

GOVERNMENT BURDEN OF PROOF

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1 Introduction

This memorandum of law shall prescribe the most important provisions of law constraining the collection of Internal Revenue taxes by the Internal Revenue Service and the burden of proof imposed upon the government in proceeding lawfully during the collection process. It will summarize these provisions in the Conclusions section later. It is intended to be attached to correspondence you send to the IRS in order to remind them of the burden of proof and provisions of law that they must satisfy before they can expect any cooperation from you.

2 Fair Debt Collection Practices Act Mandates Creditor to Timely Produce Verified Evidence of Proof of Debt

When a government representative sends any kind of collection notice to a private American, they are asserting the existence of a debt and must meet all the requirements of law placed upon private third party debt collectors. The U.S. Supreme Court prescribed that all tax liabilities are “debts” when it said:

“Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes, and we are free to re-examine it, and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered, see Wisconsin v. Pelican Insurance Co., 127 U.S. 265, 292, et seq.

*8 S.Ct. 1370, compare Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641, **still the obligation to pay taxes is not penal. It is a statutory liability, quasi contractual in nature, enforceable, if there is no exclusive statutory remedy, in the civil courts by the common-law action of debt or indebitatus assumpsit.** United States v. Chamberlin, 219 U.S. 250, 31 S.Ct. 155; Price v. United States, 269 U.S. 492, 46 S.Ct. 180; Dollar Savings Bank v. United States, 19 Wall. 227; and see Stockwell v. United States, 13 Wall. 531, 542; Meredith v. United States, 13 Pet. 486, 493. This was the rule established in the English courts before the Declaration of Independence. Attorney General v. Weeks, Bunbury's Exch. Rep. 223; Attorney General v. Jewers and Batty, Bunbury's Exch. Rep. 225; Attorney General v. Hatton, Bunbury's Exch. Rep. [296 U.S. 268, 272] 262; Attorney General v. _ _ , 2 Ans.Rep. 558; see Comyn's Digest (Title 'Dett,' A, 9); 1 Chitty on Pleading, 123; cf. Attorney General v. Sewell, 4 M.&W. 77. “ [Milwaukee v. White, 296 U.S. 268 (1935)]*

The legal dictionary defines “indebitatus assumpsit” as follows:

“Indebitatus assumpsit. Lat. Being indebted, he promised or undertook. That form of the action of assumpsit in which the declaration alleges a debt or obligation to be due from the defendant, and then avers that, in consideration thereof, he promised to pay or discharge the same.”
[Black's Law Dictionary, Sixth Edition, p. 768]

Notice the phrase “in consideration thereof”, which implies that the party who voluntarily accepted some government benefit agreed to pay for that benefit. This is a result of the common law, which says that a person accepts a benefit agrees to all obligations arising from the acceptance of that benefit. This common law requirement is codified in California civil law as follows:

California Civil Code
[Section 1589](#)

1589. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

However, the U.S. Supreme Court has acknowledged that the Social Security system does not contractually obligate the government to provide the benefit that is the subject of the agreement or contract. See Fleming v. Nestor, 363 U.S. 603 (1960); Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980). If the benefits are not contractual, then equal protect of of the law requires that the payment for the benefits is not contractual either. See Fourteenth Amendment, Section 1 and 42 U.S.C. §1981.

1 In recognition of taxes as “debts”, the following provisions of law require that the IRS obey the Fair Debt Collection
2 Practices Act (FDCPA) in respect to the tax collection process.

- 3 1. The [Fair Debt Collection Practices Act, 15 U.S.C. Chapter 41, Subchapter V](http://www4.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_41_20_V.html), available at:
4 http://www4.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_41_20_V.html
- 5 2. IRS Restructuring and Reform Act of 1998, 12 Stat. 687, Section 3466. See:
6 <http://famguardian.org/Publications/IRSRRRA98/IRSRRRA98.htm>
- 7 3. [26 U.S.C. §6304](#) describes the implications of the Fair Debt Collection Practices Act upon the conduct of IRS
8 Employees.

9 The provision of the FDCPA which regulates production of verified proof of liability is found in [15 U.S.C. 1692g](#), which
10 states in pertinent part:

11 [TITLE 15 > CHAPTER 41 > SUBCHAPTER V > § 1692g](#)
12 [§ 1692g. Validation of debts](#)

13 (a) *Notice of debt; contents*

14 *Within five days after the initial communication with a consumer in connection with the collection of any debt, a*
15 *debt collector shall, unless the following information is contained in the initial communication or the consumer*
16 *has paid the debt, send the consumer a written notice containing—*

17 (1) *the amount of the debt;*

18 (2) *the name of the creditor to whom the debt is owed;*

19 (3) *a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of*
20 *the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;*

21 (4) *a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the*
22 *debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a*
23 *judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by*
24 *the debt collector; and*

25 (5) *a statement that, upon the consumer’s written request within the thirty-day period, the debt collector will*
26 *provide the consumer with the name and address of the original creditor, if different from the current creditor.*

27 (b) *Disputed debts*

28 *If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of*
29 *this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and*
30 *address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion*
31 *thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and*
32 *address of the original creditor, and a copy of such verification or judgment, or name and address of the*
33 *original creditor, is mailed to the consumer by the debt collector.*

34 (c) *Admission of liability*

35 *The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court*
36 *as an admission of liability by the consumer.*

37 [SOURCE: http://www4.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00001692---g000-.html]

38 [15 U.S.C. §1692g](#)(b) above requires that the creditor must, within 30 days of a written request, supply verified evidence of
39 the debt. In the case of Internal Revenue taxes or state income taxes, the only admissible evidence is a verified assessment
40 signed under penalty of perjury by an assessment officer as required by [26 U.S.C. §6065](#) and [26 CFR §301.6203-1](#). For a
41 form useful in requesting such verified evidence, see the following:

[Demand for Verified Evidence of Lawful Federal Assessment, Form #07.304](http://sedm.org/Forms/FormIndex.htm)
<http://sedm.org/Forms/FormIndex.htm>

3 Legal Requirements Upon Burden of Proof

In any administrative proceeding such as tax collection, the moving party has the burden of proving his position using court-admissible evidence. This requirement is described in the Administrative Procedures Act, [5 U.S.C. §556\(d\)](#) as follows:

[TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 556](#)
[§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision](#)

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

[SOURCE: http://www4.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000556---000-.html]

The Internal Revenue Code describes this same burden of proof below.

[TITLE 26 > Subtitle F > CHAPTER 76 > Subchapter E > § 7491](#)
[§ 7491. Burden of proof](#)

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations

Paragraph (1) shall apply with respect to an issue only if -

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section [7430\(c\)\(4\)\(A\)\(ii\)](#). Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section [645\(b\)\(1\)](#)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section [645\(b\)\(2\)](#)).

(3) Coordination

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court

proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

[SOURCE: http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007491----000-.html]

Note that Section 7491 establishes the burden of proof ONLY in the case of “taxpayers” and NOT to all persons or even to “nontaxpayers”. Most “nontaxpayers” are nonresidents, and statutory law cannot impose any legal requirement upon “nonresident persons”.

*"Judge Story, in his treatise on the Conflicts of Laws, lays down, as the basis upon which all reasonings on the law of comity must necessarily rest, the following maxims: First 'that **every nation possesses an exclusive sovereignty and jurisdiction within its own territory**'; secondly, '**that no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects or others.**' The learned judge then adds: 'From these two maxims or propositions there follows a third, and that is that whatever force and obligation the laws of one country have in another depend solely upon the laws and municipal regulation of the latter; that is to say, upon its own proper jurisdiction and polity, and upon its own express or tacit consent.'" Story on Conflict of Laws §23.*
[Baltimore & Ohio Railroad Co. v. Chambers, 73 Ohio St. 16; 76 N.E. 91; 11 L.R.A., N.S., 1012 (1905)]

You will also note that the federal government enjoys no legislative jurisdiction within any state of the Union, and that the Internal Revenue Code qualifies as “legislation” within the meaning of the following U.S. Supreme Court ruling:

*"It is no longer open to question that **the general government, unlike the states, Hammer v. Dagenhart, 247 U.S. 251, 275, 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation.**"*
[Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855 (1936)]

The process of proving liability must conform to the following sequence.

1. If the party claims or acquiesces to being called a “taxpayer”, then any provision of the I.R.C. may be applied against him or her. See:

[Your Rights as a NONTaxpayer
http://sedm.org/LibertyU/NontaxpayerBOR.pdf](http://sedm.org/LibertyU/NontaxpayerBOR.pdf)

2. If the target of the government action denies under penalty of perjury that he is a “taxpayer” and instead claims to be a “nontaxpayer”, then no provision of any part of the Internal Revenue Code may be applied against him until it is proven administratively with court admissible evidence by the government that he is a “taxpayer” subject to the Internal Revenue Code as described in [26 U.S.C. §§7701\(a\)\(14\)](#) and 1313. The only exception to this rule is “public officers” working for the government.
3. Silence in responding to evidence presented of illegal activities to a public official or a failure by the public official to deny gives rise to a permissible and “adverse inference” against the public servant who has been presented with evidence of his own violations of law. That adverse inference is a form of evidence. Government employees are “public officers” and trustees of the people. As such, they owe a fiduciary duty to the public at large.

"As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. ¹ Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain from a discharge of their trusts. ² That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves. ³ and owes a fiduciary duty to the public. ⁴ It has been

¹ State ex rel. Nagle v Sullivan, 98 Mont 425, 40 P2d 995, 99 ALR 321; Jersey City v Hague, 18 NJ 584, 115 A2d 8.

² Georgia Dep't of Human Resources v Sistrunk, 249 Ga 543, 291 SE2d 524. A public official is held in public trust. Madlener v Finley (1st Dist) 161 Ill App 3d 796, 113 Ill Dec 712, 515 NE2d 697, app gr 117 Ill Dec 226, 520 NE2d 387 and revd on other grounds 128 Ill 2d 147, 131 Ill Dec 145, 538 NE2d 520.

³ Chicago Park Dist. v Kenroy, Inc., 78 Ill 2d 555, 37 Ill Dec 291, 402 NE2d 181, appeal after remand (1st Dist) 107 Ill App 3d 222, 63 Ill Dec 134, 437 NE2d 783.

⁴ United States v Holzer (CA7 Ill) 816 F2d 304 and vacated, remanded on other grounds 484 US 807, 98 L Ed 2d 18, 108 S Ct 53, on remand (CA7 Ill) 840 F2d 1343, cert den 486 US 1035, 100 L Ed 2d 608, 108 S Ct 2022 and (criticized on other grounds by United States v Osser (CA3 Pa) 864 F2d 1056) and (superseded by statute on other grounds as stated in United States v Little (CA5 Miss) 889 F2d 1367) and (among conflicting authorities on other grounds noted in United States v Boylan (CA1 Mass) 898 F2d 230, 29 Fed Rules Evid Serv 1223).

1 said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual.⁵
2 Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken
3 public confidence and undermine the sense of security for individual rights is against public policy.⁶
4 [63C Am.Jur.2d, Public Officers and Employees, §247]

5 The fiduciary duty of “public officers” is completely incompatible with and inconsistent with silence in responding to
6 claims by a member of the public that specific employees or agencies are violating the law. See section 7:

Silence as a Weapon and a Defense in Legal Discovery, Form #05.021
<http://sedm.org/Forms/FormIndex.htm>

- 7 4. The benefit of the doubt is always in favor of the person against whom the tax is to be laid or collected.

8 *“Keeping in mind the well-settled rule that **the citizen is exempt from taxation unless the same is imposed by***
9 ***clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be***
10 ***resolved in favor of those upon whom the tax is sought to be laid.”***
11 [Spreckels Sugar Refining Co. v. McClain, [192 U.S. 297](#) (1904)]

12 *“In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of*
13 *clear expression to the contrary, to operate prospectively; that, **if doubt exists as to the construction of a***
14 ***taxing statute, the doubt should be resolved in favor of the taxpayer...”***
15 [Hassett v. Welch., [303 US 303](#), pp. 314 - 315, 82 L Ed 858. (1938)]

- 16 5. Any presentment by either party that is not specifically denied is admitted and defaulted to, pursuant to [Federal Rule of](#)
17 [Civil Procedure 8\(b\)\(6\)](#). See:
18 <http://www.law.cornell.edu/rules/frcp/Rule8.htm>
19 6. All presumptions which might prejudice constitutionally protected rights are impermissible and unconstitutional and
20 may not lawfully be made, nor admitted as evidence in any trial before any court:

21 *(1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be*
22 *defeated where its application would impair a party's constitutionally-protected liberty or property interests. In*
23 *such cases, conclusive presumptions have been held to violate a party's due process and equal protection*
24 *rights. [Vlandis v. Kline (1973) [412 U.S. 441](#), 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur*
25 *(1974) [414 US 632](#), 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are*
26 *unfit violates process]*
27 [[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34](#)]

- 28 7. If law is the source of evidence to be admitted, then pursuant to [1 U.S.C. §204](#), it is admissible as evidence if enacted
29 into positive law. If the statute is not enacted into positive law, such as the entire Internal Revenue Code, then it
30 becomes “prima facie evidence”, which is “presumed to be law, exclusively applicable to the District of Columbia”.
31 See [28 U.S.C. §1366](#). Since presumptions that prejudice constitutionally protected rights are unconstitutional, then
32 each provision or individual statute cited as authority by the moving party domiciled in a state of the Union and
33 protected by the Constitution must individually be demonstrated to be positive law using quotes from the Statutes At
34 Large. Failure by the moving party or the Court to follow this provision constitutes a violation of due process of law
35 and the use essentially of “presumption” as a substitute for lawful evidence.

36 *“A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable*
37 *presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption*
38 *affecting the burden of proof. Calif.Evid.Code, §600.”*
39 [Black’s Law Dictionary, Sixth Edition, p. 1185]

40 4 Admissible Evidence of Claim

41 The [Federal Rules of Evidence \(Fed.Rul.Ev.\)](#) prescribe the rules to be applied towards evidence which the moving party
42 presents to prove their claim. Most forms of evidence that might be presented are usually excludible under the [Hearsay](#)
43 [Rule, Fed.Rul.Ev. 802](#). All evidence which is admitted into evidence in establishing a liability or one’s status as a
44 “taxpayer” must satisfy the following criteria:

⁵ Chicago ex rel. Cohen v Keane, 64 Ill 2d 559, 2 Ill Dec 285, 357 NE2d 452, later proceeding (1st Dist) 105 Ill App 3d 298, 61 Ill Dec 172, 434 NE2d 325.

⁶ Indiana State Ethics Comm’n v Nelson (Ind App) 656 NE2d 1172, reh gr (Ind App) 659 NE2d 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

1. Evidence must be authenticated with either a perjury statement or a testimonial oath.
2. Evidence must come from someone who has personal knowledge of the facts in question.
3. Evidence must be consistent and compatible with all of the Federal Rules of Evidence.
4. Evidence must be produced completely consistent with the entire content of the IRS Internal Revenue Manual. The IRS Restructuring and Reform Act of 1998, 112 Stat. 685, Section 1102 and [26 U.S.C. §7811\(a\)\(3\)](#) both require that the Internal Revenue Manual *must* be followed in all cases, and that the Taxpayer Advocate must construe every situation to the benefit of the “taxpayer” where it has *not* been followed.
5. Evidence must come from an unbiased witness who has no financial interest in the outcome of the proceeding. This means that if it relates to a tax matter, it should come from a third party whose pay and benefits do not derive either directly or indirectly from the tax in question. Due process of law mandates an impartial decision maker and impartial witnesses.
6. Any document not signed under penalty of perjury or with testimony under oath, is excludible under the [Hearsay Rule, Fed.Rul.Ev. 802](#).
7. Evidence may not constitute a presumption. Presumptions are *not* admissible as evidence.

“A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. Calif.Evid.Code, §600.”
[Black’s Law Dictionary, Sixth Edition, p. 1185]

8. Evidence may not constitute a religious belief or opinion, because these are excluded pursuant to [Fed.Rul.Ev. 610](#).
9. If the fact being established is whether the party “willfully violated a known legal requirement”, also called “willfulness”, then the only basis for reasonable belief about one’s tax liability is: 1. The rulings of the Supreme Court and not lower courts; 2. The Statutes at Large after January 2, 1939; 3. The Constitution of the United States; 4. Only those provisions within the Internal Revenue Code which are proved individually to be “positive law” and not “prima facie” or “presumed” law applicable exclusively to the District of Columbia. See the following for proof of this:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

10. Statutes without implementing regulations may be cited directly as evidence of a duty or obligation *only* in the case of persons specifically exempted from the requirement for implementing regulations appearing in [44 U.S.C. §1505\(a\)](#) and [5 U.S.C. §553\(a\)](#). A person domiciled in a state of the Union who is not a *member* of these specifically exempted groups may conclude that he has a legal liability under a statute *only* in the case where an implementing regulation published in the Federal Register identifies him specifically as the proper audience for that statute. The specifically exempted groups identified above include:
 - 10.1. Members of the military. [5 U.S.C. §553\(a\)\(1\)](#).
 - 10.2. Foreign affairs function of the United States. [5 U.S.C. §553\(a\)\(1\)](#).
 - 10.3. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. [5 U.S.C. §553\(a\)\(1\)](#).
 - 10.4. Federal agencies. [44 U.S.C. §1505\(a\)\(1\)](#).
 - 10.5. Persons in their capacity as officers, agents, or employees of federal agencies. [44 U.S.C. §1505\(a\)\(1\)](#).

Pursuant to [44 U.S.C. §1505\(a\)](#) and [5 U.S.C. §553\(a\)](#), no law may be enforced or prescribe a penalty against a person domiciled in a state of the Union who is not involved in one of the above activities. This provision preempts any enforcement of the Internal Revenue Code against anyone in states of the Union not a member of the above exempted groups, which is nearly everyone. This is confirmed by 26 CFR §601.702(a)(2)(ii) and [5 U.S.C. §552\(a\)](#).

[TITLE 5 > PART 1 > CHAPTER 5 > SUBCHAPTER II > § 552](#)
[§ 552. Public information; agency rules, opinions, orders, records, and proceedings](#)

(a)(1)

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

For further details on the above requirement for “reasonable notice”, see:

Requirement for Reasonable Notice, Form #05.022

<http://sedm.org/Forms/FormIndex.htm>

11. Must be considered in light of contradictory evidence submitted which rebuts it. For instance, if the IRS is receipt of an information return documenting “trade or business” earnings in conformance with [26 U.S.C. §6041](#) and the party who is the subject of the return rebuts this evidence with a corrected information return signed under penalty of perjury, then the original unverified information returns are no longer admissible because superseded by evidence of greater weight. The original information returns are not signed under penalty of perjury and the correction is. Therefore, the information returns have been duly rebutted and may not be considered in determining liability. See the following for information on the proper use, submission, and processing of information returns:
<http://sedm.org/LibertyU/WithngAndRptng.pdf>

In regards to the admissibility of evidence, [26 U.S.C. §6065](#) establishes that all documents created under the authority of the Internal Revenue Code must be signed under penalty of perjury, which should make them admissible as evidence. Unfortunately, federal courts have deprived Americans in states of the Union of equal protection of the laws by applying this provision to them while excluding the Internal Revenue Service from this provision of law.

[TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART IV > § 6065](#)
[§ 6065. Verification of returns](#)

*Except as otherwise provided by the Secretary, **any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.***

Notice the above provision does NOT expressly exclude declarations, statements, or documents prepared by IRS employees from its requirements. Equal protection of the laws mandated by Section 1 of the Fourteenth Amendment furthermore requires that the same provisions shall be applied to everyone:

[TITLE 42 > CHAPTER 21 > SUBCHAPTER I > Sec. 1981.](#)
[Sec. 1981. - Equal rights under the law](#)

(a) *Statement of equal rights*

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

5 Severe Penalties for False Claims

The False Claims Act, [31 U.S.C. §3729](#), authorizes any person aware of a false claim presented to or by any private American or any federal employee to sue for damages in the name of the United States of America. To wit:

[TITLE 31 > SUBTITLE III > CHAPTER 37 > SUBCHAPTER III > § 3729](#)
[§ 3729. False claims](#)

(a) *Liability for Certain Acts.— Any person who—*

(1) *knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;*

(2) *knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;*

(3) *conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;*

(4) *has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;*

(5) *authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;*

1 (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or
2 employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the
3 property; or

4 (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or
5 decrease an obligation to pay or transmit money or property to the Government,

6 is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than
7 \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that
8 person, except that if the court finds that—

9 (A) the person committing the violation of this subsection furnished officials of the United States
10 responsible for investigating false claims violations with all information known to such person
11 about the violation within 30 days after the date on which the defendant first obtained the
12 information;

13 (B) such person fully cooperated with any Government investigation of such violation; and

14 (C) at the time such person furnished the United States with the information about the violation, no
15 criminal prosecution, civil action, or administrative action had commenced under this title with
16 respect to such violation, and the person did not have actual knowledge of the existence of an
17 investigation into such violation;

18 the court may assess not less than 2 times the amount of damages which the Government sustains because of the
19 act of the person. A person violating this subsection shall also be liable to the United States Government for the
20 costs of a civil action brought to recover any such penalty or damages.

21 [SOURCE: http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007421----000-.html]

22 An IRS employee who makes a false tax collection claim against anyone is personally liable under the above provisions of
23 law for up to THREE TIMES and not less than TWO TIMES the amount of the false claim. The above provision of law
24 also authorizes any third party to bring the suit in the name of the “United States of America” as a “qui tam” action.

25 *Qui tam action.* Lat. “*Qui tam*” is abbreviation of Latin phrase “*qui tam pro domino regequam pro si ipso in*
26 *hac parte sequitur*” meaning “Who sues on behalf of the King as well as for himself.” It is an action brought
27 by an informer, under statute which establishes a penalty for the commission or omission of a certain act, and
28 provides that the same shall be recoverable in a civil action, part of the penalty to go to any person who will
29 bring such action and the remainder to the state or some other institution. It is called a “qui tam action”
30 because the plaintiff states that he sues as well for the state as for himself. *U.S. v. Florida-Vanderbilt*
31 *Development Corp.*, D.C.Flz., 326 F.Supp. 289, 290. See also *False Claims Act*; *Whistle-blower Acts*.
32 [*Black’s Law Dictionary, Sixth Edition, p. 1251*]

33 In addition to penalties under the False Claims Act, IRS employees and supervisor can also be prosecuted pursuant to:

- 34 1. [26 U.S.C. §7433](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007433----000-.html) in the case of “taxpayers” only. See:
35 http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007433----000-.html
36 2. IRS Restructuring and Reform Act, Section §1203, 112 Stat. 720 in the case of a “taxpayer”. See:
37 <http://famguardian.org/Publications/IRSRRRA98/IRSRRRA98.htm>

38 The above provisions of law do not provide a statutory remedy for “nontaxpayers”, and therefore those persons will need to
39 sue under equity rather than law as “nontaxpayers”. In addition, statutory remedies for extortion, denial of rights, etc.
40 appear in Titles 18 and 42 of United States Code.

41 **6 Conclusions**

42 The IRS plays a vicious game of presumption of liability in the tax collection process. Most people are unaware of how
43 this game is played and therefore are taken advantage of. Below are the rules of this game:

- 44 1. The IRS receives a information return, such as IRS Forms W-4, W-2, 1042-S, 1098, 1099 and K-1. These information
45 returns are submitted without any verification of contained therein, such as a perjury statement or testimonial oath.
46 Consequently, this information return is hearsay evidence not admissible under the Federal Rules of Evidence.
47 2. The information returns received by the IRS create the following prima facie presumptions:

2.1. That the target of the information return is engaged in an excise taxable activity within the District of Columbia called a “trade or business”. See:

The Trade or Business Scam, Form #05.001
<http://sedm.org/Forms/FormIndex.htm>

2.2. That the target of the information return is engaged in commerce with the federal government and consents to become a “resident alien” of the District of Columbia subject to exclusive federal legislative jurisdiction. This results in a surrender of sovereign immunity pursuant to 28 U.S.C. §1605(a)(2) on the part of the American National. See:

<http://famguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm>

2.3. That the target of the information return is a “taxpayer” subject to every provision of the Internal Revenue Code Subtitle A.

2.4. That the existence of a Social Security Number on the information Return creates an obligation to participate in federal income taxation, pursuant to Social Security Act of 1935, Title 8, Section 801. See:

<http://www.ssa.gov/history/35acviii.html>

3. After the presumption has been established that you are a “taxpayer”, the burden of proof shifts to you to prove that you aren’t. Because it is legally impossible to prove a negative, this puts you in an untenable and unwinnable situation and all your arguments become frivolous and irrelevant.

The only way to prevail in the above process is to:

1. Vociferously insist that all government presumptions which might prejudice your rights as a party domiciled in a state of the Union and protected by the Constitution are illegal and impermissible according to the U.S. Supreme Court.
2. To fill your administrative record with exculpatory evidence admissible under the Federal Rules of Evidence which clearly establishes your correct status as a “nontaxpayer”, a national but not a citizen, a nonresident alien, and a person not engaged in any excise taxable federal privilege. This person is identified in the regulations at 26 CFR §1.871-1(b)(i) and is indicated as having no federal tax liability in 26 CFR §1.872-2.
3. Rebut all information returns promptly and consistently, such as IRS forms W-4, W-2, 1042-S, 1098, 1099, and K-1. Claim that they are invalid, hearsay evidence, submitted under duress, and are therefore erroneous and unreliable. See:

Income Tax Withholding and Reporting Course, Form 12.0041
<http://sedm.org/Forms/FormIndex.htm>

4. Ask the IRS periodically for a copy of all information returns they have received to make sure that you didn’t miss any.
5. Vociferously insist that burden of proof remains on the government to prove liability at all times and that you are presumed to be a nontaxpayer until proven to be a taxpayer.
6. Vociferously deny any attempt by the IRS to identify you as a “taxpayer” subject to the Internal Revenue Code, and demand that they satisfy their burden of proof with admissible evidence.
7. To deny any attempt to identify you as a statutory “U.S. citizen” pursuant to 8 U.S.C. §1401. This status also causes a surrender of sovereign immunity pursuant to [28 U.S.C. §1603\(b\)\(3\)](#). See:

Why you are a “national” or a “state national” but not a “U.S. citizen”, Form #05.006
<http://sedm.org/Forms/FormIndex.htm>

8. Ensure that you do *not* accept any federal privilege, benefit, or presumed benefit which might cause a surrender of your sovereign immunity pursuant to [28 U.S.C. §1605\(a\)\(2\)](#) or create a presumption that you are subject to federal law.
9. Never on any federal or state form, identify yourself as any of the following:

9.1. Domiciled in the “United States”. See:

Why domicile and becoming a “taxpayer” require your consent, Form #05.002
<http://sedm.org/Forms/FormIndex.htm>

- 9.2. A “resident”, which is a “resident alien” or U.S. citizen abroad pursuant to [26 U.S.C. §7701\(b\)\(1\)\(A\)](#).
- 9.3. A statutory “U.S. citizen” pursuant to [8 U.S.C. §1401](#). Instead, identify yourself as a citizen of your state and DO NOT mention the United States.
- 9.4. A “taxpayer” subject to the I.R.C. pursuant to [26 U.S.C. §7701\(a\)\(14\)](#) and 1313.

10. To resign all participation in any federal benefit program. See:

Resignation of Compelled Social Security Trustee, Form #06.002
<http://sedm.org/Forms/FormIndex.htm>

11. To discontinue use of all federal identifying numbers stored in IRS records and databases which might create an association with an excise taxable federal privilege or a presumption that you are a “taxpayer” engaged in a “trade or business”.

American jurisprudence has always presumed that the accused is innocent until proven guilty beyond a reasonable doubt with evidence. The Internal Revenue Code does not change that requirement or any of the following legal requirements for meeting the burden of proof:

1. That persons who are to be held responsible to obey a statute must receive “reasonable notice” by publication in the Federal Register of all enforcement statutes and the regulations that implement them. Most IRS enforcement actions are undertaken without the authority of any implementing regulations, and even those implementing regulations exist, they have not been duly published in the Federal Register as required by 5 U.S.C. §552(a).
2. That presumptions may not be used as evidence or a substitute for evidence. All presumptions which prejudice constitutionally protected rights violate due process of law, including the presumption that a person is a “taxpayer”. Any administrative result based entirely or mostly upon presumption as a substitute for evidence is a violation of due process and produces an unconstitutional and void result.
3. That all evidence of liability must be verified under penalty of perjury or by testimonial oath as required by [26 U.S.C. §6065](#). Evidence not so verified is excludible under the Hearsay Rule, Fed.Rul.Ev. 802.
4. That religious beliefs and opinions are not admissible as evidence of liability pursuant to [Fed.Rul.Ev. 610](#).
5. That an un rebutted affidavit stands as truth and a nihil dicit judgment against the party who received it. See [Fed.Rule.Civ.Proc. 8\(b\)\(6\)](#).
6. That public officers and federal employees are “trustees of the public trust” and fiduciaries of the public and that fiduciary duty is incompatible with silence when they are confronted with evidence of their own wrongdoing. Therefore, silence in such a circumstance constitutes admissible evidence of wrongdoing and an equitable estoppel against the public officer.
7. That the only basis for reasonable belief about one’s liability for taxes is documented in the memorandum of law below:

[Reasonable Belief About Income Tax Liability](#), Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

The IRS frequently receives information returns from third parties documenting receipt of taxable “trade or business” income pursuant to [26 U.S.C. §6041](#). These information returns are frequently the only proof of liability available to the IRS, and yet they

1. Do not satisfy any of the requirements of the [Federal Rules of Evidence](#).
2. Are not verified by a signature under penalty of perjury or testimonial oath as required by [26 U.S.C. §6065](#). The only exception to this rule is IRS forms W-2G and W-3G.
3. Are excludible under the [Hearsay Rule, Fed.Rul.Ev. 802](#).

Based on the foregoing, all information returns are simply “prima facie evidence” of a liability that can only be verified if they are accompanied by a tax return signed under penalty of perjury by the subject of the information return. Absent this type of verification, they cannot lawfully be used as a basis for instituting a substitute return against the subject of the report without their consent. Where these presumptions are challenged by the affected party, the moving party must sustain using admissible, verified evidence signed under penalty of perjury, the existence of a lawful liability.

If the subject of the information return is a natural person who would ordinarily file using IRS form 1040 or its variants, then the IRS Internal Revenue Manual does NOT authorize the completion of a Substitute For Return (SFR) or Automated Substitute For Return (ASFR), as shown in IRM Section 5.1.11.6.8. Notice the conspicuous absence of Form 1040:

Internal Revenue Manual
5.1.11.6.8 (03-01-2007)
IRC 6020(b) Authority

1. The following returns may be prepared, signed and assessed under the authority of IRC 6020(b):

- A. Form 940, Employer’s Annual Federal Unemployment Tax Return*
- B. Form 941, Employer’s Quarterly Federal Tax Return*
- C. Form 943, Employer’s Annual Tax Return for Agricultural Employees*
- D. Form 720, Quarterly Federal Excise Tax Return*
- E. Form 2290, Heavy Vehicle Use Tax Return*
- F. Form CT-1, Employer’s Annual Railroad Retirement Tax Return*
- G. Form 1065, U.S. Return of Partnership Income.*

2. Pursuant to IRM 1.2.2.97, Delegations of Authority, Order Number 182 (rev. 7), dated 5/5/1997, revenue officers GS-09 and above, and Collection Support Function managers GS-09 and above, have the authority to prepare and execute returns under IRC 6020(b).

Even the statutes cited by the IRS as authority, the Internal Revenue Code, constitute a prejudicial presumption, since they are only “prima facie evidence of law” pursuant to 1 U.S.C. §204 which is applicable exclusively to the District of Columbia pursuant to [28 U.S.C. §1366](#). Therefore, the IRS proceeds almost entirely and exclusively upon “presumption” not substantiated by any verified evidence of any kind in the process of collecting taxes pursuant to the I.R.C. Subtitle A. This abundance of “presumption” constitutes the equivalent of the establishment of a state-sponsored religion in violation of the First Amendment, where presumption operates as the equivalent of religious faith. Religious faith is simply a belief which cannot be proven with evidence, and that is what presumption of liability for tax operates as: religious faith.

7 Resources for Further Study and Rebuttal

If you would like to study the subjects covered in this short pamphlet in further detail, may we recommend the following authoritative sources, and also welcome you to rebut any part of this pamphlet after your have read it and studied the subject carefully yourself just as we have:

Table 1: Resources for further study and rebuttal

Reference	Type	Available at:
Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction, Form #05.017	Free memorandum of law	http://sedm.org/Forms/FormIndex.htm
Reasonable Belief About Income Tax Liability, Form #05.007	Free memorandum of law	http://sedm.org/Forms/FormIndex.htm
Authorities on presumption	Free link	http://famguardian.org/TaxFreedom/CitesByTopic/presumption.htm
Meaning of the Words “includes” and “including”, Form #05.014	Free memorandum of law	http://sedm.org/Forms/FormIndex.htm
Who are Taxpayers and who needs a ‘Taxpayer Identification Number’, Form #05.013	Free memorandum of law	http://sedm.org/Forms/FormIndex.htm
Your Rights as a NONTaxpayer	Free pamphlet	http://sedm.org/LibertyU/NontaxpayerBOR.pdf
Federal Jurisdiction, Form #05.018	Free memorandum of law	http://sedm.org/Forms/FormIndex.htm
Liberty University	Free educational materials for regaining your sovereignty as an entrepreneur or private person	http://sedm.org/LibertyU/LibertyU.htm
Family Guardian Website, Taxes page	Free website	http://famguardian.org/Subjects/Taxes/taxes.htm
Sovereignty Forms and Instructions	Free references and tools to help those who want to escape federal slavery	http://famguardian.org/TaxFreedom/FormsInstr.htm
Rebutted version of the IRS pamphlet: “The Truth About Frivolous Tax Arguments”	Free downloadable pamphlet	http://famguardian.org/PublishedAuthors/Govt/IRS/friv_tax_rebuts.pdf

8 Questions that Readers, Grand Jurors, and Petit Jurors Should be Asking the Government

These questions are provided for readers, Grand Jurors, and Petit Jurors to present to the government or anyone else who would challenge the facts and law appearing in this pamphlet, most of whom work for the government or stand to gain financially from perpetuating the fraud. If you find yourself in receipt of this pamphlet, you are demanded to answer the questions within 10 days. Pursuant to [Federal Rule of Civil Procedure 8\(b\)\(6\)](#), failure to deny within 10 days constitutes an admission to each question. Pursuant to [26 U.S.C. §6065](#), all of your answers must be signed under penalty of perjury. We are not interested in agency policy, but only sources of reasonable belief identified in the pamphlet below:

Reasonable Belief About Income Tax Liability, Form #05.007
<http://sedm.org/Forms/FormIndex.htm>

Your answers will become evidence in future litigation, should that be necessary in order to protect the rights of the person against whom you are attempting to unlawfully enforce federal law.

1 1. Admit that tax liabilities are considered “debts” pursuant to the Fair Debt Collection Practices Act.

2
3 YOUR ANSWER: ___ Admit ___ Deny

4
5 CLARIFICATION: _____

6 2. Admit that pursuant to [15 U.S.C. §1692g\(b\)](#), a creditor who receives a dispute of a debt and which demands proof of
7 the debt must provide verified original proof of the debt within 30 days.

8
9 YOUR ANSWER: ___ Admit ___ Deny

10
11 CLARIFICATION: _____

12 3. Admit that pursuant to [15 U.S.C. §1692g\(b\)](#), a creditor who fails to provide verified proof of the debt when challenged
13 after 30 days forfeits his right to further collection activity and repudiates the debt.

14
15 YOUR ANSWER: ___ Admit ___ Deny

16
17 CLARIFICATION: _____

18 4. Admit in all administrative proceedings, the burden of proof is upon the moving party.

19 [TITLE 5 > PART 1 > CHAPTER 5 > SUBCHAPTER II > § 556](#)
20 [§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of](#)
21 [decision](#)

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

34 [SOURCE: http://www4.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000556---000-.html]

35
36 YOUR ANSWER: ___ Admit ___ Deny

37
38 CLARIFICATION: _____

39 5. Admit that in tax collection actions of the government, the government is the moving party asserting the existence of a
40 legal liability.

41
42 YOUR ANSWER: ___ Admit ___ Deny

43
44 CLARIFICATION: _____

45 6. Admit that as the moving party in tax collection actions, the government has the burden of proving liability.

46
47 YOUR ANSWER: ___ Admit ___ Deny

48
49 CLARIFICATION: _____

50 7. Admit that the burden of proof in tax collection actions may only be shifted from the government to the person who is
51 the target of the collection if that person is a “taxpayer” as defined in [26 U.S.C. §7701\(a\)\(14\)](#) and [26 U.S.C. §1313](#).

1
2 YOUR ANSWER: ___ Admit ___ Deny

3
4 CLARIFICATION: _____

- 5 8. Admit that a person who claims to be a “nontaxpayer” under penalty of perjury and who refutes all evidence that he is
6 a “taxpayer” under penalty of perjury may not be imputed as having the burden of proof pursuant to [26 U.S.C. §7491](#)
7 to prove nonliability in any tax collection action.

8 [TITLE 26](#) > [Subtitle F](#) > [CHAPTER 76](#) > [Subchapter E](#) > § 7491
9 [§ 7491. Burden of proof](#)

10 (a) Burden shifts where taxpayer produces credible evidence

11 (1) General rule

12 If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue
13 relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary
14 **shall have the burden of proof** with respect to such issue.

15 (2) Limitations

16 Paragraph (1) shall apply with respect to an issue only if -

17 (A) the taxpayer has complied with the requirements under this title to substantiate any item;

18 (B) the taxpayer has maintained all records required under this title and has cooperated with reasonable
19 requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

20 (C) in the case of a partnership, corporation, or trust, the taxpayer is described in section
21 [7430\(c\)\(4\)\(A\)\(ii\)](#). Subparagraph (C) shall not apply to any qualified revocable trust (as defined in
22 section [645\(b\)\(1\)](#)) with respect to liability for tax for any taxable year ending after the date of the
23 decedent's death and before the applicable date (as defined in section [645\(b\)\(2\)](#)).

24 (3) Coordination

25 Paragraph (1) shall not apply to any issue if any other
26 provision of this title provides for a specific burden of proof
27 with respect to such issue.

28 (b) Use of statistical information on unrelated taxpayers

29 In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with
30 respect to any item of income which was reconstructed by the Secretary solely through the use of statistical
31 information on unrelated taxpayers.

32 (c) Penalties

33 Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court
34 proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount
35 imposed by this title.

36 [SOURCE: http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007491----000-.html]

37
38 YOUR ANSWER: ___ Admit ___ Deny

39
40 CLARIFICATION: _____

- 41
42 9. Admit that no provision of the Internal Revenue Code may be cited against or create a legal duty for anyone who is a
43 “nontaxpayer”.

44 “The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers,
45 and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and
46 no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not
47 assume to deal, and they are neither of the subject nor of the object of the revenue laws...”
48 [Long v. Rasmussen, 281 F. 236 (1922)]

49 “Revenue Laws relate to taxpayers and not to non-taxpayers. The latter are without their scope. No
50 procedures are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies

1 in due course of law. With them[non-taxpayers] Congress does not assume to deal and they are neither of the
2 subject nor of the object of federal revenue laws.”
3 [Economy Plumbing & Heating v. U.S., 470 F2d. 585 (1972)]
4

5 YOUR ANSWER: ___ Admit ___ Deny
6

7 CLARIFICATION: _____

- 8 10. Admit that presumption is neither evidence nor may it lawfully be used as a substitute for evidence without violating
9 due process of law.

10 A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption
11 is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden
12 of proof. Calif.Evid.Code, §600.
13 [Black's Law Dictionary, Sixth Edition, p. 1185]
14

15 YOUR ANSWER: ___ Admit ___ Deny
16

17 CLARIFICATION: _____

- 18 11. Admit that conclusive presumptions which prejudice or injure constitutionally protected rights are a violation of due
19 process of law.

20 (1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be
21 defeated where its application would impair a party's constitutionally-protected liberty or property interests. In
22 such cases, conclusive presumptions have been held to violate a party's due process and equal protection
23 rights. [Vlandis v. Kline (1973) [412 U.S. 441](#), 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur
24 (1974) [414 US 632](#), 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are
25 unfit violates process]
26 [[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34](#)]
27

28 **This court has held more than once that a statute creating a presumption which operates to deny a fair**
29 **opportunity to rebut it violates the due process clause of the Fourteenth Amendment.** For example, Bailey v.
30 Alabama, [219 U.S. 219](#), 238, et seq., 31 S. Ct. 145; Manley v. Georgia, [279 U.S. 1](#), 5-6, 49 S. Ct. 215.

31 **'It is apparent,' this court said in the Bailey Case ([219 U.S. 239](#), 31 S. Ct. 145, 151) 'that a constitutional**
32 **prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can**
33 **be violated by direct enactment. The power to create presumptions is not a means of escape from**
34 **constitutional restrictions.'**

35 If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove
36 the facts of his case, certainly the power cannot be made to emerge by putting the enactment in the guise of a
37 rule of substantive law.
38 [[Heiner v. Donnan, 285 U.S. 312 \(1932\)](#)]
39

40 YOUR ANSWER: ___ Admit ___ Deny
41

42 CLARIFICATION: _____

- 43 12. Admit that one of the main purposes of due process of law is to remove all presumptions which might prejudice rights
44 from the consideration of the factfinder(s).
45

46 YOUR ANSWER: ___ Admit ___ Deny
47

48 CLARIFICATION: _____

- 49 13. Admit that “prima facie law”, such as the Internal Revenue Code, is “presumed to be law” for the United States
50 exclusively applicable to the District of Columbia pursuant to [28 U.S.C. §1366](#).

1 “**Prima facie evidence.** Evidence good and sufficient on its face. Such evidence as, in the judgment of the law,
2 is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and
3 which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted,
4 is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by
5 other evidence. *State v. Haremza*, 213 Kan. 201, 515 P.2d 1217, 1222.

6 That quantum of evidence that suffices for proof of a particular fact until the fact is contradicted by other
7 evidence; once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence with all
8 the other probative evidence presented. *Godesky v. Provo City Corp.*, Utah, 690 P.2d 541, 547. Evidence
9 which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support
10 which it is introduced. An inference or presumption of law, affirmative or negative of a fact, in the absence of
11 proof, or until proof can be obtained or produced to overcome the inference. See also *Presumptive evidence.*”

12 [*Black’s Law Dictionary, Sixth Edition, p. 1190*]

13
14 YOUR ANSWER: ___Admit ___Deny

15
16 CLARIFICATION:_____

- 17 14. Admit that once “prima facie law” is challenged, the moving party asserting the authority of that specific law has a
18 duty to prove that the provisions he is citing as authority are positive law, by providing evidence of enactment into
19 positive law from the Statutes at Large.

20
21 YOUR ANSWER: ___Admit ___Deny

22
23 CLARIFICATION:_____

- 24 15. Admit that in the absence of non-prima facie evidence that a statute cited as authority is “positive law” (see [1 U.S.C.](#)
25 [§204\(a\)](#)) or that Congress has expressly extended authority of said law to the states ([4 U.S.C. §72](#)), then any said
26 statute may *not* be cited against a person domiciled in a state of the Union whose rights are protected by the
27 Constitution because this would be an abuse of presumption to prejudice constitutionally guaranteed rights.

28 (1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be
29 defeated where its application would impair a party’s constitutionally-protected liberty or property interests. In
30 such cases, conclusive presumptions have been held to violate a party’s due process and equal protection
31 rights. [*Vlandis v. Kline* (1973) [412 U.S. 441](#), 449, 93 S.Ct 2230, 2235; *Cleveland Bd. of Ed. v. LaFleur*
32 (1974) [414 US 632](#), 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are
33 unfit violates process]

34 [[Rutter Group Practice Guide-Federal Civil Trials and Evidence, paragraph 8:4993, page 8K-34](#)]

35
36 YOUR ANSWER: ___Admit ___Deny

37
38 CLARIFICATION:_____

- 39 16. Admit that a violation of due process of law produces a void judgment of no force and effect.

40 “A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith
41 and credit elsewhere. *Pennoy v. Neff*, 95 U.S. 714, 732-733 (1878).”

42 [*World-Wide Volkswagen Corp. v. Woodson*, [444 U.S. 286](#) (1980)]

43
44 YOUR ANSWER: ___Admit ___Deny

45
46 CLARIFICATION:_____

- 47 17. Admit that all doubt must be resolved in favor of the person against whom a tax is laid:

48 “Keeping in mind the well-settled rule that **the citizen is exempt from taxation unless the same is imposed by**
49 **clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be**
50 **resolved in favor of those upon whom the tax is sought to be laid.**”

51 [*Spreckels Sugar Refining Co. v. McClain*, [192 U.S. 297](#) (1904)]

1 *"In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of*
2 *clear expression to the contrary, to operate prospectively; that, if doubt exists as to the construction of a*
3 *taxing statute, the doubt should be resolved in favor of the taxpayer..."*
4 *[Hassett v. Welch., [303 US 303](#), pp. 314 - 315, 82 L Ed 858. (1938)]*

5
6 YOUR ANSWER: ___ Admit ___ Deny

7
8 CLARIFICATION: _____

- 9 18. Admit that evidence used in determining liability or a legal duty in any tax collection proceeding must follow the
10 Federal Rules of Evidence.

11
12 YOUR ANSWER: ___ Admit ___ Deny

13
14 CLARIFICATION: _____

- 15 19. Admit that evidence which is not authenticated with a perjury statement or a testimonial oath is not admissible in any
16 administrative proceeding for use as evidence of liability, pursuant to [26 U.S.C. §6065](#).

17 [TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART IV > § 6065](#)
18 [§6065. Verification of returns](#)

19 *Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required*
20 *to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a*
21 *written declaration that it is made under the penalties of perjury.*

22
23 YOUR ANSWER: ___ Admit ___ Deny

24
25 CLARIFICATION: _____

- 26 20. Admit that information returns submitted to the IRS pursuant to [26 U.S.C. §6041](#) must be signed by the submitter
27 under penalty of perjury in order to be used as evidence of the receipt of taxable earnings.

28
29 YOUR ANSWER: ___ Admit ___ Deny

30
31 CLARIFICATION: _____

- 32 21. Admit that with the exception of IRS forms W-2G and W-3G, none of the information returns require a signature under
33 penalty of perjury. This includes IRS forms 1098, 1099, 1042-S, K-1.

34
35 YOUR ANSWER: ___ Admit ___ Deny

36
37 CLARIFICATION: _____

- 38 22. Admit that because of the foregoing, all information returns except the W-2G and W-3G are hearsay evidence that is
39 not admissible under the Federal Rules of Evidence and which essentially amount to "hearsay evidence" excludible
40 under the [Hearsay Rule, Fed.Rul.Ev. 802](#).

41
42 YOUR ANSWER: ___ Admit ___ Deny

43
44 CLARIFICATION: _____

- 45 23. Admit that the IRS has not authority to create a Substitute For Return or Automated Substitute For Return for IRS
46 forms 1040, 1040EZ, 1040A, 1040NR, 1040NR-EZ, etc.

47
48 YOUR ANSWER: ___ Admit ___ Deny

49
50 CLARIFICATION: _____

1 **Acknowledgment:**

2 I declare under penalty of perjury as required under [26 U.S.C. §6065](#) that the answers provided by me to the foregoing
3 questions are true, correct, and complete to the best of my knowledge and ability, so help me God. I also declare that these
4 answers are completely consistent with each other and with my understanding of both the Constitution of the United States,
5 Internal Revenue Code, Treasury Regulations, the Internal Revenue Manual, and the rulings of the Supreme Court but not
6 necessarily lower federal courts.

7 Name (print): _____

8 Signature: _____

9 Date: _____

10 Witness name (print): _____

11 Witness Signature: _____

12 Witness Date: _____