular 230.

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## Tactics - Intimidation

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**Witnesses, cont'd** Any remaining witness may be allowed in the meeting only when their testimony is needed, and then only after they have positively identified themselves and the relevance of their testimony has been established.

Regarding disclosure in any face-to-face discussion with a taxpayer when the taxpayer is accompanied by a third party, consider the witness's presence as the taxpayer's implied consent to discuss tax matters in the presence of a third party. You do not need a written authorization from the taxpayer consenting to or requesting such disclosure. However, advise the taxpayer that tax return information will be disclosed during the interview in front of a third party.

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**Court reporters** The taxpayer may arrive at the interview accompanied by a court-approved stenographer. This is an allowable procedure, however, you need to make an audio recording as well.

Generally, any nonverbatim recording of an interview, such as notes or shorthand, is allowed and requires no action on your part as it is not admissible in a court of law.

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**Questionnaires** During interviews, or via the mail, some protestors may submit a questionnaire soliciting personal information from you, such as; home address, social security number, or home telephone number. Do not divulge personal information as it is an invasion of your privacy. However, you can disclose your name, group, work telephone number, and your manager's name.

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## Tactics - Intimidation

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### Harassment

Some IRS employees who have had dealings with tax protestors later find that they are the target of harassment. The harassment may come in various forms. It is intended to embarrass, influence or intimidate the employee.

Examples of harassment include:

- Unsolicited mail, merchandise, magazines, books, etc., received at home.
- Services rendered that were not requested, such as having a load of manure dumped on an employee's lawn.
- Telephone calls or hang-ups late at night.
- Anti-IRS literature distributed in the employee's neighborhood.
- Personal information about the employee published in protestor literature, identifying the employee as a public enemy.

As a Service employee, you are protected by law from job-related harassment. Notify Inspection and your manager of any situations in which you feel you have been made the target of harassment.

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### Legal threats

Computers have accelerated the ability of protestors to generate bogus legal documents. Protestors can now generate civil suits and common law liens against IRS employees in minutes using proforma documents. Internet access allows protestors to share information from remote locations around the United States.

Civil suits, naming IRS employees as defendants, have been filed in both State and Federal courts. Because many protestors refute the legitimacy of the IRS as a government agency, some actions are brought against employees in their personal capacity.

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## Tactics - Intimidation

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Legal threats,  
cont'd

If you are named as a defendant in a suit, or a subpoena is received requiring your appearance:

1. advise your group manager.
2. Contact the Disclosure Officer.
3. Disclosure Officer is to notify District Counsel
4. *Notify Inspection if necessary.*
5. Retain all materials received for evidence.

Due to the revival of the common law courts, common law liens have been filed against employee's real property. These bogus liens cloud the title on the property making it difficult to sell or transfer the property. Most county register of deeds are aware of this tactic, and refuse to file these documents. If a common law lien is filed against you, call Inspection and contact your group manager.

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Physical threats

If a threat of physical violence occurs during a field contact, the agent/officer should terminate the meeting and notify Inspection and/or Criminal Investigation.

If a similar threat occurs in the office, know and utilize your local office procedure, i.e. emergency alarms, contact guards.

In remote offices, these meetings may require planning and risk assessment prior to the actual meeting. Armed escorts could be considered/utilized in pre-arranged situations. Local police agencies are better equipped for immediate response.

Review Document 7410 (Rev. 7-94), Guide To Assaults and Threats.

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## Tactics - The Paper Chase

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### Introduction

A technique that has had long term use by protestors is to attempt to flood the IRS system with paperwork. The protestor philosophy is that if the agent spends all their time processing and responding to frivolous documents, legal arguments, comments, and questions, they will have less time to do actual case work. They believe (perhaps justifiably so) that given enough frivolous paper, the entire IRS would be unable to perform the work they have to do.

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### Voluminous or Frivolous Documents

One tactic is to send voluminous documents filled with legal sounding claims, threats, and questions. Many of these documents may be sold on computer disk or passed over the counter from a promoter to another protestor.

Frequently, copies of the same document are sent to agents, managers, service centers, district directors and commissioners. Each will demand a written response by a given date. Once we respond, another letter will be sent enumerating another list that is just as long.

Our policy is not to respond to long lists of frivolous, enumerated questions and we do not have a responsibility to do so. Frequently, this tactic can be cut short by responding with a letter such as the one shown in Exhibit 3. It can be sent in response to each of the taxpayers attempts to draw you in, but is not required.

A well-known promoter, John Kotmair of Westminster, Maryland, continues #  
to use this tactic. He attempts to represent taxpayers through the Save-A- #  
Patriot organization as well as the National Workers' Rights Committee. #  
Mr. Kotmair is currently not authorized to practice before the IRS. Exhibit 4 #  
provides a sample response to Mr. Kotmair's correspondence. #

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### Freedom of Information Act (FOIA) Requests

Another tactic which is being used to flood the system with paperwork, is the filing of numerous Freedom of Information Act (FOIA) requests. FOIA allows any taxpayer legally to have access to his official file. Protestors are filing the requests to find out if they have been identified as a protestor as well as to simply flood the system with additional paperwork. FOIA requests should be forwarded to the District Disclosure Officer.

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## Tactics - The Paper Chase

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**OMB Numbers** Protestors frequently burden agents and officers with requests for direct answers to frivolous questions. One such question deals with OMB Numbers. OMB numbers are required by the Paperwork Reduction Act, Public Law 104-13, to be assigned to all official government documents and forms. The protestor will argue that since OMB numbers cannot be found on some IRS forms, they are not official government forms, and therefore, taxpayers are not required to respond to them.

Public Law 104-13, Section 3518(c)(1)(B) specifically states that forms used in the collection of information in the conduct of any civil action, or administrative action, are exempt from the provisions of PL 104-13. This means that revenue agent reports, levy forms, lien documents, correspondence, workpapers, files and other such documents are exempt from the requirement for OMB numbers.

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**Bankruptcy actions**

Protestors can also temporarily thwart the assessment and collection process through the filing of bankruptcies. The bankruptcy "stay" prevents assessments from being made. It also prevents enforced collection while the bankruptcy remains open.

Typical bankruptcies filed by protestors include:

Chapter	Description
7	This is a liquidation where debts exceed assets, and where there is little likelihood of making full payments to creditors even over a long period of time.  By meeting applicable criteria, a protestor can have tax liabilities discharged through a Chapter 7 in as little as four months.
13	Routinely called the wage-earner plan, Chapter 13 is limited to individuals with a regular and stable source of income that is reliable enough to enable the debtor to make payments for the term of the plan.

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## Tactics - the Paper Chase

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### Bankruptcy actions, cont'd

If a protestor files a bankruptcy petition, contact your Special Procedures Staff (Spf). It is important to have proofs of claim filed, and if all returns are not filed, the Service can request that the protestor file all delinquent returns to establish liabilities. Failure to file the returns can lead to a quick dismissal of the bankruptcy petition.

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### Legal actions (lawsuits)

Protestors continue to bring frivolous actions in all legal venues. Lawsuits have been filed in Small Claims, Circuit, State, and Federal Courts. Their intent is to flood the legal system and force the Government to waste time and resources, while intimidating other defendants. For example, to dismiss a small claims action, would typically require the involvement of District and/or Regional Counsel, Disclosure, the U.S. Attorneys Office, and the U.S. Department of Justice.

Civil suits have been brought against:

- IRS employees
- Employers who honor levies
- Account receivables, i.e., insurance companies, vendors, etc..
- Police officers who assist on seizures
- Judges

Once dismissed, any of these actions can be appealed, thus expending additional government time and resources. Suits have also been filed for disclosure issues and bankruptcy filings.

With computers, protestors now have the ability to generate realistic legal documents in minutes. Sharing information via the Internet or modifying legal software purchased over-the-counter, has made preparation of these documents quick and easy.

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## Tactics - Common Law Courts

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### Common Law Court

The Common Law Court, also known as the Constitutional Common Law Court, Our One Supreme Court, or The Juries Christian Assembly, is a growing movement with representation in over 30 states. This movement rejects the authority of existing governments and court systems, claiming they are corrupt and unconstitutional. Members disavow U.S. citizenship and declare themselves to be "freemen" or "sovereign citizens" of the particular state where they reside. They claim they have no responsibility to adhere to the laws enacted by the legitimately elected government.

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### Member's position

Members cite the U.S. Constitution, the Uniform Commercial Code, and common law as the basis for their position and the authority for establishing their own system of courts. Members of these "courts" believe they possess the authority to issue indictments, arrest warrants, and liens against anyone, including government agencies. A variety of public officials, including judges and Internal Revenue Service employees have had "indictments" issued against them by a Common Law Court. In some instances, frivolous liens for enormous sums have been filed against IRS employees or other public officials. In Western Region, a county official received death threats and was subsequently beaten for refusing to accept the filing of a frivolous lien against an IRS employee. In another instance, members of one "court" openly discussed the possibility of seizing Internal Revenue Service property in order to satisfy one of their bogus liens.

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### IRS efforts to counter

The effort to counter this movement has already been successful in several areas of the country resulting in convictions against members on a variety of charges including filing frivolous liens, issuing bogus money orders, and threatening jury members. Additional investigations are currently underway and prosecutions are anticipated. In spite of these successes, the movement continues to grow and Internal Revenue Service employees in the field should be on the alert when dealing with known or suspected members of this movement. Any employee who learns that he/she is the subject of any action by one of these "courts" should contact the nearest Inspection or CID office immediately.

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## Tactics - Marketing Schemes

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### Introduction

The promoters of the un-taxing or de-taxing packages prey on an individual's religious, patriarchal, and family oriented heart strings. They are very slick talking salesmen, who are able to work a crowd into a frenzy. They present their theories or schemes in such a manner that it sounds legal when, in actuality, it is not.

By combining the promoter's public communication skills with the fact that what they are proposing to the formerly compliant taxpayer, is a way to legally place more money in the taxpayer's pocket, you get a very receptive audience. Often the promoters are so convincing, that the purchasers of the un-taxing packages become essentially brainwashed into believing that the methods that they are following are perfectly legal. This cult type atmosphere makes it difficult for the Examination Division to convince the protestor to rejoin the rest of the taxpaying public. On many occasions, it is not until the Collection division follows through with their liens and levies, that the protestor becomes reformed or de-programmed. Sometimes, even this enforcement action is not successful in bringing the protestor back into compliance.

The promoters of the illegal tax protestor packages offer individuals a variety of items to purchase, at varying costs, through various different advertising mediums.

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## Tactics -Marketing Schemes

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### Untaxing packages

The promoter sells these complete packages to individuals for prices up to \$2,000 in some instances. These packages contain form letters, and easy step by step instructions for the taxpayer to follow, to supposedly legally eliminate their requirement to pay income taxes. These form letters are often contained on a computer disk, for easier preparation (see Exhibits 5A, 5B, and 5C). The protest package includes the names of the Government officials and the government agencies to which the taxpayer should send these form letters. The taxpayer is instructed to send almost all communication by certified mail. These packages inform the taxpayer what information they can obtain from Disclosure, as well as the course of action that they should take after each step in the *Examination and Collection process*.

These packages are often sold at a persons house or in the basements of local business establishments. The individuals attending these meetings are also given the opportunity to sell these packages on behalf of the promoter, which is identical to the pyramid schemes used by Amway, Tupperware, etc. See Exhibit 6 for a sample of this marketing approach. These subsequent sellers will then approach their friends, families, and co-workers, attempting to convince them to purchase the un-taxing package.

Besides selling whole protestor packages, the promoters also offer a variety of other propaganda, including books, newsletters, videos, etc. These items can be purchased for a fraction of the cost of the more sophisticated untaxing protest package. These smaller marketing items usually leave the individual desiring more information on the topic, which eventually lures them into the purchase of the whole package.

Income tax protest activities have become increasingly popular as a result of today's technology, more specifically the information highway. It is a known fact that protestor theories and packages are being discussed and sold via the Internet.

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## Tactics - Marketing Schemes

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### Money Orders

A scheme that has been marketed most recently by the illegal tax protestor promoters, is the sale of phony money orders and cashier's checks. These worthless money orders look somewhat authentic, and are being submitted by individuals to various financial institutions and mortgage companies across the country. They have been remitted at retail establishments, including gun and ammunition shops. They have been submitted at sheriff's sales of protestor properties, and have also been submitted to the Service and State department of revenues to pay off delinquent tax accounts. See Exhibit 7 for a sample of one of these phony money orders.

In some instances, the money orders submitted to the Service were for amounts far exceeding the tax deficiency owed by the protestor. In these cases, the protestor would ask that the difference be refunded to him immediately. This, unfortunately, resulted in one protestor receiving a \$50,000 refund from the Service.

This scheme originated out of Montana by an individual named Leroy Schweitzer and his anti-government group "The Freeman". It has since branched out to areas all over the country, and is a tactic that is being closely monitored.

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## Procedures - General

### Initial identification

Potential tax protestors may be identified in several ways. The chart below lists ways you can identify protestors that may be in your case inventory

TYPE PROTESTOR	WAYS TO IDENTIFY
Taxpayer has not filed a return (Nonfiler)	<ul style="list-style-type: none"> <li>● Current IDRS (Information Document Retrieval System) records shows that the taxpayer has not filed a current year return.</li> <li>● Secure transcripts of the three prior taxable periods.</li> <li>● There is a TC 148 indicator on the account.</li> </ul>
Referrals	You may receive a referral from other divisions, such as Collection, Criminal Investigation, etc. Also, referrals may be received from state and other governmental agencies.
Claims/Amended Returns	Forms 843 or 1040X where the tax protestor demands a refund of all taxes.
Altered 1040 and Form 1040NR	The standard Form 1040 has been changed. Protestor files Form 1040NR renouncing U.S. citizenship.
Trusts	<ul style="list-style-type: none"> <li>● Form 1041 may have been filed.</li> <li>● The taxpayers assets may have been placed in a trust.</li> </ul>
Correspondence	Tax protestor sends to IRS various documents claiming constitutional arguments, renouncing U.S. citizenship, and surrendering Social Security Numbers.
Practitioners	Protestor returns are prepared by so-called practitioners that are known to the IRS as promoters of protest schemes. These practitioners also claim to represent taxpayers on tax matters.
IDRS	<ul style="list-style-type: none"> <li>● A TC 148 indicator may have been previously placed on the taxpayer's account. This indicator identifies the taxpayer as a protestor.</li> <li>● Check the account for a PDT indicator. If the indicator is present, contact your local Inspection office for further information.</li> </ul>

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## Procedures - Examination

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### Pre-contact analysis

Once you have determined that a taxpayer may be a protestor, there are a few additional steps that should be followed during the pre-contact analysis. The current protestor tactic is the non-filer approach. Scheme promoters are convincing their followers that taxes are "voluntary" and there is no requirement to file a tax return. Most likely your taxpayer filed returns until buying into this scheme. At that point, your taxpayer ceased filing returns. In some cases, claims for refunds on previous returns may have been filed. The following page lists these additional steps.

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**STEPS FOR PRE-CONTACT ANALYSIS**

1. **Filing History:** Use IDRS to determine the taxpayer's filing history. Look for things such as prior years filing requirements, income and tax liability, which years returns were filed, filing status, etc.
2. **Name and Address:** Determine the taxpayers most recent address. In the case of non-filers, the most recent address on IDRS may be old. Use telephone directories, Cole or Polk Directories, Dept. of Motor Vehicles, Postal Tracers and other services to locate the taxpayer.

3. **Income:** Use IDRS to find any IRP income.

4. **Cross Functional Activity:** A review of the SUMRY screen on IDRS will identify any current activity in collections. A Revenue Officer currently working with a taxpayer may add background information and help in locating and securing a taxpayer's cooperation in filing returns. An ADP handbook will provide help with codes, but the following status codes will be most helpful.

<u>Status Code</u>	<u>Status</u>
22	Automated Collection System (ACS)
24	Awaiting Assignment
26	Currently Assigned to an RO

If the case is assigned to a revenue officer, use the Employee Number to identify the Revenue Officer. Find out what contact he has made and what he knows about the taxpayer.

A review of the TDINQ screen will identify other Collection activity. If a case has been assigned but is now closed, this screen will put you in contact with the revenue officer who worked the case previously.

Check for PDT indicators on the account. If a PDT indicator exists, contact Inspection for information about the taxpayer. They will also provide an escort to accompany the agent.

A TC 148 is a tax protestor indicator and should be input by the agent if it is not already there.

5. **FED/State:** Some districts have established information sharing procedures between Federal and State agencies. These avenues can provide assistance in locating taxpayers and establishing return information. For instance, if the taxpayer has filed a state tax return it could be used to determine information for a federal return. Some state statutes have stronger and quicker remedies for dealing with difficult taxpayers such as non-filers.

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**STEPS FOR PRE-CONTACT ANALYSIS**

- 6. Initial Interview:** Prepare an initial interview. Consider the possibility that the taxpayer may cut off the interview at any point. Ask the most pertinent questions first. If you contact the taxpayer by telephone, use this outline to begin assembling information.
- 7. Frivolous Returns:** Form 1040NRs, altered Form 1040s, and other returns filed under these schemes are considered frivolous returns. Penalties may have already been assessed. They are assessed under MFT 55 and can be found on IDRS under IMFOLI and IMFOLT screens. If the penalties have not been assessed on these returns, consider assessing them. A frivolous return is not considered a valid return and does not start a filing statute to run. Address any statute issues with your District Technical Coordinator.
- 8. False Withholding Statements (Form W-4s):** Review IRP documents to see if the taxpayer has significant wages with little or no withholdings. If the taxpayer has previously filed legitimate tax returns, compare the income earned and tax owed from those years to the income and withholding for the current years under investigation. A significant decrease in withholding generally indicates that a false W-4 has been submitted by the protestor to their employer. Request suspected false W-4 filings from the taxpayers former and current employers. Current employers can be located using the Department of Industry, Labor, and Human Relations Database. If in fact a false W-4 was submitted by the taxpayer, make sure that the \$500 W-4 penalty under IRC 6682 has been properly assessed by researching command code IMFOLI on IDRS. These penalties will have a MFT of 55. See IRM 4293.2 for additional guidance on the review of tax protestor's W-4s.



## Procedures - Examination

**Taxpayer contact** In general, the taxpayer will try to prolong or delay your examination. He will either not respond or delay his response to your attempts to contact him. Once he responds, he may try to side track you with extraneous requests or long drawn out letters filled with demands and questions.

Contacting the taxpayer who is or may be a protestor should be handled much the same as any taxpayer. Remember at all times that our goal is to convert the protestor back into a taxpayer. Take every opportunity to put the Service's "Best Foot" forward. Avoid the temptation to respond to the taxpayer's tactics in kind. He would like to throw you off balance and put you on the defensive. If you maintain control of the meeting or discussion you will be better able to cut through any rhetoric or harassment tactics and gather the information you need.

### Type of Contact

TYPE	ACTION/REACTION
Correspondence	Usually a contact letter will be the least confrontive. Insure that all required disclosure information such as Pub.1 is provided. Avoid allowing long time periods for the taxpayer to respond or appear. Be alert to taxpayers' attempts to delay the examination by setting appointments that are later canceled. You should also avoid being drawn into long oral or correspondence debates about the constitutionality of the tax laws, etc. A suggested response to these attempts is attached (See Exhibit 3).
Telephone	This may be an opportunity to catch the taxpayer off guard. If the taxpayer will talk with you, begin your initial interview. Try to secure some of the information you will need immediately. Find out where the taxpayer works, lives, banks, etc. Take the opportunity to try to persuade the taxpayer about tax laws and explain the benefits of cooperating with you.

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TYPE	ACTION/REACTION
Personal contact	If there is no response to letters or phone calls you may consider attempting to talk to the taxpayer in person. As a part of your examination, you will need to observe the taxpayer's standard of living. A Form 2246 can be an effective means to get the taxpayer to respond. It can be filled out and left at the residence, advising that you attempted to contact and request that the taxpayer call you. While you are there, document your file as to standard of living, types of autos and license numbers, etc.

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## Procedures - Examination

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**Working the Examination**

How you proceed with the examination will be based on how the taxpayer responds to your request for information. If at any time during this process, the taxpayer decides to cooperate, you can proceed as with a regular examination. Secure and process delinquent returns per IRM 4562.31.

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**No response or uncooperative taxpayer**

Usually the taxpayer will not respond with returns or information to help you prepare returns. You will need to proceed with the following steps to close your case.

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**STEPS TO CLOSE CASE - NO RESPONSE TAXPAYER**

1. **Substitute for Return:** Establish a substitute for return per IRM 4562.4.
2. **Taxpayer's Income:** Estimate taxpayer's income for each tax year, if unable to locate known income sources.
  - Use IRP sources where available.
  - Take into consideration sales of Real Property. Note change of address from prior year returns, rental properties no longer owned etc. Use county recorder information to identify property, value, sales price, date of sale, etc.
  - Consider sales of other assets. Stocks, bonds, personal property.
  - Schedule C or F filers income can be estimated from prior years returns. Income in prior years should be adjusted for consumer price index increases.
  - Bureau of Labor Statistics can be used where no better method of determining income is available. This method estimates income based upon the cost of living in different geographic areas.
  - Third party contacts or other indirect methods can be used, however, they are costly and take a great deal of time. Given a large number of protestor cases these methods are prohibitive. Decisions to use such methods should be made on a case by case basis with management input.
3. **Revenue Agents Report:** Issue an RAR to the taxpayer using the Estimated income, if unable to locate known income sources.
  - The only deductions the taxpayer is statutorily entitled to are his personal exemption and the standard deduction.
  - If there is no W-2 we must assume he is self-employed and therefore his income is subject to SE tax. In this case, he is entitled to a self employment tax deduction for years after 1989.
  - His filing status must be either Single or Married Filing Separately. (Joint filing is an election he has not made.) A separate file should be set up for the spouse.
  - Appropriate penalties should be assessed as described below.

STEPS TO CLOSE CASE - NO RESPONSE TAXPAYER

4. Penalties: When examining an illegal tax protestor, you will be concerned primarily with the following penalties:

Penalty	Code Section
Delinquency-Failure to File	IRC 6651(a)(1)
Fraudulent Failure to File	IRC 6651(f)
Negligence	IRC 6662(b)(1)
Civil Fraud	IRC 6663(a)
Estimated Tax	IRC 6654
Failure to Pay	IRC 6651(a)(2)
Substantial Understatement	IRC 6662(b)(2)
Frivolous Return	IRC 6702
False Form W-4	IRC 6682

If a valid return for the years under examination was delinquent, the delinquency penalties(F-TF and F-TP) and the estimated tax penalty should be considered.

The failure to pay penalty does not apply when the substitute for return procedures are used, since a return for purposes of that section, does not exist until the taxpayer ultimately consents to the deficiency or the tax is assessed by default.

If you are auditing a protestors return, the traditional penalties used in any regular examination may be asserted.

**Errandient Failure to File Penalty:** IRC 6651(f) has been successfully assessed against protestors that have submitted false W-4s. Discuss this avenue with your local District Counsel before pursuing.

**Frivolous Return Penalty:** IRC 6702 provides for an immediate assessment of a \$500 civil penalty against individuals who file frivolous income tax returns or frivolous amended income tax returns. The intent of the law is to stop the flow of returns, amended returns, or documents which purport to be returns, that contain altered line items, or claim unallowable deductions or credits, based on a frivolous position.

This penalty is directed against specific conduct by an individual with respect to the filing of a return. The legislative history clearly reflects that Congress imposed this penalty to halt the increase in the filing of protestor returns, the processing of which delays and impedes the administration of the revenue laws. Accordingly, multiple frivolous returns submitted by a single taxpayer can subject that taxpayer to multiple penalties. The subsequent filing of a legitimate return has no effect on the assertion of the penalty with respect to previously filed frivolous returns.

The penalty is computed on Form 8278 and becomes part of the penalty case file that is forwarded for closing. This file should be flagged with a Form 3198. In addition to Form 8278, the file should include the frivolous return document and your workpaper setting forth the facts of the case. When the case file is complete, it can be forwarded for assessment because this penalty is independent of the income tax examination and no income tax deficiency is required in order to make the assessment. The normal deficiency procedures for appeal do not apply to this penalty.

**Edict W-4:** For those protestors who are employees, the QW-4 (Questionable W-4) program is your first line of defense. If employee protestors are claiming

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STEPS TO CLOSE CASE - NO RESPONSE TAXPAYER

Districts have available on-line access to the DCC's national QW 4 data base. To request access to this data base contact:

Detroit Computing Center  
Systems Operation Division  
Systems Management Branch  
Data Security Section  
Phone no.: (313) 234-1834  
Fax: (313) 234-1831

You will need to fill out Form DC 1122.

Once you have access to the data base this procedure can be done electronically. The QW-4 data base is an effective tool for revenue officers, revenue agents, tax auditors, and special agents working employed protestors. It's a way to get withholding up-front and make non-compliance much less financially attractive.

False W-4 Penalty: IRC 6682

Once you receive the false W-4 and are requesting DCC to change the withholding, you can recommend that DCC also assess the W-4 penalty. This penalty can be assessed for each W-4. This \$500 civil penalty is assessed immediately.

5. **No response from RAR:** If the RAR does not get a response from the taxpayer, forward the case for issuance of a Statutory Notice. The thirty day letter procedure is not necessary unless the taxpayer has been cooperative. Follow local procedures for issuance of the Statutory Notice.

**Prompt Assessment Recommendation**

Upon submission of the case for statutory notice, it is recommended that local procedures include a system whereby the service center is sent Form 2859 (Request Quick or Prompt Assessment). A copy of this notice should also be routed to the Collection Tax Protestor Coordinator. This ensures that assessments generated against tax protestors are accelerated for collection. It is at this stage, that the protestors truly feel the ramifications of their prior actions.

6. **Input TC 148:** When tax protestor status is first clearly established (either at the service center or district level) the RA, TA, or RO should enter on the Master File the protestor identifier Transaction Code 148-2 (TC148) by using Form 4844 or Form 3177. See Exhibit 8 for a sample. This transaction code is subsequently entered by ESP after submission of either one of these forms.

Master File Transaction Code 148-2 is used to ensure a follow-up compliance check on known tax protestors. Returns filed subsequently to the entry of the code on the Master File will be subject to an automatic screening by the service center Tax Protestor Team.

A copy of all tax protestors with the TC148 code may be obtained from your service center. It is recommended, that upon receipt of this listing, that a local database be established so that all newly identified and potential protestors can be added to this listing and monitored accordingly.

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## Procedures - Collection

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### Introduction

The primary focus of Collection is to bring the protestor back into compliance. Preliminary work should include contact with examination employees for potential sources of collection, such as income and property. IDRS command codes IRPTR, IRPOL, and LEVYS should be researched for potential levy sources. Many older protestors who were previously uncollectible are now receiving Social Security benefits. This information is now readily available on IDRS. Contact should also be made with your state taxing authority, as they may have significant information on your taxpayer. In marital property states, similar research should be conducted on the spouse for collection potential.

Safety of employees is critical when dealing with any taxpayer. Research your local policy to determine if Inspection or CID has primary responsibility if a protestor confrontation occurs.

Work to minimize confrontation when dealing with protestors. If you have bona fide levy sources, and the legal notice requirements have been met, attempt collection without making direct contact with the tax protestor. This can bring the taxpayer to our "turf" not theirs.

Do not attempt to refute their arguments. If a protestor believes that the Internal Revenue Code is not "positive" law, or that the Sixteenth Amendment was never ratified, anything you say will not convince them otherwise.

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### Internal Identification

Some protestors do not show their "true colors" until confronted with collection action. It is important that IDRS be updated to indicate if an individual is a protestor or a potentially dangerous taxpayer (PDT).

1. When TC 148-02 is input on IDRS, it identifies the taxpayer as an "illegal tax protestor." A "P" or "Q" indicator will then show on TDA's, SUMRY, and TXMOD to alert collection personnel. Use Form 4844 to request input. (See Exhibit 8.)
  2. PDT Indicators require an investigation by Inspection and District Director approval. This indicator should only be used on those taxpayers who advocate violence or who have verbally or physically threatened Service employees.
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## Procedures - Collection

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### Streamlined procedures

To streamline the enforcement process, a copy of the prompt assessment document prepared by examination, Form 2859, Request for Quick or Prompt Assessment, should be forwarded to the Collection Illegal Tax Protestor Coordinator. Collection can then generate the first notice, Form 3552, which gives the protestor 10 days to pay in full. If full payment is not received within 10 days:

1. File the federal tax lien.
2. Issue a Final Demand (Letter 1058) via certified mail.

This procedure allows a revenue officer to take enforcement in 41 days versus waiting for a TDA to be issued following the normal notice cycles. Exhibit 9 compares the streamlined process vs. the normal issuance cycle. The streamlined process also prevents delinquency accounts from being placed in the collection queue (Status 24) or being delayed by Automated Collection (Status 22). Prompt filing of the federal tax lien is important in the event the protestor is attempting to place property in trust, or transfer property to a third party.

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### W-4 Adjustments

IRC 3401 and 3402 gives the IRS authority to correct invalid and/or unauthorized Withholding Exemption Certificates, Form W-4. Code section 3403(f) specifically states that the number of withholding exemptions which he claims, shall in no event exceed the number to which he is entitled. If a protestor is currently claiming exempt or ten or more exemptions, send a copy of the frivolous W-4 to the Detroit Computing Center for corrective action.

Once the W-4 is corrected, it places the emphasis back on the protestor to file an accurate return. There should now be ample withholding on file.

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## Procedures - Collection

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### Bankruptcy procedures

As previously discussed, protestors, representing themselves, have attempted to file Chapter 13 bankruptcies to thwart collection efforts. A Chapter 13 bankruptcy is limited to individuals with a regular source of income that is reliable enough for the taxpayer to make payments under an approved plan. The main problem in collection is that once a bankruptcy is filed, the automatic stay imposed by the Court requires collection activity to cease. In situations involving seizures, although we can seek adequate protection through the Court, we cannot go to sale. In other levy situations, such as wage garnishments, the levies must be released until the bankruptcy is dismissed.

Coordination with Spf is essential to making timely responses in establishing accurate liabilities with the Court. Our intent is to have the bankruptcy dismissed so that collection activity can resume. Rarely does a protestor submit a bona fide plan to the Court. Spf should be notified, via Form 4488, that the bankruptcy has been filed. This document should also include a listing of all unfiled returns. Spf will then file a proof of claim with the Court, and request that the taxpayer be compelled to file all delinquent returns.

If the protestor fails to file the returns, that is, to fail to accurately report all liabilities due to the IRS, then the Court will usually dismiss the action. Once dismissed, collection action can resume. The bankruptcy schedules completed by the taxpayer should be obtained, as they may include asset and income information.

A taxpayer cannot refile a Chapter 13 for six months. Be prepared for repeat filings.

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## Procedures - Collection

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### Trusts and fraudulent conveyances

Tax protestors continue to use invalid trusts as a means of placing property beyond the reach of the Government or other creditors. Fraudulent conveyances can range from family trusts to church-type trusts. A thorough real property check will identify the trust.

When a trust is encountered, it is the responsibility of the revenue officer to determine if the transfer circumstances indicate either actual or constructive fraud. In other cases, property may have been acquired in the name of another person or entity but the protestor continues to exercise control over the property to such an extent that it is clear the title holder has *nothing* more than "color of title." Such situations may give rise to an administrative transferee assessment, a suit to assert a transferee liability, or a suit to set aside a fraudulent transfer.

In cases where the property has been transferred or acquired in the name of a third party with the protestor's funds, a notice of transferee lien may be used to subject the property to the government's lien. In some jurisdictions, State law may not recognize a transferee lien without judicial process. Check with District Counsel or consult your local law guide.

Where a transferee lien is not feasible but a combination of facts and circumstances support a conclusion that the protestor clearly treats the property as his/her own, a nominee lien may be filed. Such factors to be considered include, but are not limited to:

- The transfer of all or nearly all of the protestor's property.
- A close relationship between the parties involved in the transfer.
- The transfer was made in anticipation of a tax deficiency or while an investigation of a deficiency is pending.
- The protestor maintains an interest in the transferred property.
- The protestor retains possession of the property.
- There is no or inadequate consideration paid by the "purchaser."
- The property taxes continued to be paid by the protestor.
- No Form 1041 fiduciary returns are filed by the sham trust.

The burden of proof to set aside a fraudulent conveyance is on the Government. Your district counsel will be able to advise you as to which type of lien notice is appropriate. For more information on fraudulent conveyances, see IRM 57(16)800.

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## Procedures - Collection

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### Trusts and fraudulent conveyances, cont'd

Once a transferee or nominee lien is filed, you should consider the likelihood that confusion in the chain of title (i.e. clouded title) and potential redemption rights, may depress the sale of the property that has been administratively seized. A judicial lien foreclosure or seizure followed by a suit to foreclose the lien will generally bring a greater sales price, particularly for real property. Consult district counsel to determine the merits of judicial vs. administrative enforcement of a transferee or nominee lien.

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### Seizure and sale

When seizing the assets of tax protestors, follow the Seizure and Sale Reference Guide (IRM 5600-24). Take adequate precautions to ensure the safety and security of all personnel involved in the seizure and sale. These precautions should include:

1. Follow your local procedures when requesting armed escorts, allowing adequate lead time. A request for armed escorts usually requires a pre-seizure meeting with CID or Inspection.
  2. To the extent possible, prepare seizure documents prior to the seizure to expedite the on-site process.
  3. For additional information, see Assaults and Threats Guide (Document 7410, Rev. 7-94).
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## Fraud Referrals to Criminal Investigation

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### Introduction

In October 1995, a streamlined fraud referral format was adopted by Examination, Collection, EP/EO and Criminal Investigation. One aspect of the new process is the creation of the District Fraud Coordinator (DFC). IRS and NTEU recently agreed on a position description for the DFC, and in many districts the position has been filled.

As a result of the new guidelines, the time required to complete a fraud referral has been significantly reduced. Extensive reports and attachments are no longer required. The DFC and CI have agreed on local (district) guidelines for case referral and CI acceptance. These district guidelines and instructions on submitting referrals are available from your DFC. Local referral criteria is protected from FOIA disclosure as it has been designated "For Official Use Only." This information should not be shared with taxpayers.

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### Criminal violations

The following is a list of the applicable criminal charges that might be applicable to tax protestors.

IRC § 7201	Tax Evasion
IRC § 7203	Failure to File
IRC § 7205	Fraudulent Employee's Withholding Allowance Certificate
IRC § 7206 (1)	Subscribing to a False Return
IRC § 7206 (2)	Aiding & Assisting in the Preparation of False Returns
IRC § 7212 (a)	Omnibus Clause Protection
IRC § 1001	False Statement or Document

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## Fraud Referrals to Criminal Investigation

Points to consider

Consider the following points on fraud referrals:

1. Referrals of protestor cases may involve either felony or misdemeanor violations
  - A felony results in possible incarceration of more than one year
  - A misdemeanor is one year or less
  - Felonies include evasion, false returns, or assisting in filing false returns
  - Misdemeanors include failure to file and filing false W-4 forms
2. Criminal Tax Cases
  - Criminal cases cannot be based on estimates of income (Bureau of Labor)
  - The burden of proof is on the IRS, not the taxpayer
  - Burden of proof is higher than in an audit (beyond a reasonable doubt)
  - Referring agent/officer's notes of contact may be critical
  - Referring agent/officer may be a witness at trial
  - Most criminal tax cases are settled with a plea rather than trial
  - Tax cases take significant amount of time to come to completion (sentence)
3. The U.S. Attorney is the prosecutor of all federal crimes
  - All federal agencies send cases to the U.S. Attorney (9 major agencies including IRS, and a host of smaller ones)
  - CI chiefs will secure agreements from the U.S. Attorney to help in enforcement in problem areas such as protestors
  - CID does not control how many tax cases are prosecuted by the U.S. Attorney
4. Sentences are governed by the sentencing guidelines
  - Much discretion (by judges) has been removed by the guidelines
  - Sentences for tax cases are, in part, based on the tax evaded
  - Consideration is given to the total tax loss, not just for the year convicted
  - Each year is considered a separate count (charge)

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5. Probation

- Payment of tax is generally a specific condition of sentencing
  - Terms of probation are not satisfied unless tax is paid
  - Probation may be violated if IRS contends taxpayer is not cooperating
  - IRS loses clout if agreement is not reached with taxpayer prior to probation expiration.
  - CI will assist in probation revocation if notified by Collection of taxpayer's failure to perform/make payment(s).
  - Most probation officers are not familiar with tax issues, installment agreements or taxpayer appeal rights.
  - Probation Officer case load similar to Revenue Officer case load.
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## Safety and Security

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Consider the following points

If at any time an armed escort is warranted, you should consider the following points.

- Inspection has primary responsibility for employee protection.
  - CI has back up responsibility.
  - Agents/officers should determine district policy on requesting escorts and follow local armed escort procedures.
  - Attempt to minimize direct confrontational contact with protestors.
  - Attempt necessary meetings at IRS or on neutral ground.
  - Intent should be to bring protestor back into system.
  - Agents and officers in imminent danger (loss of life or bodily injury) should call 911 for immediate help.
  - When a situation is escalating toward the possibility of violence or threats of violence, agents/officers should break off the meeting and leave the area.
  - CI must be notified 2-3 days in advance to allow for background and planning.
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## Education Outreach

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### Introduction

Promoters are holding seminars and selling packages of information describing how to "untax" oneself. A fee is being offered to current members for recruiting others and results in a systematic and organized growth of the organizations. The rate of growth of the protest movement is such that it appears uncontrollable by using conventional enforcement techniques.

It is recognized that protestor organizations are selling protest packages and recruiting members who are unlearned about tax and constitutional law. There is a ready market of individuals who are unhappy with the current state of the economy and feel the tax burden is too much. Those who are uneducated become prey to those who would "educate" them about their "real" rights. If taxpayers can be informed before they are approached by a protestor they will be far less likely to buy into such schemes.

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### Action plan

The team action plan should combine both taxpayer education efforts and compliance/enforcement techniques. The following elements should be included.

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## Education Outreach - Action Plan

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### Education efforts a. **Quick Response Packet**

Develop a brochure of information that could be mailed to protest group members immediately upon receipt of protest documents, determination of protest affiliation, or upon request. This information should deal directly and specifically with protestor arguments by citing court cases, etc. (See Exhibits 10 and 11.)

The brochure is also used to educate the general public as to tax protest issues. It provides education beforehand to those who may be approached by promoters.

### b. **Telephone Hot Line**

Make a telephone hotline available for taxpayers to call in where questions can be answered concerning protestor issues. Operators could answer questions, mail out information brochures, copies of more specific court cases etc. They could also take reports of promoters, seminars, other activity, etc.

### c. **Kickoff Press Conference**

Hold a press conference at the start of the program to publicize joint cooperation of IRS and State Tax Commission (STC), awareness of protest movement, issues being addressed, etc.

Seek a well known, respected, public official such as Governor, Senator etc., as keynote speaker.

### d. **Road Tour**

IRS and State Public Information Officers would engage in a statewide road tour to address the public via local radio stations to talk over the issues and answer questions.

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## Education Outreach - Action Plan

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Education  
efforts, cont'd

### e. Education Outreach

Assemble a cadre of outreach speakers made up of IRS and State Tax Commission (STC) personnel who can address the protestor and other issues. Publicize their availability to civic groups, businesses, etc.

Proactively schedule engagements with civic groups, business seminars, and such. This could be most effectively used by scheduling local community seminars to be conducted in conjunction with the radio road tour.

Schedule time in already conducted small business seminars held at IRS.

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Area Compliance  
Initiative  
"Geographical"

### f. Compliance Initiatives

Initiatives can be completed using the following steps:

1. Use available databases, both State and Federal, to analyze the profile of protestor groups. Determine trends and locate pockets where there will be an increased chance to impact larger numbers of protestors and potential protestors by exercising various compliance measures.
  2. Organize and execute "compliance initiatives" in key geographical areas. An initiative would consist of the execution of traditional compliance measures in such concentration as to bring public awareness to the increased activities of the IRS and State Tax Commission. An initiative would primarily address protestor groups and issues but will also include compliance and enforcement action on nonprotestors in the same areas. Activity of all types increases the "presence". Use available State and Federal data to analyze and profile protestor groups. Determine trends and locate pockets where there will be an increased chance to impact larger numbers of protestors and potential protestors by exercising various compliance measures.
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## Education Outreach - Action Plan

**Suggested  
Compliance steps**

The following steps can be used to enhance compliance.

STEP	ACTIONS
Businesses promoting or employing groups of protestors:	<p>IRS and State Tax Commission will verify the company's compliance with all agency filing requirements including Employment Tax, W-4, Sales Tax, Licensing, etc.</p> <p>Lists of employees claiming exempt of over 10 status will be solicited from the employers. Employee lists will be researched to determine what compliance measures may be applicable in individual cases.</p> <p>Meet with employers, corporate officers, and/or payroll personnel to discuss the protestor issues. Solicit their help in identifying and counseling employees. Request permission to meet with problem employees to discuss the issues. Provide copies of the brochure.</p> <p>During an initiative, both state and federal personnel from examination, collections, and other appropriate functions will be used to enforce compliance in deficient areas to the greatest extent possible.</p> <p>We suggest employers who are nonprotestors but who employ protestors not be dealt heavy handed compliance measures at this time. We expect they will be cooperative and friendly.</p>
Individual protestors	Individuals within the geographical area will be contacted, interviewed, examined, levied, served, etc. during the initiative.
Businesses with non-protest tax problems/issues	To the extent resources will allow, a heightened presence may be generated by performing regular examination and collection activities in a given area at or near the same time as a sweep. This may be implemented by management once a given schedule is arrived at. Caution should be used to keep from disclosing information such as timing which may be useful to the protestor groups.
Individuals with non-protest tax problems/issues	As with businesses, we may increase taxpayer awareness of tax agency presence by scheduling regular tax work during a time when a sweep is in process.

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## Education Outreach - Disclosure

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**Disclosure issues** To meet the requirements of internal Revenue Code Section 6103(d), several actions should be taken. A Memorandum of Understanding should be executed between the Internal Revenue Service and your state tax agency. This request provides a "two way" sharing (disclosure) of tax information on individuals identified as being associated with the protest movement. The two way disclosure request should also be used when joint contacts are made on non-protestor cases as part of the Compliance Initiatives.

Overall, the FedState Protester Initiative has been very successful in increasing awareness of both Federal and state tax requirements in many states.

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## Appendix

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### Appendix A

The following references should be noted:

1. **Illegal Tax Protestor Training (Coursebook)**  
Training 3110-02 (Rev. 112-87), TPDS 86406, **OFFICIAL USE ONLY**
  2. **Examination:**  
  
IRM 4231, Chapter (11), 400, and 500.  
IRM 4293, Tax Protestors  
IRM 4562.1, *Delinquency Cases*  
IRM 4562.4, *Substitute for Return*
  3. **Collection:**  
  
IRM 5164.4, *District Collection Activity Procedures*  
IRM 5600-24, *Seizure and Sale Reference Guide*
  4. **Compliance CPE - Bankruptcy**  
Training 3203-147 (Rev. 3-96) TPDS 84180D
  5. **Document 7410, Assaults and Threats Guide (Rev. 7-94)**
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# Appendix

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## Appendix B

## Glossary

**United States Code** The United States Code, otherwise known as "The Code of Laws of the United States" is the official restatement in convenient form of the general and permanent laws of the United States.

**Internal Revenue Code** The Internal Revenue Code of 1939 was enacted into law and became part of the United States Code on February 10, 1939. The Internal Revenue Code of 1954 was enacted into law on August 16, 1954. Public Law 99-514 was enacted into law on October 22, 1986. This law contained extensive revisions to the IRC of 1954 and provided, in part, that the IRC could be cited as "Internal Revenue Code of 1986."

**Code of Federal Regulations** The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. Title 26 of the CFR is published as of April 1 of each year by the Office of the Federal Register National Archives and Records Administration as a Special Edition of the Federal Register.

### **Definitions**

- (a) **Secretary of the Treasury (IRC 7701(11))** When this term is printed in any location in the IRC, it means the Secretary of the Treasury personally.
- (b) **Secretary (IRC 7701(11))** When this term is printed in any location in the IRC, it means the Secretary of the Treasury or his delegate.

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## Appendix B, Continued

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- (c) **Secretary (IRC 7701(12))** When used with reference to the Secretary of the Treasury, this term means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context. (see also 26 CFR 301.7701-9(b)) In any case in which a function is vested by the IRC or any other statute in the Secretary or his delegate, and Treasury regulations or Treasury decisions approved by the Secretary or his delegate provide that such function may be performed by the Commissioner,...district director,... or by a designated officer or employee in the office of any such officer, such provision in the regulations or Treasury decision shall constitute a delegation by the Secretary to the Commissioner of the authority to perform such function and a redelegation thereof by the Commissioner to the designated officer or employee.
  
  - (d) **District Director (26 CFR 301.7701-10)** This term means the district director of the Internal Revenue for an Internal Revenue district.
  
  - (e) **Person (IRC 7701(a)(1))** This term shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. (26 CFR 301.7701-1 provides additional details.)
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**Appendix B, Continued**

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- (f) **Taxpayer (IRC 7701(a)(14))** This term means any person subject to any Internal Revenue tax.
  - (g) **Gross income (IRC 61(a))** Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to ) the items listed in this subsection.
  - (h) **Taxable income (IRC 63(a))** Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction). Subsection (b) deals with individuals who do not itemize deductions.
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**Imposition of income tax**

- (a) **IRC 1(a), 1(b), 1(c), and 1(d)** These subsections of the IRC (26 U.S.C. 1) begin with the phrase "There is hereby imposed on the taxable income of..." The words thereafter in each subsection differ from each other depending on which subsection is being read. Basically, 1 of the IRC imposes income tax on individuals. (see also 26 CFR 1.1-1)

**Requirement to make a return of income**

- (a) **General rule (IRC 6011(a))** When required by regulations prescribed by the Secretary, any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.
- (b) **(26 CFR 1.6011-1(a))** Every person subject to any tax , or required to collect any tax, under Subtitle A of the Code, shall make such returns or statements as are required by the regulations in this chapter.
- (c) **(IRC 6012(a) and 6012(a)(1)(A) et seq.)** Returns with respect to income tax under Subtitle A shall be made by the following: Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual... (see subsections for details, e.g. an individual who, for the taxable year, has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such individual.) (see also 26 CFR 1.6012-1).

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**Requirement to file a return of income**

- (a) **General rule. (IRC 6072(a))** In case of returns under 6012, 6013, 6017 or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year...(see also 26 CFR 1.6072-1).

**Requirement to pay tax**

- (a) **General rule. (IRC 6151(a))** Except as otherwise provided in this subchapter, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the Internal Revenue Officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return...(see also 26 CFR 1.6151-1).

**Additional Information**

26 U.S.C. 6203 does not require that a signed record of assessment be provided to the taxpayer. It does provide that upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of assessment. See also 26 CFR 301.6203-1 which details what will be provided to the taxpayer upon request relating to the record assessment.

Any assertion that the Bureau of Alcohol, Tobacco and Firearms is the only part of the Treasury Department that has the authority to issue and enforce summonses is inaccurate. 26 U.S.C. 7602 provides in part that the Secretary has the authority to summon, among others, any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper.

Noncompliance with the requirements of Title 26, U.S.C. is not a lawful option.

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## Appendix B, Continued

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The income tax imposed by 26 U.S.C. 1 is not a tax that taxpayers may choose not to report and not to pay. All of the requirements of the IRC are requirements of the law and taxpayers are expected to voluntarily comply with the law.

Title 26 of the U.S.C. is law. A letter or other document directed to Government employees is not the proper manner in which to challenge the validity of a law and the Service is not required to argue points raised in taxpayers' letters with regard to the validity of the law.

Assertions that section 7806 of Title 26 states that Title 26 has no legal effect are incorrect. This IRC section does not provide that Title 26 has no legal effect. 26 U.S.C. 7806(a) provides:

The cross reference in this title to other portions of the title, or other provisions of law where the word "see" is used, are made only for convenience, and shall be given no legal effect.

This section clearly states that the words or phrases which are to be given no legal effect are those words and phrases appearing as cross references following the word "see."

IRC 7806(b) provides in relevant part:

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect.

This section simply provides that the content and effect of the law cannot be assumed or presumed to be anything it is not based on whether or how it appears in the table of contents, in a table of cross references, etc. or on where it might appear in the title.

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## Appendix B, Continued

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### **Federal Tax Lien**

A lien arises under 6321 after assessment of the liability, notice and demand is made on the taxpayer and the taxpayer refuses or neglects to pay. After three requirements necessary for a lien under 6321 have been met, the lien comes into existence with no further action by anyone.

Because this statutory lien comes into existence automatically after the three basic requirements have been met without any further action, there is no need for any individual to "impose" the lien on the taxpayer.

With regards to the enforcement of the lien, 26 U.S.C. 6331(a) provides:

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

The first sentence of this code provides the authority to levy on any property or rights to property of any person liable to pay any tax. See also 26 CFR 301.6331-1

A person need not be an officer, employee, or elected official, of the United States, etc. to be liable for tax. Any taxpayer who asserts that only the second sentence of this code section is applicable is in error.

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## Appendix B, Continued

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### Notices of Levy:

The beginning of 26 U.S.C. 6331(a) provides:

*If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien.....*

See also 26 CFR 301.6331-1. Note the term "any tax." The definition of "person" is found in IRC section 7701(a)(1).

There is no requirement that the Service provide the taxpayer with a certified copy of a levy. The District Director has delegated the authority to sign the Form 668-B Levy to revenue officers GS-9 and above by Delegation Order. However, it must be noted that the delegation Order relating to the seizure of principal residences of taxpayers provides that only the District Director may approve the Form 668-B.

A principal residence may be lawfully seized under IRC section 6331 when such seizure is approved in writing and in person by the District Director prior to the seizure as required by IRC section 6334(e). Any assertion that only BATF has the authority to seize under section 6331 is inaccurate.

### Publishing in the Federal Register

A bill becomes Federal law after it is sent by the Congress to the President of the United States and is signed into law by the President. There is not a requirement that every law be published in the Federal Register before it can become effective.

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# Appendix

## Appendix C

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### IDENTIFIED TAX PROTESTER GROUPS

#### Sovereign Citizens Group

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Schemes used include the filing of 1040NRs (Nonresident), claiming exempt status on W-4s, non-filing, and sending a sequence of correspondence to leaders of various government agencies stating the unconstitutionality of income taxes and alleged violations of the Internal Revenue Service. They also flood the Disclosure Office with Freedom of Information Act (FOIA) and Privacy Act requests.

#### The Pilot Connection Society

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National based protest group operated by Philip Marsh. This group of protesters has been dying out ever since the indictment and conviction of eight of the group's leaders in California, in December of 1993. Schemes used by this group include all of the schemes currently being used by the Sovereign Citizens Group. They also advocate placing assets and businesses in trusts. Members purchased "Untaxing Packages" which gave them steps to follow to supposedly legally withdraw from the country's system of taxation, which included revoking their SSN with the Social Security Administration. Their main belief was that taxes are voluntary.

#### Posse Comitatus

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The Posse Comitatus (Latin for "Power of the County"), is based on the belief that the Executive branch of the U.S. Government is vested in the local sheriff. No other branch of government has authority to conduct any business, make laws, or direct the daily events of the United States. The Federal Government has exceeded the original authority granted by the U.S. Constitution.

#### Family Farm Preservation

#

A spin off organization of the Posse Comitatus protest group. The number of members is unknown. They advocated not filing income tax returns. This group has sold fake money order packages across the country. The money orders have been used to attempt to purchase property or pay off large outstanding debts.

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Appendix C, Continued

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We the People

Another spin-off organization of the Posse Comitatus. Their main argument is that taxes are unconstitutional. Members follow the steps of the "Untaxing Packages" purchased.

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Save-A-Patriot Fellowship

Nationwide tax protest organization led by John Kotmair. Kotmair attempts to represent all of the members of this organization, but is not recognized by the IRS as a valid power of attorney. Their protest scheme is not to file tax returns or file voluminous documents.

#  
#

Midwest War Tax Group

They have voiced their disapproval of tax dollars being spent on weapons and for the funding of wars. Members are advised to avoid having tax dollars spent toward this cause by living a life of poverty. They are also advised to increase the number of dependents claimed on their W-4, and to donate the tax money saved to various organizations for peace.

#

National Workers Rights Committee

This is a spinoff of Save-A-Patriot group. Members of this group attempt to intimidate banks into refusing to honor our notices of levy. In the letter they send to the banks, they make several spurious arguments concerning the authority of the IRS to levy and the effect of honoring our levy, and threaten the banks with litigation if the levy is honored.

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Associates De Libertas (ADL)

This group believes that because of the wording of the 13th and 14th amendments income taxes only apply to Blacks. They also believe in sovereign citizenship and that "sovereign" citizens should file Form 1040NR.

#

American Institute for the Republic (AIR)

This is a business operated by Albert E. Carter. Carter produces and sells a line of products that teach taxes are voluntary, the Federal Reserve is a privately-owned bank, and the IRS is a private corporation. They are associated with several other organizations.

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## Appendix C, Continued

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### Militia Groups

These groups have extreme philosophies which advocate anarchy and government overthrow. They frequently refer to themselves as patriots or freeman. They are strong believers in 2nd Amendment rights (right to bear arms) and frequently believe they will need those arms to defend themselves against the "New World Order." A large part of their platform is tax protest and doing away with the IRS.

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EXHIBIT 1

Form <b>W-4</b> Department of the Treasury Internal Revenue Service	<b>Employee's Withholding Allowance Certificate</b>	OMB No. 1545-0010 <b>1995</b>
▶ For Privacy Act and Paperwork Reduction Act Notice, see reverse.		
1 Type or print your first name and middle initial <b>Richard Chowan</b>	Last name	2 Your social security number <b>000 00 9876</b>
Home address (number and street or rural route) <b>416 Casper St</b>	3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input checked="" type="checkbox"/> Married, but withhold at higher Single rate. <small>Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.</small>	
City or town, state, and ZIP code <b>ANYTOWN USA</b>	4 If your last name differs from that on your social security card, check here and call 1-800-772-1213 for a new card	
5 Total number of allowances you are claiming (from line G above or from the worksheets on page 2 if they apply)		5 <b>99</b>
6 Additional amount, if any, you want withheld from each paycheck		6 <b>5</b>
7 I claim exemption from withholding for 1995 and I certify that I meet BOTH of the following conditions for exemption: • Last year I had a right to a refund of ALL Federal income tax withheld because I had NO tax liability; AND • This year I expect a refund of ALL Federal income tax withheld because I expect to have NO tax liability. If you meet both conditions, enter "EXEMPT" here		7 <b>EXEMPT</b>
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate or entitled to claim exempt status.		
Employee's signature ▶ <b>Richard Chowan T.D.I.C</b>	Date ▶ <b>1-1-95</b>	19
8 Employer's name and address (Employer: Complete 8 and 10 only if sending to the IRS)	9 Office code (optional)	10 Employer identification number

Cat. No. 102200

Form <b>W-4</b> Department of the Treasury Internal Revenue Service	<b>Employee's Withholding Allowance Certificate</b>	OMB No. 1545-0010 <b>1995</b>
▶ For Privacy Act and Paperwork Reduction Act Notice, see reverse.		
1 Type or print your first name and middle initial <b>Richard Chowan</b>	Last name	2 Your social security number <b>000 00 9876</b>
Home address (number and street or rural route) <b>416 Casper ST</b>	3 <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. <small>Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.</small>	
City or town, state, and ZIP code <b>ANYTOWN USA</b>	4 If your last name differs from that on your social security card, check here and call 1-800-772-1213 for a new card	
5 Total number of allowances you are claiming (from line G above or from the worksheets on page 2 if they apply)		5
6 Additional amount, if any, you want withheld from each paycheck		6 <b>5</b>
7 I claim exemption from withholding for 1995 and I certify that I meet BOTH of the following conditions for exemption: • Last year I had a right to a refund of ALL Federal income tax withheld because I had NO tax liability; AND • This year I expect a refund of ALL Federal income tax withheld because I expect to have NO tax liability. If you meet both conditions, enter "EXEMPT" here		7 <b>EXEMPT</b>
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate or entitled to claim exempt status.		
Employee's signature ▶ <b>Richard Chowan UCC-3-501</b>	Date ▶ <b>1-1-95</b>	19
8 Employer's name and address (Employer: Complete 8 and 10 only if sending to the IRS)	9 Office code (optional)	10 Employer identification number

Cat. No. 102200

Lines marked # are for Official Use Only.

**EXHIBIT 2**

**BUSINESS TRUST**

**- E X A M P L E -**

In prior years, the taxpayer filed form 1120S. This year, it should have filed an 8810S with a net profit of \$210,000. This net profit would have been passed through to Mr. & Mrs. Shareholder to report on their form 1040. Instead, the filing looked like this.

	Restaurant - 1120S	
	\$210,000	
<u>Mr. &amp; Mrs. Shareholder</u>	<u>Trust #1</u>	
\$55,000	\$155,000	From S Corp.
	<u>(1,000)</u>	Trust expenses
	\$154,000	Net to Beneficiary
	<u>Trust #2</u>	
	\$154,000	From Trust #1
	( 4,000)	Accounting fees
	<u>( 3,000)</u>	Trust expenses
	\$147,000	Net to Beneficiary
	<u>Trust #3</u>	
	\$147,000	
	(5,000)	Accounting fees
	(70,000)	*Charitable deductions
	(65,000)	*Other deductions
	<u>(1,000)</u>	Trust expenses
	\$ 6,000	Taxable Income
	1,134	Tax Paid

\*These amounts were paid for personal living expenses of the taxpayers.

Lines marked # are for Official Use Only.

**EXHIBIT 3**

**INTERNAL REVENUE SERVICE**  
District Director

**DEPARTMENT OF THE TREASURY**

**Person to Contact:**

**Telephone Number:**

**Date:**

Dear

We recently received your correspondence of \_\_\_\_\_ date \_\_\_\_\_. We do not respond to letter of this kind on a point-by-point basis. However, we are pleased to have this opportunity to explain to you the mission of the Internal Revenue Service.

The mission of the Service is to encourage and achieve the highest possible degree of compliance with the tax laws and regulations and to conduct ourselves in manner to warrant the highest degree of confidence in our integrity and efficiency. While tax administration is not a popular function of government, it is clearly a necessary one. Those individuals who file and pay their taxes expect the Service to enforce the tax laws against those who do not.

We support and have successfully implemented the Taxpayer Bill of Rights passed by Congress on November 20, 1988. This is an important piece of legislation which we *feel* provides all taxpayers with the necessary safeguards against government waste and abuse. We will continue to emphasize throughout the Service the provisions of that law and the importance it plays in tax administration.

The success of our tax system relies upon the taxpaying public's perception that the Service is firm but fair in administering the tax laws. Please remember that refusal to file and/or pay taxes when such returns are required is illegal. The courts have consistently backed the legality of taxes, with most arguments put forth by protestors being classified as frivolous. We will extend every effort to ensure that we earn and deserve the public's confidence.

We have that you would reexamine your philosophy of protesting the tax laws and decide to rejoin the taxpaying public who believe that the only fair and equitable tax system is one where everyone is complying with the tax laws.

Sincerely,

Group Manager

Lines marked # are for Official Use Only.

**EXHIBIT 4**

**INTERNAL REVENUE SERVICE**  
District Director

**DEPARTMENT OF THE TREASURY**

**Person to Contact:**

**Telephone Number:**

**Refer to:**

**Date:**

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

This letter is in response to your correspondence of \_\_\_\_\_ date \_\_\_\_\_ in which you claim to be the authorized power of attorney for \_\_\_\_\_ Our regulations governing practice before the Internal Revenue Service do not grant representation privileges to persons other than attorneys, CPAs, enrolled agents, preparers, and members of the taxpayer's immediate family. Our records indicate that you are not qualified under any of the aforementioned categories. Accordingly, you are not authorized to represent this taxpayer before the Internal Revenue Service.

You were previously notified by the District Director of \_\_\_\_\_ District that you are not authorized to act as a power of attorney before the Internal Revenue Service.

If you have any questions regarding your standing, please direct your inquiries to \_\_\_\_\_, Office of the Director of Practice, at \_\_\_\_\_ phone number \_\_\_\_\_.

Sincerely,

Group Manager

Lines marked # are for Official Use Only.

**EXHIBIT 5A**

**SAMPLE COVER LETTER OF JURISDICTION DEMAND LETTER**

**Your Name  
Address  
City, State, & Zip  
Date**

**Internal Revenue Service  
Address  
City, State & Zip**

**Dear (Name of agent, if you know it or District Director):**

I have recently found out that you are operating under color of law, and have been attempting to extort money from me.

This is a formal demand that you cease and desist from such activity at once. Failure to answer the enclosed Demand for Jurisdiction, in writing would cause me to ignore anything further you might have to say.

If you wish to proceed further with this matter, I first demand herewith to see a certified copy of your letter of Designation of Authority from the Secretary of the Treasury.

I am also informed about IRC Sec. 7214, and so should you be, if you wish to proceed illegally, as you have in the past.

**Sincerely,**

Lines marked # are for Official Use Only.

**Respond within 10 days to:**

**Your Name  
Address  
City, State Zip  
Date**

Internal Revenue Service  
Address  
City, State Zip

Dear (Name of agent or District Director):

Cert./Reg. Mail # \_\_\_\_\_

**DEMAND FOR JURISDICTION/AUTHORITY,  
INFORMATION FROM INTERNAL REVENUE SERVICE,  
AND NOTICE OF CHALLENGE AND DISCLAIMER OF SAME.**

PLEASE TAKE NOTICE that the undersigned does demand that the INTERNAL REVENUE SERVICE (hereafter called IRS) hereby advise the undersigned, forthwith, as to each and every claim of Jurisdictional Authority the IRS enjoys and/or otherwise claims to have/provide Jurisdiction and/or Authority over to undersigned. this to also include, but not limited to: Constitutional, Statutory, Contract and/or Merchant Law(s).

Said information is necessary to enable the undersigned to adequately prepare a meaningful and affirmative defense to the charges, allegations, and/or penalties imposed and or threatened in the within case, thus protecting the undersigned's right to Due Process and Equal Protection.

The undersigned is informed and believes that the IRS is operating under a secret jurisdiction and, as such, is operating unlawfully.

Without knowledge of Jurisdiction, the undersigned cannot and does not know under which Jurisdiction the undersigned must prepare the undersigned's defense. To keep the undersigned insulated from knowledge of Jurisdiction, has, in effect insulated the undersigned from the undersigned's rights to Due Process, Equal Protection, and access to the courts, in which the undersigned desires to redress the undersigned's grievance(s). Such is a violation of 42 USC 1983, and/or 18 USC 241 and 242, under which sections the undersigned will sue, should this matter prevail.

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**EXHIBIT 5 B**  
**PAGE 2 OF 2**

Should the IRS claim Contract Law/Jurisdiction, the undersigned does hereby demand to know what contract (including, but not limited to title, date, witness(es) thereto, and all parties thereto) the undersigned has knowingly and willfully entered into to provide any such alleged Jurisdiction. Also, please take notice that should any contract(s) currently exist, the undersigned does hereby rescind the undersigned's signature(s) on any such contract(s) and do challenge same.

Further, please take notice that the undersigned does hereby challenge your Jurisdiction and/or Authority in this matter, and do further rescind any and all signatures the undersigned has place upon any and all document(s) which are in effect with your agency.

Also, the undersigned no longer volunteers the undersigned's involvement with your agency or any of its subdivisions, and any such dealings are without the undersigned's express knowledge and/or consent, and as such are unlawful!

This request is also made pursuant to the freedom of information act, which mandates response within 30 days.

Respectfully,

(Your Name)

c: File  
Attorney

**PROOF OF SERVICE**

I do hereby certify that I have service a true copy of the within document on the Internal Revenue Service and/or its District Director by Certified Mail R.R.R. Said service effected at (your local Post Office).

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature of witness)

Lines marked # are for Official Use Only.

**PRIVACY ACT REQUEST**

Your name  
Address  
City, State Zip  
Date

**Internal Revenue Service  
Address  
City, State Zip**

**RE: Request for Notification and Access**

Dear (Name of agent, if you know it or District Director):

This is a request under the Privacy Act, 5 USC 522a. This is my firm promise to pay fees for duplicating the documents requested below.

This request pertains to the years 19XX through 19XX.

If some of my request is exempt from release, please furnish me with those portions reasonably segregatable. If you determine some of this request is exempt, please furnish me with an indexing, itemization and detailed justification concerning information which you are not releasing.

Please send me a copy of this request with your response. (Copy enclosed for your convenience.)

Please send me a copy of all documents maintained in a System of Records known as Individual Master File (IMF): Data Services - Treasury/IRS, 24.030 which pertains to me. Additionally, I am requesting all Collection File History Notes in this System of Records which pertain to me.

Please note: I am requesting a complete IMF transcript.

I understand the penalties provided in 552a(i)(3) for requesting or obtaining access to records under false pretenses. I am the individual making this request and this is my signature.

The Social Security Number is not provided voluntarily, and is restricted and limited for purpose of record identification. The said number is: 999-99-9999.

**Respectfully**

/s/ \_\_\_\_\_

**Lines marked # are for Official Use Only.**



**EXHIBIT 5C  
PAGE 2 OF 2**

State of \_\_\_\_\_

County of \_\_\_\_\_

-\*-

Before me, a Notary Public, on this day, personally appeared the above named individual.

Subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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**EXHIBIT 6**

*MORNING STAR CONSULTANTS*

#

*"Providing information and educational resources upon request"*

**REFERRAL SCHEDULE FOR DE-TAX PACKAGES**

1-5 packages	\$100 each (upon full payment received)
6-15 packages	\$200 each (upon full payment received)
16 packages and up	\$300 each (upon full payment received)

**Please have referrals contact us at the voice and fax numbers, or e-mail address listed below ONLY.**

**Please have referrals clearly indicate who referred them.**

P. O. Box 227 Port Washington, WI 53074  
414-571-2137 Voice 414-570-0770 Fax MomstarCn@AOL.com  
Robert R. Raymond Robert C. Bernhoft

#  
#  
#

**Lines marked # are for Official Use Only.**

EXHIBIT 7

Norwest Bank Anaconda-Butte N.A.  
101 North Main Street  
Butte, Montana state, U.S. of A.  
United States District Court escrow

Certified Bankers Check

Date June 10<sup>th</sup>, 1995

Remitter: **LeRoy M. Schweitzer**

Pay To: Wuane Ariztegui - Wisconsin Dept of Revenue \$ 10,000,000  
Ten Million exactly Dollars  
via Treasurer of the United States of America  
at office of Postmaster

LeRoy M. Schweitzer  
authorized acceptance signature  
LeRoy M. Schweitzer  
without recourse U.C.C. § 3-415  
accommodation/surety/guarantor  
LeRoy M. Schweitzer drawer/maker

Payable on sight

:092900024: :8520799406 special private funds

Norwest Bank Anaconda-Butte N.A.  
101 North Main Street  
Butte, Montana state, U.S. of A.  
United States District Court escrow

Certified Bankers Check

Date June 8<sup>th</sup>, 1995

Remitter: **LeRoy M. Schweitzer**

Pay To: Bob Grant and ~~W.D.~~ Wis. Dept of Revenue \$ 8,000  
Eight thousand exactly Dollars  
via Treasurer of the United States of America  
at office of Postmaster

LeRoy M. Schweitzer  
authorized acceptance signature  
LeRoy M. Schweitzer  
without recourse U.C.C. § 3-415  
accommodation/surety/guarantor  
LeRoy M. Schweitzer drawer/maker

Payable on sight

:092900024: :8520799406 special private funds

Lines marked # are for Official Use Only.

EXHIBIT 8

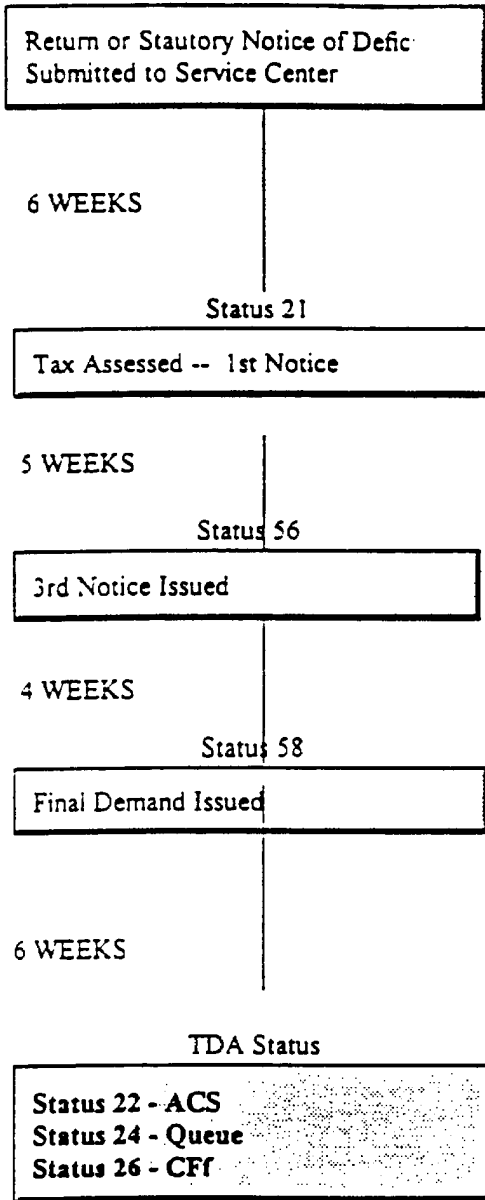
Request for Terminal Action	TIN (EIN or SSN)	000-00-1441	Name Control	CHOW	MFT code	30	Periods	9512
	Name of taxpayer			Address of taxpayer (if necessary)				
Richard Chowan			416 Casper ST Anytown USA					
Taxpayer Amount Changes	Transaction code	Amount (if applicable)	General Base Data Request			Remarks		
Type of Remarks Requested			<input type="checkbox"/> ACTON Activity code: _____ Status code: <u>B</u> Category code: _____ Employee no.: _____ <input checked="" type="checkbox"/> TC 148 <u>Sel. Code 085</u> Entry indic'tr: _____			Invalid W-4		
<input type="checkbox"/> Assessed balance \$ _____ <input type="checkbox"/> Accruals to (date) _____ Interest ..... \$ _____ Penalty ..... \$ _____ Total due ..... \$ _____								
<input type="checkbox"/> Module printout <input type="checkbox"/> Complete printout <input type="checkbox"/> Other (specify) _____			Employee no.	Signature of requester		Date		
<input type="checkbox"/> Return request: DLN _____ <input type="checkbox"/> DLN not available Type: <input type="checkbox"/> Photocopy <input type="checkbox"/> Original <input type="checkbox"/> W 2 <input type="checkbox"/> Other (specify) _____			Request apprvd.	Signature of supervisor (if necessary)		Date		
			Request completed	Signature of terminal operator		Date		
			<input type="checkbox"/> Yes <input type="checkbox"/> No					

Form **4844** (Rev. 10-81) Cat. No. 23470Y U.S. Government Printing Office: 1988 - 210-711/81-001 Department of the Treasury - Internal Revenue Service

Lines marked # are for Official Use Only.

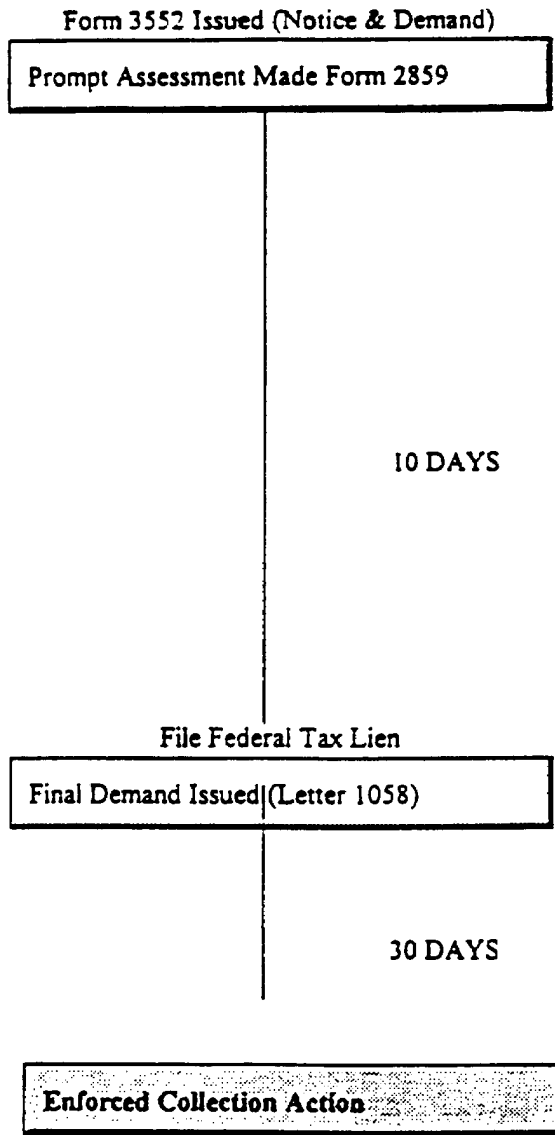
**EXHIBIT 9**

**NORMAL CYCLING OF IDRS NOTICES AND TDAs**



**21 WEEKS**

**STREAMLINED ISSUANCE CYCLE**



**40 DAYS**

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**EXHIBIT 10  
PAGE 1 OF 2**

**PROTESTERS CLAIM:**

can avoid paying taxes through the use of trusts.

**JTH:**

In the case of the United States v. Sanford Knapp, the 11th Circuit upheld the IRS contention that Mr. Knapp (of Madison, Wisconsin) committed a felony crime (violating Section 7201 of the Internal Revenue Code) by willfully aiding or assisting in -- or preparing -- fraudulent tax returns which involved illegal trusts. Mr. Knapp was sentenced to eight years in prison. His wife, John and Lois Hillmer, were convicted with him for a joint tax return containing false information and were sentenced to a combined total of 37 months in prison.

**PROTESTERS CLAIM:**

don't file and pay my taxes. I will not go to jail. Sixty million Americans did not file or pay 'taxes' with the IRS last year.

**JTH:**

Since 1968, the number of convictions for tax crimes has steadily increased from 756 to more than 2,300 annually. A total of 92 percent of all individuals the IRS recommends for prosecution are convicted. Of those convicted, 71 percent are sentenced to serve time in prison for their tax-related crimes. The average prison term is more than 40 months. Recent new tougher sentencing guidelines mean that those convicted will serve nearly 90 percent of the time to which they are sentenced. In addition to criminal prosecution, IRS seeks to collect delinquent taxes, civil penalties, and interest. These civil assessments can easily triple the amount due the government, compared to the tax bill if it had been properly paid in the first place. Enforcement action can lead to the filing of federal tax liens, seizure of bank accounts and property to pay the tax bill.

**TAX PROTESTERS CLAIM:**

The IRS is not too tough to take on. The IRS is only one person -- the one that is contacting you, and if you know your rights, you can take that one person 'on' easily.

**TRUTH:**

IRS has approximately 115,000 employees nationwide. We stand by our track record of coordinated handling of cases from audit through enforced collection of delinquent returns and the taxes, penalties, and interest due. IRS is committed to dealing with those who don't pay the taxes they legally owe. That's only fair to the millions of Americans who do file their returns and pay their taxes.

Want more  
straight talk  
and common-sense  
answers?

# ILLEGAL TAX PROTESTS



## FACT VS. FICTION

Their names may vary.  
**We The People.**  
Sovereign Citizens for Liberty.  
Family Farm Preservation.  
COSMOS.  
The North American Freedom Council  
Professional Wealth Insights.

Some are hard-core protesters.  
Some are local anti-tax protesters.

All have been active in Wisconsin.  
All have spread similar messages.

Their messages are false.

Here is the truth about the claims  
made by tax protesters.

These common-sense answers are  
provided by Wisconsin's IRS.

Lines marked # are for Official Use Only.

**EXHIBIT 10  
PAGE 2 OF 2**

**PROTESTERS CLAIM:**

is no such code that requires me to file a tax  
Only an "individual" is required to file a tax

H:

Section 6012 of the Internal Revenue Code makes  
in great detail -- that the only people who are  
required to file tax returns are those whose in-  
comes fall below certain levels

**PROTESTERS CLAIM:**

income taxes -- and filing tax returns -- is  
arbitrary

H:

Test groups have frequently taken the phrase  
"voluntary compliance" out of context and used it to  
make spurious claims that taxes are optional  
The courts have historically held that there are no  
constitutional, moral, or legal grounds for failing to file  
tax returns and failing to pay taxes. The term "volun-  
tary compliance" refers to the fact that the majority of  
taxpayers in the United States complete tax returns  
voluntarily in taxes due without the need for enforce-  
ment on the part of the Internal Revenue Service.  
Failure to file required tax returns and failure to  
pay taxes will result in criminal and/or civil penalties.

**PROTESTERS CLAIM:**

Section 6012 of the Internal Revenue Code imposes a tax

The law can be found in Title 26 of the United  
States Code. Title 26 of the U.S.C. is the codification  
of the Internal Revenue Code of 1986 as amended,  
and published under the supervision of  
the Department of the Treasury. The courts have  
held that the Code affects all U.S. citizens throughout

**TAX PROTESTERS CLAIM:**

The IRS can only assess taxes against people  
who have filed returns

**TRUTH:**

Taxes are imposed by Title 26 of the Internal  
Revenue Code whether a return is filed or not.  
Section 6201 of the Internal Revenue Code states  
that the Secretary of the Treasury is required to  
make assessments "of all taxes (including inter-  
est, additional amounts, additions to the tax, and  
assessable penalties) imposed by this title."

**TAX PROTESTERS CLAIM:**

Filing a Form 1040 violates the Fifth Amendment  
right against self-incrimination. Filing a Form  
1040 violates the right to privacy contained in the  
Fourth Amendment

**TRUTH:**

Numerous court cases (United States v. Neff,  
United States v. Turk, Hallowell v. Commis-  
sioner, Baker v. Commissioner) have struck  
down these arguments

**TAX PROTESTERS CLAIM:**

The 16th Amendment was never properly rati-  
fied.

**TRUTH:**

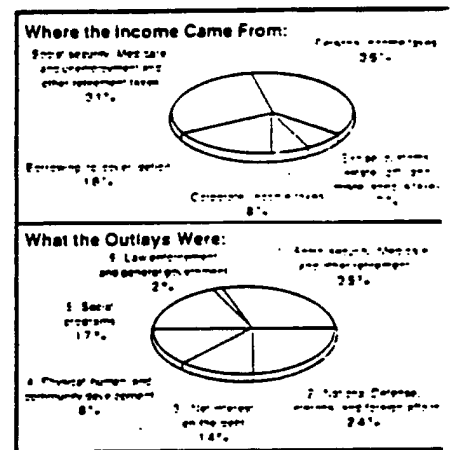
Courts have frequently stated that the 16th  
Amendment was properly ratified (Mitchell v.  
Commissioner, United States v. House, United  
States v. Silka, and Sisk v. Commissioner).

**TAX PROTESTERS CLAIM:**

People who like paying taxes and supporting their  
country should know that not one dime of this money  
the IRS steals from you goes to support this country

**TRUTH:**

The following charts detail how much tax money was  
collected by the IRS from various sources and how  
Congress directed the spending of that money



**TAX PROTESTERS CLAIM:**

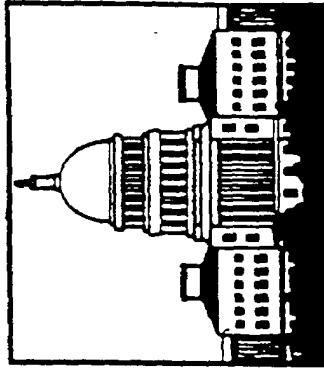
I am helping to destroy the United States by filing and  
paying the IRS taxes. The money all winds up in the  
hands of this country's enemies

**TRUTH:**

This also may be a matter of political opinion and  
depends on the definition of "enemies." However,  
once again, the pie chart above shows how the tax  
dollars are collected and spent.

Lines marked # are for Official Use Only.

# The Law and Your Taxes



## WHERE TO GO FOR HELP

More information, including specific court cases, is available by calling 1-800-662-4335 (Extension 3882) or in Salt Lake City, 297-3882.

If you are involved in a scheme which promotes the avoidance of filing returns or paying taxes and want to get right with your government, contact either the IRS or Utah State Tax Commission about "Operation Fresh Start." Through this program, help is available in ordering income records, preparing returns, and, when needed, working out payment arrangements.

No criminal prosecution will be sought by the IRS or Utah State Tax Commission when someone comes forward prior to being contacted by the agencies, and when a tax return is filed that accurately reflects income and expenses.

## Operation Fresh Start



There are a number of illegal tax practice groups operating in the United States which promote "untaxing" or dropping out of the tax system. They have had a significant impact in reducing the amount of tax collected by the government.

The tax burden for honest taxpayers grows because of those who choose not to participate in the system designed to keep our government operating. The tax laws are very clear, and have been tested in the courts -- including the Supreme Court of the United States.

The Internal Revenue Service and the Utah State Tax Commission have joined together in an effort to dispel erroneous information being given, or sold to the public in the form of "untaxing" kits. It is our goal to stop the flow of false information about the legality of the tax system in the United States and in the State of Utah.

This publication was assembled to answer some of your questions regarding issues raised by these groups.

## HOTLINE

## PHONE NUMBER

1-800-662-4335, Ext. 3882



State of Utah  
Utah State Tax Commission



Department of the Treasury  
Internal Revenue Service

## Utah State Tax Commission Issues

**Claim:** A person who has revoked his Social Security number or citizenship is not required to file a federal tax return. One is only required to file a Utah tax return if he is required to file a federal return.

**Response:** The requirement to file a Utah return is not dependent upon whether a federal return is filed. Although one may not legally revoke his or her citizenship, any person who receives income from Utah sources during a tax year -- whether or not a U.S. citizen -- is required to file returns and pay state income tax, if their income exceeds certain thresholds.

**Claim:** When a person declares himself a "sovereign citizen," he revokes his Utah residency, and therefore, is no longer subject to the tax laws of the State of Utah.

**Response:** A person who has fixed his or her permanent place of residence in Utah for any period of time during a tax year, or has spent more than 183 days in a calendar year in the state, is required by state law to file a resident return and pay state income tax, if the person's income exceeds certain thresholds. The tax booklet contains a more complete description of filing threshold, domicile, and residency requirements.

**Claim:** Utah District Court lacks jurisdiction to hear tax cases.

**Response:** Utah Code Section 78-3-4 gives the District Court jurisdiction over all cases, both criminal and civil, not expressly exempted by the Utah Constitution. Additionally, Utah Code Section 59-1-707 permits the Tax Commission to petition the District Court to issue a "Writ of Mandate," ordering non-filers to file their state tax returns. The law also permits the court to order the non-filer to pay the state's court costs, attorney fees, and other costs of bringing the action, as well as to impose a jail sentence for contempt of court for refusal to file.

## Response

All of these claims have been considered and rejected repeatedly as frivolous and without merit by the courts. The courts have seen these arguments so often they no longer feel the need to even comment upon them, other than to reject them.

Because these claims and arguments are so frivolous and stale, the federal courts are assessing penalties (as high as \$25,000) against prosecutors for even raising them in litigation.

All of these claims were raised and rejected in the following, and in other cases. They may be found in local law school libraries.

- *Chock v. United States*, 498 U.S. 192 (1991)
- *Lonsdale v. United States*, 919 F.2d 1440 (11th Cir. 1990)
- *United States v. Ferguson*, 793 F.2d 628, (7th Cir. 1986)
- *Smucker v. Internal Revenue Service*, 996 F.2d 250 (N. D. Ind. 1991)
- *Lynch v. Secretary of Treasury*, 84-2 USTC ¶83,448 (S. D. Ind. 1984)
- *Earham v. United States*, 84-2 USTC ¶81,861 ¶81,884 (D. Mont. 1984)
- *Ryan v. Billig*, 76-4 F.2d 1325 (9th Cir. 1985)
- *Shiff v. Commissioner*, T.C. Memo 1993-113
- *Evans v. Commissioner*, T.C. Memo 1993-37
- *State Tax Commission of Utah v. Lonack*, 696 P.2d 1207 (Utah 1985)



**Tax Protester Claims and IRS Response**

The following is a collection of the more commonly promulgated positions regarding the tax system in the United States put forth by various tax protester groups. The IRS response allows:

**Claim:** *Filing a tax return is voluntary according to the law. The IRS tells you in the 1040 instruction book that the tax system is voluntary.*

**Response:** Tax protest groups have frequently taken the phrase "voluntary compliance" out of context and used it to spread false claims that taxes are optional. The courts have historically held there are no constitutional, moral, or legal grounds for failure to file tax returns and failure to pay taxes. The term voluntary compliance refers to the fact that taxpayers in the United States complete tax returns and send in taxes due, without the need for enforcement action on the part of the Internal Revenue Service. Failure to file required tax returns and failure to pay taxes can result in criminal and/or civil penalties.

**Claim:** *There is no law that says you have to file and pay income taxes.*

**Response:** The tax law requiring the filing of tax returns and payment of taxes can be found in Title 26 of the United States Code, also known as the Internal Revenue Code of 1986. All provisions of the Internal Revenue Code are passed by Congress and signed into law by the President of the United States. The Internal Revenue Code is available from public libraries, in virtually all law libraries, and through commercial publishers.

**Claim:** *The IRS collects tribute - not taxes. The endorsement on the back of each check says, "Pay to the order of the FRB (Federal Reserve Bank) to the credit of the United States Treasury." This means that the Federal Reserve is keeping all of the monies that the IRS sends, and is crediting it to the phone account that the Treasury owes the Federal*

**Response:** *Not one dime goes to support this country, and would end up in the hands of the enemy*

**Response:** A chart in IRS Publication 17 details how much tax money was collected by the IRS from various sources and how Congress directed the spending of that money. Although there may be political arguments as to how Congress spends the money, the courts have held that using a tax return to protest the issue is improper.

**Claim:** *The Federal Reserve is a not a government agency. It is an admittedly private corporation, privately held by 12 families (one American and eleven foreign).*

**Response:** No Federal Reserve Bank exists as a profit-oriented business. Rather than being a corporation, the Federal Reserve Bank (FRB) is an independent agency, in corporate form, created by Congress and operated within government for one primary reason -- to keep the nation's financial system healthy and its economy growing without undue political pressures intruding on a day-to-day basis. The FRB is responsible to Congress, and reports annually to Congress on the results of its operations.

**Claim:** *Forming a business trust to hold my income and assets will avoid taxes.*

**Response:** No. These trusts are generally created simply as a device to carry on a profit-making business, which would normally be classified as a proprietorship, corporation or partnership. They are not classified as a trust under the Internal Revenue Code, since they are not simply arrangements to protect or conserve property for the beneficiaries.

**Claim:** *My pure, educational, or family estate trust will allow me to reduce or eliminate my tax liability.*

**Response:** The courts have ruled that the grantor, not the trust, will be taxed on salary and wages that are assigned to the trust under the anticipatory assignment of income rule or on the grounds that such a transaction lacks economic substance and is, therefore, a nullity for tax purposes. See *Class v. Commissioner*, 13 C Memo 1981-726.

**Claim:** *The Religious Freedom Restoration Act allows me to exclude my income from Social Security taxes.*

**Response:** The Act does not change any tax laws governing income subject to Social Security taxes. Exemption from Social Security taxes is only allowed when: 1) You are a member of a recognized religious sect that opposes receiving any form of public or private insurance, 2) You have applied as a minister or religious worker for exemption from Social Security taxes, which only applies to earnings in that capacity, or 3) You have taken a vow of poverty. In any case, an application must be filed and approved by Internal Revenue Service to be considered exempt.

**Claim:** *If I don't file and pay my taxes, I will not go to jail. Sure million Americans did not file or pay taxes with the IRS last year.*

**Response:** Since 1968, the number of convictions for tax crimes has steadily increased from 756 to nearly 2,800 for 1992. Of those convicted, more than 71 percent are sentenced to serve time in prison for their tax-related crimes. In addition to criminal prosecution, IRS seeks to collect delinquent taxes, civil penalties, and interest, which can easily triple the amount that would have been due, if it had been properly paid in the first place. Enforced collection can lead to the filing of federal tax liens and seizure of bank accounts and property to pay the tax bill.

**Other Miscellaneous Claims**

● *The IRS is a not a government agency. It is a private corporation, incorporated in Delaware in 1931. It has no power to collect tax.*

● *Title 26 of the United States Code was never enacted into positive law.*

● *The 16th Amendment to the Constitution is invalid or only applies to corporations and not individuals.*

● *Wages are not income, or it is unconstitutional to tax payments received for labor.*

● *The Internal Revenue Code is a law procedure which violate due process rights. Because the IRS can assess tax, penalties, or delinquency assessments, or seize property or unemployment, a taxpayer must be allowed a hearing or trial.*

● *Filing a tax return violates the Fifth Amendment to the Constitution. Putting information on a tax return may incriminate me.*

● *The tax system and procedures infringe on a taxpayer's right to petition the government for redress of grievances; it violates the Separation of Powers Clause giving IRS judicial powers; penalties imposed by the Internal Revenue Code constitute cruel and unusual penalties; and compliance with the Federal income tax is a form of servitude in violation of the 13th Amendment.*

● *Delegation orders from the Secretary of Treasury to the Commissioner and the Commissioner to other officials are invalid.*

● *A person can elect out of the contractual agreement with the Internal Revenue Service by revoking Social Security numbers and previously filed returns, or by removing themselves from the jurisdiction of the IRS. Protesters also claim that a contract with IRS is invalid because the IRS is constantly committing fraud.*

● *The money system is illegal, receipt of gold and silver is the only income which can be taxed, and dollars issued by the Federal Reserve Bank are worthless.*

● *I am not a citizen of the United States and receive no income or benefits from sources inside the United States. If I file a Form 1040-NR, I will not be subject to income taxes. Filing a Form 1040 is a contract for voluntary servitude between the United States Government and an individual.*



Department of the Treasury  
Internal Revenue Service  
Document 9300 (9-94)  
Catalog Number 21066S

## **Ten Core Ethical Principles \***

Honesty  
Integrity/Principled  
Promise-Keeping  
Loyalty  
Fairness  
Caring and Concern for Others  
Respect for Others  
Civic Duty  
Pursuit of Excellence  
Personal Responsibility/Accountability

## **The Five Principles of Public Service Ethics \***

Public Interest  
Objective Judgment  
Accountability  
Democratic Leadership  
Respectability

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# 23. TAX PROTESTERS

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## A. References

IRM 4231(11), Tax Protesters. IRM 4293, Tax Protesters Program.

## B. Overview

An illegal tax protester is an individual using illegal methods to protest the tax laws. These individuals and groups are attempting to disrupt effective tax administration and present a potential threat to the voluntary compliance system. Some of these individuals and groups advocate the use of violence and present an ever increasing threat to employees with direct taxpayer contact. The illegal tax protestor generally advocates and/or participates in a scheme with a broad exposure that results in the underpayment of taxes.

Tax protester returns will be considered priority cases, by Examination Division, as described in IRM 4231(11)21. These examinations must be completed as expeditiously as possible to achieve compliance with the tax laws by tax protesters.

## C. Definitions

1. A "Tax Protest Scheme" is any scheme without basis in law or fact for the manifest purpose of expressing dissatisfaction with the substance, form or administration of the tax laws by either interfering with such administration or attempting to illegally avoid or reduce tax liabilities. See Section K for examples of different protester schemes.
2. Tax Protester Project Codes have been requested to attempt to better stratify the tax protester schemes being used.

085 - Constitutional Type Protester  
151 - Alleged Church  
152 - Family Estate Trust  
160 - Multiple Foreign Trust Organization  
165 - Failure to File  
166 - Non-taxable Receipt Schemes  
167 - Protest Adjustments and Other

Refer to sections K and L for information on different tax protester schemes.

## D. Potentially Dangerous Taxpayers

1. All potentially dangerous taxpayer (PDT) cases shall be

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placed in a yellow folder. This folder will be clearly marked "PDT" case. The first area that identifies the case as a PDT case will be responsible for placing the case in the special folder.

2. Potentially dangerous taxpayers are those who have assaulted, threatened or attempted to intimidate employees. Taxpayers meeting this criteria are identified on transcripts, Aims weekly update reports, and sometimes on charge-outs. The indicator may be one of several codes. "PDT" on transcripts, "PDT" or "W" on charge-outs, and "57" on the Aims weekly update.
3. If any of these indicators are present, the group manager should contact the Collection Division Potentially Dangerous Taxpayer Coordinator who maintains a background information file on these taxpayers. Also contact Inspection to determine if any additional information is available. See IRM 427(14) for full instructions.
4. Examination employees are not responsible for adding or deleting PDT indicator codes. Contact Internal Security immediately. Reports to Internal Security will result in identification of these taxpayers on Master File. Collection function employees will then be alerted if they receive TDA's or TDI's on these taxpayers.

## E. Taxpayer Contact

1. A written record should be kept of all contacts with the taxpayer. Appointments should be made using an appropriate appointment letter including Notice 609, Privacy Act and Paperwork Reduction Act Notice.
2. The taxpayer may attempt to engage in delaying tactics by requesting information that is not directly related to the conduct of the examination. While it is important to be responsive to the taxpayer, correspondence should be limited to issues that are relevant to the Examination.
3. Various tactics are similarly used in telephone conversations. The protester may question your authority, attempt to engage you in a debate regarding the Constitution or the dogma of his/her "church," or verbally abuse you. The purpose of these tactics is to frustrate and confuse you so that you will lose control of the situation and do or say something which the protesters hope they can use to further their cause. Remember that your obligation to explain the Service's position does not mean you should permit yourself to be drawn into a debate.

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## F. Interview Techniques

1. Tax protesters may request immunity from criminal prosecution. Emphasize that the examination constitutes a civil investigation of tax liability and that you have no authority to grant immunity. If the protester insists on invoking Fifth Amendment Rights, consider terminating the interview.
2. Protesters may inquire whether it is mandatory or voluntary to appear for the examination. While we cannot compel a taxpayer to respond, you should refer the taxpayer to Notice 609, which indicates that in the event of no cooperation, the Service would make a determination regarding the tax liability based on the best available information.
3. Anticipate that the taxpayer may inquire about why his/her return was selected. Be prepared to explain the reason. If the return was selected because of a potential protest scheme, respond that the return appears to have deductions or credits, etc. that warrant examination and that it is your duty to ascertain the correctness of the return.
4. It is imperative that you set the tone for the examination and maintain control of the interview at all times. A common tactic of the protester is to control the interview by asking irrelevant questions. He/she may also try to intimidate you by being very loud or abusive.
5. Explain to the taxpayer that you will be glad to respond to pertinent questions. However, these questions should be held to the end of the interview.
6. Do not limit your imagination or hesitate to pursue a lead brought up during the interview. Use common sense in asking a question, or a logical sequence of questions, that will secure pertinent information regarding the issue, or that will determine relevance of evidence presented. Try to determine how the taxpayer became involved in the protester scheme. The following questions can be asked to obtain background information: Did the taxpayer attend a seminar? If so, where and who sponsored it? Did he/she pay money? How much? What was the method of payment (cash or check)? Try to secure copies of material given out. Who were the speakers or instructors? How many times was the seminar held?
7. The interview should be used to secure sufficient facts to ascertain the taxpayer's financial picture. The information will direct you in completing the examination and in

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determining the necessary books and records to be requested.

8. Concentrate on the issues decided upon in your pre-audit plan. Keep the conversation on the issues you must resolve. If the taxpayer refuses to discuss the issues, terminate the interview. Document your efforts in the case file and make your determination using other sources of information or based on the facts available.
9. If additional information is required, complete Form 4564, Information Document Request and be as specific as possible. These cases are frequently litigated and all activity between the taxpayer and the Service should be carefully recorded on your Examination activity record.
10. If the taxpayer refuses to produce the necessary books and records, apprise the taxpayer of the statutory requirement to produce them. Inform the taxpayer that to deny access to the records will only delay the examination. It should be made clear that the taxpayer's refusal to cooperate will not prohibit us from determining a correct tax liability.
11. When deciding whether to terminate the interview, you should be satisfied that either:
  - a. enough information was secured to allow you to expeditiously close the case; or,
  - b. that the taxpayer was uncooperative and it would be counter productive to continue the interview.
12. Do not assure the taxpayer that their books and records will be used solely for civil purposes. If a taxpayer insists, or asks you to sign a statement to this effect, refuse to grant any assurances.

## G. Tactics Employed by Some Protesters

If you encounter any of the following tactics you may want to contact your manager for assistance. Together, you can proceed with the recommended actions regarding each of the tactics:

### 1. Large Number of Persons

- a. If there is a large number of persons, the meeting should be held in a private setting such as a conference room. The number of persons taking part in the discussion should be limited to the taxpayer, legal

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representative, and necessary witnesses. Obtain the identity and expertise of the individuals allowed to accompany the taxpayers. If they refuse to identify themselves, they cannot be heard in the capacity of "witnesses" and must be instructed that they are to remain silent during the entire interview.

- b. If they do identify themselves, they may be allowed to participate in the discussion if they have direct knowledge of facts relevant to the tax liability. "Any individual who has knowledge of the facts, or who can give information which will assist in establishing the facts, is a proper source of information in determining the tax liability, and can be heard in the capacity of a witness" (Rev. Proc. 68-29). These witnesses should be informed that they can act in the capacity of witnesses only, and cannot advocate the taxpayer's position, unless they are properly authorized to practice before the Internal Revenue Service (Circular 230).
- c. Any remaining witnesses should be allowed into the meeting when their testimony is needed, but only after they have identified themselves and established the relevance of their participation.
- d. The taxpayer should be advised that tax return information will be disclosed during the interview.
- e. In any face-to-face discussions with Service personnel at which a taxpayer is accompanied by a third party, the Service will consider the taxpayer's presence as implied consent to discuss the taxpayer's confidential tax matters in the presence of the third party.

## 2. Tape Recorders

If the taxpayer requests to tape record the audit interview, you must also record the meeting. Tape or other verbatim recordings are permitted subject to the conditions in IRM 4245.1 as follows.

All recorded interviews will contain the following information:

- a. The date, time, and place of the interview,
- b. The taxpayer's name and SSN/EIN,
- c. The purpose of the proceeding,
- d. The tax year(s) under examination,

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- e. A clear description of written documentation provided in support of the issues, and
- f. At the conclusion, a statement indicating:
  - i. The total recording time for the interview (i.e., the time the tape was running in making the recording), and
  - ii. That the interview has been completed and the recording is ended.

The cassette will be labeled with the taxpayer's name, SSN, year(s) examined, date of interview, and total time of the recording. Recording of multiple interviews relating to one taxpayer's examination will begin on one side of a cassette or on an additional cassette and be labeled in sequence.

The completed cassette recording will be put in a manila envelope, sealed and securely stapled into the body of the workpapers. At the top of Form 5344, Examination Closing Document, write "Recorded Interview - Cassette Enclosed".

Stenographic/verbatim recordings are allowable and will be processed under the same provisions as audio recordings.

## 3. Cameras

Cameras or videotape equipment are not permitted. At no time should examiners try to physically confiscate this equipment. If assistance is needed contact Criminal Investigation Division (CID), Inspection, or Security.

Telephone conversations are specifically not recordable.

## 4. Questioning your Authority

a. Under IRC 7602, 7601 and 7801, the Service is given broad authority to examine books and witnesses. Section 7602 gives the Service the power to examine any books, papers, records or other data which may be relevant or material to a tax examination. The Supreme Court, in *United States vs. Euge* (444 U.S. 706(1980)), broadly construed the Service's power under IRC 7602, and has concluded that a taxpayer is under an obligation to produce any information that may be relevant to a legitimate revenue purpose.

b. The taxpayer's responsibility to produce records and



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file returns is enumerated in IRC 6011, 6012 and 6001.

## 5. Public Servant's Questionnaire

Do not complete any questionnaires. You may freely disclose your name, group number, your group manager's name and information about the appeals system.

## H. Terminating the Interview

1. Keep the conversation on the issues you must resolve. It is important that you retain control of the interview. If the taxpayer refuses to discuss the issues or continues to pursue disruptive tactics, do not hesitate to terminate the interview.
2. If the taxpayer refuses to leave when asked or creates a disturbance, request assistance from Criminal Investigation Division (CID), Inspection or Security. At no time should Examination employees try to physically remove the taxpayer(s) and/or witness(es).

## I. Fraud Referrals

Follow the guidelines set forth in the chapter on FRAUD and IRM 4565.

## J. Constitutional Type Issue

1. Some tax protesters are making speeches and offering seminars around the country at which serious misrepresentations about the tax laws are being presented to the public as fact. Generally, these protesters are counseling taxpayers not to comply with the Federal income tax return filing statutes on the grounds that they violate a person's constitutional rights.
2. Those who use constitutional arguments have often been encouraged by promoters to use the same tactics used by other tax protesters to frustrate, intimidate, or confuse examiners in conducting their examinations. Documents filed using these arguments are not generally considered valid returns and thus do not normally satisfy the taxpayer's filing requirements.
3. Refer to IRM 4231(11)30-33 for more information.

## K. Protester Schemes

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Protest schemes take many forms. Protesters may claim improper deductions, credits, exemptions, exceptions, or exclusions. They might not report income, omit items of income from returns, or otherwise underreport income. Protesters might refuse to pay or report based on a variety of frivolous or discredited legal or constitutional theories. Following is a non-exhaustive list of protester schemes:

1. Constitutional Basis - Refusal to include tax return information on Form 1040/1040A because of violation of Constitutional rights. In lieu of information required on Form 1040/1040A, the illegal tax protester either shows "0", or "none", "object", or a Fifth Amendment annotation in all of the blanks or will include a broad general statement regarding his/her Constitutional rights (including 4th Amendment and 16th Amendment). This is commonly reported to as a Porth/Daly type return.
2. Fair Market Value - Reducing gross income because of the declining value of the dollar. The gross income is listed on the face of the return and there is a large adjustment to income which makes adjusted gross income small enough for the standard deduction to eliminate taxable income. The adjustment to gross income is on Schedule D, Schedule of Capital Gains and Losses, or Form 2106, Statement of Employee Business Expenses, for Form 1040.
3. Gold/Silver Standard - Any return with a statement that only gold or silver currency can be taxed.
4. Blank Form 1040/1040A - These generally fall into two categories. In one category the individual files a return with only a name and address, and possibly signature, and Form(s) W-2 is attached. This scheme is usually verified upon correspondence with the taxpayer. In the second category the individual files a return similar to the Porth type return. In both instances the return may not list marital status and/or exemptions.
5. Non-payment Protest - Non-payment or underpayment of tax based upon some type of protest statement written or attached to the return.
6. Protest Adjustment - This is similar to Non-payment Protest, in that the return contains specific unallowable items (e.g., deductions, exclusions, etc.) identified to some type of protest.
7. Alleged Churches - Individual receives income from non-religious sources and declares that it is non-taxable because of "vow of poverty". This scheme also involves

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returns where the individual includes all or substantially all of gross income as a contribution deduction on Schedule A of Form 1040. Some individuals will complete Form 1040 and then take an unusually large contribution deduction on Schedule A of Form 1040, normally 50% or more of adjusted gross income.

8. Protester Letters and Cards - The receipt of letters and cards (without tax return) protesting the use of taxes for war, defense and/or other government spending policies, and indicating that this will affect their reporting and payment of taxes.
9. Family Estate Trust - A device used to avoid paying personal income taxes. While there may be factual variations in the creation of a family estate trust, the basic prototype involves the establishment of a trust by a taxpayer/grantor and the transfer to the trust of all real and personal property. This includes the exclusive use of lifetime services and earned income accruing from the services of the taxpayer/grantor in exchange for certificates of beneficial interest in the trust.
10. Foreign Trust Organization (Double Trust) - Procedures used to set up the foreign trust are similar to those used for a family estate trust. An agent in a foreign country, who is named as the "creator" creates a trust in that country, naming the taxpayer as trustee. The taxpayer transfers certain assets and income producing property to the foreign trust. The "creator" then creates a second trust in the same country naming the first trust as trustee. The taxpayer and trusts enter sham transactions with each other, conceived only for tax purposes.
11. W-4 Excessive Overstatement of Allowances - The claiming of excessive allowances is usually directed towards elimination of withholding of Federal taxes from wages. To be considered as part of an Illegal Tax Protest, the taxpayer must in writing or orally indicate that the Form W-4 was filed as a protest document or as part of a protest movement.
12. Forms 843 and Amended Returns - Some individuals are filing Form 843 Claims and/or Amended Form 1040 (1040X) returns to obtain a total refund of all taxes paid in prior years, even though returns have not been filed for the prior years.
13. Other Tax Protestor Schemes - Many variations of the above schemes exist. They generally involve frivolous constitutional arguments or sham transactions in continually changing forms. Some examples of these schemes are:

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- a. "Wages are not Income" or "Nontaxable Receipts" - These schemes involve various deductions, usually equivalent to the amount of W-4 or 1099 income, based on arguments that wages are not profits or not income and, therefore, not taxable. These deductions have appeared on Schedule C as the total of business expenses, cost of goods sold, or as wage expense. The Eisner v. Macomber return is a "Wages are not Income" scheme variation.
- b. Eisner v. Macomber - A document which looks almost identical to page 1 of Form 1040 but line items are altered to reflect Eisner v. Macomber and/or other similar court citations to deduct large amounts from income.
- c. Factor Discount - Involves claiming a loss on Form 1040 created by discounting a wage earner's paycheck with a foreign trust financial organization pursuant to life services contract. Simultaneously with the discounting, the life services contract is purchased by a second foreign trust organization. These sham transactions disguise what is nothing more than assignment of income. This scheme is distinguishable from the Multiple Foreign Trust Organization scheme in that the wage earner does not create any foreign trusts.

## L. Alleged Churches, Related Individuals, and Tax Avoidance Schemes

1. The examination Division's involvement with the books and records of churches generally is limited to those situations where transactions between a church and individuals other than a church relate to the tax liability of those other individuals. In these situations, the Examination Division may use the usual procedures and summonses described in IRM 4293.54.
2. The examination of the books and records of a church to determine its initial or continuing qualifications as an organization to which deductible contributions may be made, or to determine the amount of tax, if any, imposed upon it, are exclusively in the jurisdiction of the EP/EO Division. This does not include a Form 1120 filed by an organization claiming to be a church but which lost its exempt status. This Form 1120 would be under the jurisdiction of Examination.
3. Refer to IRM 4293.4 for more information.