

**IN THE DISTRICT COURT OF THE UNITED STATES
(Number) JUDICIAL DISTRICT FOR THE (Region) DISTRICT OF (State)**

IN RE:

CASE NO.

**(Your Name),
Plaintiff,**

MEMORANDUM OF LAW

vs.

**UNITED STATES,
Defendant.**

_____ /

**MEMORANDUM IN SUPPORT OF PLAINTIFFS VERIFIED COMPLAINT
AND MOTION FOR TEMPORARY RESTRAINING ORDER**

This memorandum will be construed to comply with provisions necessary to establish presumed fact (Rule 301, Federal Rules of Evidence, and attending State rules) should interested parties fail to rebut any given allegation of fact or matter of law addressed herein. The position will be construed as adequate to meet requirements of judicial notice, thus preserving fundamental law. Matters addressed herein, if not rebutted, will be construed to have general application. This memorandum addresses the United States and related agencies of the United States Government, their political jurisdiction and the political jurisdiction of the Fifty Union States of the American Republic. Defining the Citizenship status of each separate population of citizen under the respective jurisdiction of each political entity, as mandated by the Constitution for the United States of America and settled case law. Plaintiff now files this Memorandum in Support of their verified complaint for the Court to Consider the Temporary Restraining Order and the Motion for Injunction and shows the Court as follows.

NONRESIDENT ALIEN

1. Plaintiffs in the above entitled action are nonresident aliens with respect to the "United States" as those terms are defined in Title 26 U.S.C., and have had no income effectively connected to a trade or business within the "United States" or any source income derived from any excise taxable event. Plaintiffs are not withholding agents.
2. Defendant's Revenue Officer (Name), District Director (Name), are Internal Revenue employees. It appears from documentary evidence, that the Internal Revenue Service Agents, etc., are "agents of a foreign principal" within the meaning and intent of the Foreign Agents Registration Act of 1938. The Internal Revenue Agents are directed and controlled by the corporate "Governor" of "The Fund", a.k.a., "Secretary of Treasury" ¹ and the corporate "Governor" of "The Bank" ². Said agents acting as "information-service employees" ³ and have been and do now solicit, collect, disburse, or dispense contribution, tax-pecuniary contribution, loan money or other things of value, for, or in interest of such foreign principal, ⁴. The Internal Revenue Service entered into agreements with a foreign principal pursuant to Treasury Delegation Order No. 91, i.e., the "Agency for International Development" ⁵. (Exhibit #) The Internal Revenue Service is also an agency of the International Criminal Police Organization and solicits and collects information, for 150 Foreign Powers. ⁶
3. The Defendant UNITED STATES believes or want we the people of the fifty States to believe is that the "united States of America" is the same as the "UNITED STATES".

¹ (Public Law 94-564, Page 5942, U.S. Government Manual 1990-91, pages 480 and 481, 26 U.S.C.A. 7701(a)(II), Treasury Delegation Order No. 150-10),

² (22 U.S.C.A. §286 and 286a)

³ (22 U.S.C.A. §611(c)(ii))

⁴ (22 U.S.C.A. §611 (c) (iii))

⁵ (22 U.S.C.A. §611(c)(2))

⁶ (22 U.S.C.A. §263(a), The United States Government Manual, 1990-91, page 385.

Nothing could be further from the truth. The “united” States of America, in an adjective, describing a Continent consisting of connecting Sovereign States plus two other landmasses (States) that are not connected to the American Continent. These united States of America consist of the 50 States, all of which have been admitted to the Union of the united States of America. This is clearly designated by the 50 Stars on the Flag of the united States of America.

4. The “UNITED STATES” on the other hand, is a noun, which is a “federal corporation” that is defined by the “places” where it has political jurisdiction 18 USC §5. That jurisdiction is clearly and unambiguously granted pursuant to Article 1, §8, Clause 17 of the Constitution for the United States. That jurisdiction is limited to the District (not exceeding 10 square miles) for the seat of government, (District of Columbia) along with other “federal areas”, “federal enclaves”, and “federal Islands” that may sit within the exterior boundaries of one of the 50 American States of the Union. If the Congress does not have exclusive legislative jurisdiction over an area, then the Executive Branch of the government would have little or nothing to enforce, other than some related Defense matters and Inter-state commerce issues within the 50 Union states.
5. It is this District of Columbia that has obtained territories over the years that include the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, Northern Mariana Islands and the Virgin Islands, etc. These are the *several states* of the UNITED STATES.⁷ It is these areas and these areas only that are within the exclusive political jurisdiction of the UNITED STATES (District of Columbia). All jurisdictions of the UNITED STATES (District of Columbia) exist “without” the jurisdiction of a particular State of the Union. These federal states of the UNITED STATES have not been admitted

to the Union of 50 American states of the united States of America. Each of the above definitions is unambiguous and cannot be challenged for ambiguity. Since the words “50 States” are not used in Title 26 U.S.C. §7701(A)(9), it appears that the “50 States” are excluded from that definition of UNITED STATES.

The statutory construction becomes crystal clear when we consider the language used by the Supreme Court in Hooven & Allison Co. v. Evatt.⁸

“This term has several meanings. It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations, it may designate territory over which sovereignty of the United States extends, or it may be the collective name of the states which are united by and under the Constitution”.

Thus, in Hooven, supra, it is readily discernible that there are two literal UNITED STATES consisting of definitive landmasses or geographical areas. The third definition in Hooven, supra, consists of the 50 States united under the Constitution. The second definition designates the geographical area consisting of the District of Columbia and all territory over which the political sovereignty of the UNITED STATES extends. Congress expresses the sovereignty of this second UNITED STATES under authority of Article 1, §8, Clause 17 and 18, and Article 4, §3, Clause 2 of the Constitution with no constitutional restrictions placed on said powers. Congress, in legislating for the District and its Territories always defines the word’s “State” and “United States” in its Public Laws to only include such geographical areas.

6. The issue as to whether there are different meanings for the term “United States” and whether there are three different and distinct "United States" operating within the same

⁷ 26 USC 1321(e)(1)(2)

⁸ U.S. Ohio, 324 U.S. 652, 65 S.Ct. 870,880, 89 L.Ed. 1252.

geographical areas and one "United States" operating outside the Constitution over its own territory in which it has citizens belonging to said "United States" was settled in 1901 by the Supreme Court in the cases of De Lima v. Bidwell⁹ and Downes v. Bidwell,¹⁰. In Downes supra, Justice Harlan dissented as follows:

“The idea prevails with some -- indeed, it found expression in arguments at the bar -- that we have in this country substantially or practically two national governments; one, to be maintained under the Constitution, with all its restrictions; the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise.”

[Downes supra, page 380,]

He went on to say, on page 382:

“It will be an evil day for American liberty if the theory of a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.”

[Downes supra, page 382]

7. This theory of a government operating outside the Constitution over its own territory with citizens of the "United States" belonging thereto under Article 4, Section 3, Clause 2 of the Constitution has been long understood. The Supreme Court in Balzac v. Puerto Rico further confirmed the proposition in 1922,¹¹ wherein the Court affirmed that the Constitution does not apply outside the limits of the 50 States of the Union. The Court quoting Downes, and De Lima, supra, that under Article IV, §3, Clause 2, the "United States" was given exclusive power over the territories.
8. The issue arose again in 1944, in the case of Hooven & Allison Co. v. Evatt,¹² wherein the United States Supreme Court stated as follows at page 671-672. [EXHIBIT #]

⁹ 182 U.S. 1

¹⁰ 182 U.S. 244

¹¹ 258 U.S. 298

¹² Tax Commissioner of Ohio, 324 U.S. 652

“The term "United States" may be used in any one of several senses. [1] It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. [2] It may designate the territory over which the sovereignty of the United States extends, [3] or it may be the collective name of the states which are united by and under the Constitution.” [Brackets, numbers and emphasis added]

Quoting Fourteen Diamond Rings v. United States, 183 U.S. 176; cf. De Lima v. Bidwell, 182 U.S. 1; Dooley v. United States, 182 U.S. 222; Faber v. United States, 221 U.S. 649; cf. Huus v. New York & P.R.S.S. Co., 182 U.S. 392; Gonzales v. Williams, 192 U.S. 1; West India Oil Co. v. Domenech, 311 U.S. 20., also see; Langdell, "The Status of our New Territories," 12 Harvard Law Review 365, 371; see also Thayer, "Our New Possessions," 12 Harvard Law Review 464; Thayer, "The Insular Tariff Cases in the Supreme Court," 15 Harvard Law Review 164; Littlefield, "The Insular Cases," 15 Harvard Law Review 169, 281.

The Court in Hooven, supra, indicated that this was the last time it would address the issue; it would just be judicially noticed.

9. The issue arose in Brushaber v. Union Pacific Railroad Company,¹³ In that case, the high Court affirmed that the “United States” could levy a tax on the income of a nonresident alien when that income was derived from sources “within” the "United States" (i.e., its territorial or political jurisdiction). (Exhibit #)
10. Affirming the decision in Brushaber, supra, the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury promulgated the Court's decision as Treasury Decision 2313 (see Exhibit #).
11. T.D. 2313 declared that Frank R. Brushaber was a “Nonresident Alien” with respect to the “United States”. Treasury Decision 2313 in addition, declared as did the Court, that the Union Pacific Railroad Company was a “Domestic Corporation” with respect to the "United States" (i.e. its territorial jurisdiction).
12. The Complaint filed by Mr. Brushaber demonstrated that he was a nonresident of the "United States", residing instead in the State of New York, in the borough of Brooklyn and a

¹³ 240 U.S. 1.

Citizen thereof. His principal place of business being in the borough of Manhattan. He owned stocks and bonds issued by the Union Pacific Railroad Company, upon which a cash dividend was declared to him by said company, a domestic corporation of the "United States". Union Pacific was chartered by an Act of Congress for the territory of the federal state of Utah, in order to build a railroad and telegraph line and other purposes. It is a matter of public record that the Union Pacific Railroad Company was a domestic "United States" corporation, of the federal state of Utah, residing in the District of Columbia, with its principal place of business in Manhattan, New York. The Corporation was created by an Act of the "United States" Senate and House of Representatives. Under the exclusive authority granted by the Constitution for the United States at Article 1, §8, Clause 17 on July 1, 1862 by the 37th Congress.¹⁴ Considering the foregoing res judicata on the matter of the diversity of citizenship of the two parties, clearly Mr. Brushaber was a "nonresident alien with respect to the United States". Brushaber had income from sources "within" said "United States". His income derived from the Union Pacific Railroad Company, a corporate citizen created by Congress and residing "within" the "United States" i.e. the District of Columbia.

*"...[A] domestic corporation is an artificial person whose residence or domicile is fixed by law within the territorial jurisdiction of the state which created it. That residence cannot be changed temporarily or permanently by the migrations of its officers or agents to other jurisdictions. So long as it is an existing corporation its residence, citizenship, domicile, or place of abode is within the state, which created it. It cannot reside or have its domicile elsewhere; neither can it in legal contemplation be absent from the state of its creation."*¹⁵ [Emphasis added]

Related cases are Hylton v. United States, 3 U.S. (3 Dall.) 171 (1796: Hylton was a Congressman; his salary was income from sources "within" the "United States". See also Springer

¹⁴ 2nd Session, as recorded in the Statutes At Large, December 5, 1859 to March 3, 1863 at Chapter CXX, page 489.

¹⁵ [Fowler v. Chillingworth, 113 So. 667, 669 (1927)]

v. U.S. 102 U.S. 586 (1881): Springer, a Virginia Citizen, operated a carriage business in the District of Columbia.

13. The first paragraph of the Secretary's Treasury Decision is quoted here as follows:

(T.D. 2313)

Income Tax

Taxability of interest from bonds and dividends on stock of domestic corporations owned by nonresident aliens, and the liabilities of nonresident aliens under Section 2 of the act of October 3rd 1913.

To collectors of internal revenue:

Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway [sic] Co., decided January 24, 1916, it is hereby held that *income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax* imposed by the act of October 3, 1913. [Emphasis added]

14. The above decision by the Secretary of the Treasury determined that a tax on income derived from rents, sales of property, wages, professions, or a trade or business "within" the "United States" was applicable to such "income" when payable to a nonresident alien, i.e. a Union State Citizen.
15. "Domestic" in the "United States" statutes mean inside the District of Columbia, possessions, territories and enclaves of the "United States", i.e. federal states of which there are 14. All income tax provisions under 26 U.S.C. Subtitle A (an excise tax on "income"), are divided between sources "within" and "without" the "United States". They are taxes imposed upon the worldwide income of citizens of the "United States" and aliens residing therein. This provision of the code applies to nonresident aliens of all species; receiving income from sources "within" said "United States". As well as within the other parts of the American Empire which fall within the exclusive legislative jurisdiction of the Congress of the "United States", pursuant to Article 1, §8, Clause 17 and Article 4, §3, Clause 2.

CONSTITUTIONAL AUTHORITY GRANTED TO CONGRESS

16. The Constitution grants to Congress the power to act for the 50 Union States as an international representative and to do so “without” (outside) the boundaries of each of those 50 States. These powers are expressed in Article 1, § 8, and Clauses’ 1 thru 16.
17. The Constitution specified to Congress the seat of government, known as the District of Columbia. In time, Congress created a government for the "District" and this "District" became a federal state by definition. (For the other federal "states" of the "United States" see Exhibit #) However, this "state" (District of Columbia) is not "united" by or under the Constitution for the United States of America. The District has never joined the Union although several unsuccessful attempts have been made to achieve this end.
18. Furthermore, the Constitution granted to Congress the authority to govern the "District", just as the Legislatures of each of the several States of the Union govern their States within the geographical limits of those States. As Congress began to legislate for the "District", under authority of Article 1, §8, Clauses’ 17 and 18, the difference between the citizens of the "District" and the Citizens’ of the Union became apparent. The citizens of the "District" did not possess the right of suffrage or other rights retained by the Citizens of the Republic States (see Balzac, De Lima and Downes, supra,) and were therefore not recognized as a part of the Sovereign Body of "We the People". The Constitution for the United States of America provided no means of taxing these “District” citizens of the "United States." A method was found by forming municipal governments and of exercising municipal taxing authority over these citizens within the territories of the "United States" as was decided by “The Insular Cases” (see Bidwell, supra.)

“The Constitution was made for States, not territories,” wrote Daniel Webster. “...[T]he Constitution of the United States as such does not under it extend beyond the limits of the States

which are united by and under it..." wrote author Langdell in "The Status of Our New Territories", 12 Harvard Law Review 365, 371.

19. Judicial note should be taken, that the United States Constitution always denoted Citizen and Person in capital letters prior to the 14th Amendment, thereafter citizen and person were not capitalized. The distinction between "citizens of the United States" and "Union State Citizens" has been fully recognized by the Congress and the Courts as follows:

*"We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect."*¹⁶ [Emphasis added]

The Federal Government is a "state".¹⁷

Foreign State. A foreign country or nation. The several United States are considered "foreign" to each other except as regards their relations as common members of the Union. [Black's Law Dictionary, Sixth Edition, page 1407]

20. Congress identifies these citizens of the "District" as "individuals" or citizens who reside in the "United States" and who are subject to the direct control of Congress in its local taxing and other municipal laws.

21. In *De Lima*, supra, the U.S. Attorney defined federal taxes with the following words, at page 99-108:

"Federal taxation is either general or local. Local taxes are levied under Article 1, Section 8, Paragraph 1, local taxes are for the support of territorial or non-state governments."

Congress imposed a federal excise tax on the "income" of these citizens or "individuals" at 26 U.S.C., § 1, as a local municipal tax. Such taxes are not for the common welfare of the

¹⁶ [*United States v. Cruikshank*, 92 U.S. 588, 540 (1875)]

¹⁷ [*Enright v. U.S.*, D.C.N.Y., 437 F.Supp 580, 581]

United States of America but are to defray the expense of the government of the locality. In the dual position which Congress occupies in our system of Federal Government and as local municipal government for the territory of the United States not ceded by the States of the Union, Congress has the power to tax for local purposes. [De Lima, supra, page 99] Hence the term "from sources within" the United States". General taxes are of two kinds, direct; and what, for brevity may be called indirect, meaning thereby duties, imposts, and excises. Direct taxes must be uniform on all the States alike. [De Lima, supra, page 100]

22. A Citizen of one of the 50 States, residing therein, is a nonresident alien with respect to this local municipal taxing power of Congress (see Brushaber, supra.) Outside the geographical area of the "United States" as that term is defined¹⁸ Congress lacks power to support the local Municipal Government of the District by imposing a tax on the incomes of nonresident aliens. (Ones' outside the locality, i.e. Citizens of the 50 States). UNLESS they reside within that jurisdiction by residence, or UNLESS the source of their income is situated WITHIN that geographical territory. The "withholding agent" must withhold any income arising from sources therein at the source,¹⁹ or unless the recipient is engaged in a trade or business WITHIN. For a full understanding of this local taxation, (see pages 55 and 99-108 of De Lima, supra.) For confirmation of the domestic municipal jurisdiction of the "United States" (see Downes, supra, at pages 383-388.)

23. Congress has control of these "individuals", whether they "reside" WITHIN the "United States" territorial states, or WITHOUT the "United States". These "individuals" i.e. born within the jurisdiction of Congress, such as a citizen born in the District of Columbia or in one of the territories). Whether they reside within "United States" territories, or without the

¹⁸ 26 C.F.R. 1.911-2(g)

¹⁹ T.D. 2313, 26 C.F.R. 871, and 26 U.S.C. 1461

"United States" in the "foreign countries" as defined,²⁰ or abroad, are still liable for the federal income tax unless they abrogate that citizenship by naturalization or otherwise.²¹ However ²² Congress has exempted from taxation all "foreign earned income" of these citizen individuals, except for Puerto Ricans.²³

24. Another species of nonresident alien, are those citizens of contiguous countries such as Mexico, Canada and other foreign sovereign nations. These foreigners, residents or nonresidents, as the case may be, are subject to the tax on incomes received from any place within the American Empire, i.e. in these united States of America and in the "United States". A Union State Citizen previously nonresident may lose his nonresident status by residing within the territorial sovereignty of the "United States" for 183 days.²⁴ Thereby becoming subject to the local municipal tax on incomes received from sources within and without the "United States" (i.e. worldwide income). The Income Tax is a local Municipal Tax, imposed "within" the "UNITED STATES". Plaintiffs are strangers to this locality.

**DEFINITIONS IN 26 U.S.C.
THE INTERNAL REVENUE CODE**

25. The definitions used in 26 U.S.C. are very clear in defining "State" and "United States". In every definition that uses the word "include" or "including", only the words that follow are defining of the term. For example:
26. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.²⁵

²⁰ 26 C.F.R. 1.911-2(h)

²¹ 26 C.F.R. 871-5, 6 and 12 and 1.932-1

²² 26 U.S.C. 911(a)(1)

²³ 26 C.F.R. 1.932-1(b), IRS Form 2555

²⁴ 26 C.F.R. 1.871-71(d)(2).

²⁵ Title 26 U.S.C. 3121(e) (1)

27. United States. -- The term "United States" when used in a geographical sense includes only the States and the District of Columbia.²⁶

28. The federal government has used these definitions correctly, albeit torturously. But its agents of the Internal Revenue Service and the Department of Justice seem to erroneously assume or willfully distort the definitions meaning of the 50 States of the Union (America). The agents look at the word "States" in 26 U.S.C. 7701(a)(9), much the same as would Three Blind Men describing an Elephant climbing a Tree. "None are so blind as they that will not see."

29. It would be disingenuous for Congress to use the common everyday meaning of the terms "United States" or "State", as do the Defendants. When talking about the tax laws and many other laws that are enacted under the local municipal authority of the "United States" government within and for the District of Columbia, Congress always defines the term.

30. It is important to understand the limits of the definitions. Where a definition uses examples to set the limits of whatever is being defined, the definition can be expanded to include only other things in the class so defined. In other words, in the term "animal" if defined by using German Shepherd, Collie, or Pit Bull as examples, the term would apply only to canines. For purposes of the Internal Revenue Code, the general application of the definition of the terms "include" and "Including" at 26 USC§7701 (c) is useful:

(c) Includes and Including: The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

31. A Latin principle of law addresses the matter;

"Inclusio unius est exclusio alterius: The inclusion of one is the exclusion of another". "The certain designation of one person is an absolute exclusion of all others." ²⁷ Blacks Law Dictionary, 6th Edition

²⁶ Title 26 U.S.C. 7701(a) (9)

32. This doctrine decrees that where law expressly describes a particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded.²⁸
33. The following congressional Acts reveal the crafty, illusory way, with which the federal government uses correct English and how Congress changes the meanings of words by using “word art” definitions. For example, all the United States Code definitions had to be changed to allow Alaska and Hawaii to join the Union of States united under the Constitution. When Alaska joined the Union, Congress added a new definition of "States of the United States".²⁹ This definition had never appeared before, to wit:

*Sec. 48. Whenever the phrase "continental United States" is used in any law of the United States enacted after the date of enactment of this Act, it shall mean the 49 States on the North American Continent and the District of Columbia, unless otherwise expressly provided.*³⁰ [Emphasis added]

Where is it otherwise expressly provided?

Answer:

Sec. 22. (a) Section 2202 of the Internal Revenue Code of 1954 (relating to missionaries in foreign service), and sections 3121(e)(1), 3306(j), 4221(d)(4), and 4233 (b) of such code (each relating to a special definition of "State") are amended by striking out "Alaska".

(b) Section 4262 (c) (1) of the Internal Revenue Code of 1954 (definition of "continental United States") is amended to read as follows: "(1) Continental United States. – The term 'continental United States' means the District of Colombia and the States other than Alaska."

When Hawaii was admitted to the Union, Congress again changed the above definition, to wit:

²⁷ *Burgin v. Forbes*, 293 Ky. 456, 169 S.W. 2d 321, 325

²⁸ *Kevin McC v. Mary A*, 123 Misc. 2d 148, 473 N.Y.S. 2d 116, 118

²⁹ Omnibus Acts at 86th Congress, 1st Session, Volume 73, 1959, and 2nd Session, Volume 74, 1960, Public Laws 86-70 and 86-624.

^{22.} cf. 1 USCS 1, "Other Provisions"

Sec. 18. (a) Section 4262 (c)(1) of the Internal Revenue Code of 1954 (relating to the definition of "continental United States" for purposes of the tax on transportation of persons) is amended to read as follows: "(1) Continental United States. -- The term 'continental United States' means the District of Columbia and the States other than Alaska and Hawaii."

WHAT ARE THE STATES OTHER THAN ALASKA AND HAWAII?

34. They certainly cannot be the other 48 States united by and under the Constitution, because Alaska and Hawaii at that point in time just joined the Union. The same definitions apply to the Social Security Act. So, what is left? Answer: the District of Columbia, Puerto Rico, Guam, Virgin Islands, Northern Mariana Islands, etc. These are the States of (i.e. belonging to) the "United States" and which are under its sovereignty and exclusive political jurisdiction. Do not confuse this term with States of the Union, because the word "of" means "belonging to" in this context.

35. Congress can also change the definition of "United States" for two sentences and then revert back to the definition it used before those two sentences. This is proven in Public Law 86-624, page 414, under School Operation Assistance in Federally Affected Areas.

Affected Areas, section (d)(2): "The fourth sentence of such subsection is amended by striking out "in the continental United States (including Alaska)" and inserting in lieu thereof "(other than Puerto Rico, Wake Island, Guam, or the Virgin Islands)" and by striking out "continental United States" in clause (ii) of such sentence and inserting in lieu thereof "United States" (which for purposes of this sentence and the next sentence means the fifty States and the District of Columbia)". The fifth sentence of such subsection is amended by striking out "continental" before "United States" each time it appears therein and by striking out "including Alaska."

36. This one section standing alone, contains all the evidence needed by the words of its construction, proving the term "United States" on either side of these sentences, do not mean the 50 States united by and under the Constitution. If that is not convincing then review the following:

26 C.F.R. 31.3121(e) -1 State, United States, and citizen.

(a) When used in the regulations in this subpart, the term "State" includes [in its restrictive form] the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, **the Territories of Alaska and Hawaii before their admission as States**, and (when used with respect to services performed after 1960) Guam and American Samoa.

(b) When used in the regulations in this subpart, the term

"United States", when used in a geographical sense, means the several states, (including the **Territories of Alaska and Hawaii before their admission as States**), the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. When used in the regulations in this subpart with respect to services performed after 1960, the term "United States" also includes [in its expansive form] Guam and American Samoa when the term is used in a geographical sense. The term "citizen of the United States" includes [in its restrictive form] a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa. [Emphasis added]

Please note the bolded terms. In paragraph (a), Alaska and Hawaii only fit the definition of "State" before joining the Union. That means the definition of "State" was never meant to be the 48 now 50 States of the Union unless distinctly expressed.

If paragraph (b) clouds' men's mind's so they can not see, the following is submitted:

37. The word "geographical" was never used in tax law until Alaska and Hawaii joined the Union and it is not defined in the Internal Revenue Code. So, we must use the definition found in the Standard Random House Dictionary:

ge.o.graph.i.cal 1. of or pertaining to geography 2. or pertaining to the natural features, population, industries, etc., of a region or regions.

38. Were you born in the "United States"? The preposition "in" shows that the "United States" in this question is a place, a geographical place named "United States". It is singular, even though it ends in "s". It also can be plural when referring to the Union States, which are places, which exist by agreement.

Every human in a nation is a natural Citizen of a place called a nation, if he was born in that nation. Those same people must be naturalized (born again) if they want to become a citizen of another nation. Original citizenship exists because of places, not agreements. This is what is referred to as *Jus soli*, the law of the place of one's birth.³¹ Here are two questions, your own answers to which will prove the status distinction. In a geographical sense, where is the State of Minnesota located on the American Continent? In a geographical sense, where is the "United States", (Congress) located on the American Continent?

39. Additional supporting argument is found in legislation written by Congress to solve a problem caused by the admission of Alaska and Hawaii to the Union. Since typewriters were purchased by the government from the areas that had just joined the Union, namely Alaska and Hawaii, according to Title 1 USC, Congress was required to use a term that is NOT used in the Internal Revenue Code, in order to buy the same typewriters from the same geographical area:

Sec. 45. Title 1 of the Independent Offices Appropriation Act, 1960, is amended by striking out the words "for the purchase within the continental limits of the United States of any typewriting machines" and inserting in lieu thereof "for the purchase within the STATES OF THE UNION AND THE DISTRICT OF COLUMBIA OF ANY TYPEWRITING MACHINES". [Emphasis added]

The Supreme Court obviously understands the distinction of citizenship for purposes of declarations made under penalties of perjury. The Court approved the statute,³² which separately defines declarations to be made by citizens made WITHIN and WITHOUT the "United States" as follow:

If executed WITHOUT the United States: I declare ... under the laws of the United States of America that the; foregoing is true and correct. [Emphasis added]

³¹ Blacks Law Dictionary, Sixth Edition, page 863

³² 28 U.S.C. §1746

If executed WITHIN the United States, its territories, possessions, or commonwealths: I declare ...that the foregoing is true and correct. [Emphasis added]

The latter declaration above is the declaration found on IRS Form 1040 and similar IRS forms.

And, 28 USC 1603(a)(3) states as follows:

(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title ...

Section 1332 (d). The word "States" as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Examples of Two Definitions of the term "United States" in 26 U.S.C.

First Definition:

40. Title 26 U.S.C. 7701(a) (9):

(9) United States. -- The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

Second Definition:

41. Title 26 U.S.C. 4612(a) (4) (A):

(A) In general. -- The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. [Emphasis added]

42. The Supreme Court clarified the issue in Hepburn & Dundas v. Ellsey,³³ stating that the District of Columbia is not a "State" within the meaning of the Constitution. Therefore it is apparent that the meaning of the term "States" in the first definition above can only mean the territories and possessions belonging to the "United States", because of the specific mention

³³ 6 U.S. 445, 1 Cranch 445, 2 L.Ed 332

of the District of Columbia and the specific omission of the 50 States.³⁴ The District of Columbia is not a "State" within the meaning of the Constitution, therefore the 50 States are specifically excluded from this first definition of the term "United States".

43. Congress has no problem naming the "50 States" when it is legislating for them, so, in the second definition of the term "United States" above, Congress expressly mentions them and there is no misunderstanding. If a statute in 26 U.S.C. does not have a special "word of art" definition for the term "United States", then the first Definition of the term "United States" is always used (see above) because of the general nature of that term as defined by Congress. English Grammar is inflexible and any use of the language in violation of the law of grammar is a fraudulent use of the English language. The total abandonment of grammatical discipline may be found in many of the Internal Revenue Services Forms.³⁵ (Exhibit #)
44. When citizens or residents of the first "United States" are without the geographical area of this first "United States", their "compensation for personal services actually rendered" is defined as "foreign earned income".³⁶

911(b) Foreign Earned Income.

(d) (2) Earned Income.

(A) In general. -- The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

45. A citizen or resident of the first "United States" does not pay a tax on his "compensation for personal services actually rendered" while residing outside of the first "United States",

³⁴ *inclusio unius est exclusio alterius*

³⁵ Form 668-A Notice of Levy.

³⁶ 26 U.S.C., § 911(b) and 911(d)(2)

because Congress has exempted all such compensation from taxation under 26 U.S.C., Section 911(a)(1), which reads as follows:

911(a) Exclusion from Cross Income. -- ... [T]here shall be excluded from the gross income of such individual, and exempt from taxation ... [1] the foreign earned income of such individual....

46. When residing without (outside) this "United States", the citizen or resident of this "United States" pays no tax on "foreign earned income", but is required to file a return, claiming the exemption.³⁷ (Exhibit #)
47. Title 26 C.F.R., Section 871-13 (c) permits the District citizen to abandon his citizenship or residence in the "United States" by residing elsewhere.
48. Title 26 C.F.R. Section 1.911-2(g) defines the term "United States" as follows:

(g) United States. The term "United States" when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the states, [Puerto Rico, Guam, Mariana Islands, etc.] the District of Columbia, the possessions and territories of the United States, the territorial waters of the United States, the airspace over the United States, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law ...

This term "state" evidently does not embrace one of the 50 States of which Plaintiff is a free inhabitant, united by the Constitution, because they are separate governments or foreign states with respect to the "United States", District of Columbia, its territories, possessions and enclaves. None of the 50 united States comes under the sovereignty of the "United States" and subsection (h) defines the 50 States united by the Constitution as "foreign countries":

(h) Foreign country. The term "foreign country" when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States.³⁸

³⁷ IRS Form 2555

³⁸ 26 C.F.R. 1.911-2(h)

All of the 50 States are foreign with respect to each other and are under the sovereignty of their respective Legislatures, except where a power has been expressly delegated to Congress. The Citizens of each Union State are foreigners and aliens with respect to another Union State unless they establish a residence therein under the laws of that Union State. Otherwise, they are nonresident aliens with respect to all the other Union States.

49. The regulations at 26 C.F.R. Section 1.1-1 (a) state, in pertinent part:

(a) General Rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by Section 871(b) or 877(b), on the income of a nonresident alien individual.

Title 26 U.S.C. § 1 imposes a tax on "taxable income" as follows, in pertinent part:

There is hereby imposed on the taxable income of ... every married individual ... who makes a single return jointly with his spouse under section 6013...

50. The regulations promulgated to explain 26 U.S.C. Section 1 are found in 26 C.F.R., Section 1.1-1, and state in pertinent part:

(a) General Rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by Section 871(b) or 877(b), on the income of a nonresident alien individual.

Please note that the term "taxable income" is not used as such in the above statute because the "income" of those classes of individuals mentioned is taxable as "taxable income".

Section 1.871 Classification and manner of taxing alien individuals

(a) Classes of aliens. For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens.

(b) Classes of nonresident aliens.

(1) In general. For purposes of the in-come tax, nonresident alien individuals are divided into the following three classes:

(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States,

(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under Section 1.871-9 to be engaged in a trade or business in the United States, and

(iii) NOT APPLICABLE (concerns residents of Puerto Rico)

51. Title 26 C.F.R., Section 871-13 states as follows:

(a) In general. (1) An individual who is a citizen or resident of the United States at the beginning of the taxable year but a nonresident alien at the end of the taxable year, or a nonresident alien at the beginning of the taxable year but a citizen or resident of the United States at the end of the taxable year, is taxable for such year as though his taxable year were comprised of two separate periods, one consisting of the time during which he is a citizen or resident of the United States and the other consisting of the time during which he is not a citizen or resident of the United States.

NONRESIDENT ALIEN

52. The federal Income tax is a local municipal tax for the "United States" designed to support local government. In order for an individual, a State Citizen of the Union States to become liable for this tax, he/she must be a resident therein (i.e. a resident alien). Or receive income from sources therein, or be engaged in a trade or business therein or receive income from a source of an excise taxable event.

53. In 26 U.S.C., Section 7701(b) (1) (A) and (B), Congress defined the statutory difference between "resident alien" and "nonresident alien" as follows:

(b) Definitions of Resident Alien and Nonresident Alien.

(1) In general. -- For purposes of this title

(A) Resident Alien. -- An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence. – Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence. - Such individual meets the substantial presence test of paragraph (3)

(iii) First year election. -- Such individual makes the election provided in subparagraph (4)

(B) Nonresident Alien. -- An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A))

54. Plaintiffs are not "residents" as that term is defined in the above statutes nor are they citizens of this "United States". They are nonresident aliens as that term is defined in subsections (B) and (A)(i), (ii), and (iii), and they have the same status as had the Plaintiff in *Brushaber, supra*.

INDIVIDUALS REQUIRED TO MAKE RETURNS OF INCOME

55. The following individuals are required to make returns of income:

26 CFR Section 1.6012-1. Individuals are required to make returns of income.

(a) Individual citizen or resident.---

(1) In general. ...an income tax return must be filed by every individual...if such individual is...

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof,
or

(iii) An alien bona fide resident of Puerto Rico during the entire taxable year.

56. (Your name and Wife) clearly are not defined in the above statutes, but are defined in the following statute as ones that are not required to make a return.

57. Title 26 C.F.R., Section 1.6013-1 states:

(b) Nonresident Alien. A joint return shall not be made if either the husband or wife at any time during the taxable year is a nonresident alien.

Mr. (Your name) and Mrs. (Wife name) are nonresident aliens with respect to the "United States", with no income derived from sources within the "United States" with no source income derived from excise taxable events.

58. Title 26 C.F.R., § 871-7 states, in pertinent part, as follows:

Except as otherwise provided in Section 1.871-12, a nonresident alien individual to whom this section applies *is not subject to the tax imposed by section 1 or section 1201(b) 5*, but, pursuant to the provision of section 871(a), is liable to a flat tax of 30 percent upon the aggregate of the amounts determined under paragraphs (b), (c), and (d) of this section which are received during the taxable year *from sources within the United States*. [Emphasis added]

59. Please note 26 C.F.R., Section 1.871-4(b), proof of residence of aliens, which establishes a key legal presumption:

(b) Nonresidence presumed. An alien by reason of this alienage is presumed to be a nonresident alien.

60. Further facts are illustrated by the definition of "withholding agent" at 26 U.S.C. Section 7701(a)(16):

Withholding agent. -- The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

61. Title 26 U.S.C. Section 1441 refers to nonresident aliens who receive income from sources within the "United States", as set forth in Section 871(a)(1). The other sections do not apply to the Plaintiffs.

62. Your attention is invited to 26 C.F.R., Section 31.3401(a)(6)-1 (b), which states as follows:

Remuneration for services performed outside the United States. Remuneration paid to a nonresident alien individual for services performed outside the United States is excepted from wages and hence is NOT SUBJECT TO WITHHOLDING. [Emphasis added]

63. As a rule, military retirement pay of a nonresident alien individual is exempted from the income tax at 26 C.F.R., Section 31.3401(a)-1(b)(1)(ii), with the following exception:

Where such retirement pay or disability annuity ... is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid to a nonresident alien individual who is a resident of Puerto Rico.

and at 26 C.F.R., Section 935-1(a)(3):

[F]or special rules for determining the residence for tax purposes of individuals under military or naval orders, see section 514 of the Soldiers' and Sailors' Civil Relief Act of 1946, 50 App. U.S.C. 574. The residence of an individual, and, therefore, the jurisdiction with which he is required to file an income tax return under paragraph (b) of this section, may change from year to year.

Section 574(1) of The Soldiers' and Sailors' Relief Act states that:

For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of *which such person is not a resident or in which he is not domiciled* ... personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession or political subdivision, or district.

[Emphasis added]

AUTHORITY FOR THE COURT TO ISSUE THE INJUNCTION

64. In Botta v. Scanlon,³⁹ the Court set forth the general exceptions to the bar⁴⁰, stating:

"... [I]t has long been settled that this general prohibition is subject to exception in the case of an individual taxpayer against a particular collector where the tax is clearly illegal or other special circumstances of an unusual character make an appeal to equitable remedies appropriate."⁴¹

The Court then gave a number of examples as follow:

"(a) Suits to enjoin collection of taxes which are not due from the plaintiff but, in fact, are due from others. For example, see Rafael v. Granger, 3 Cir. 1952, 196 F.2d 620, 622....

³⁹ 288 F.2d 504 (2nd Circuit, 1961)

⁴⁰ 26 U.S.C. §7421

⁴¹ National Foundry Co. of N.Y. v. Director of Int. Rev., 2nd Cir. 1956, 229 F.2d 149, 151.

"(b) Cases in which plaintiff definitely showed that the taxes sought to be collected were "probably" not validly due. For example, Midwest Haulers Inc. v. Brady, 6 Cir. 1942, 128 F.2d 496, and John M. Hirst & Co. v. Gentsch, 6 Cir. 1943, 133 F.2d 247.

"(c) Cases in which a penalty was involved. For example, Hill v. Wallace, 259 U.S. 44, 42 S.Ct 453, 66 L.Ed, 822; Lipke v. Lederer, 259 U.S. 557, 42 S.Ct. 549, 66 L.Ed. 1061; Regal Drug Corporation v. Wardell, 260 U.S. 386, 43 S.Ct 152, 67 L.Ed 318; Alien v. Regents of the University System of Georgia, 304 U.S. 439, 58 S.Ct 980, 82 L.Ed 1148.

"(e) Cases based upon tax assessment fraudulently obtained by the tax Collector by coercion. For example, Mitsukiyo Yoshimura v. Alsup, 9 Cir. 1948, 167 F.2d 104 "(141 F.Supp. at page 338).

[4] In the present case, if any of the plaintiffs are not subject to any tax liability, such plaintiff might well be within the exception stated in 9 Mertens, law of Federal Income Taxation, Section 49.213, Chapter 49, page 226, as follows:

"[2] It is equally well settled [sic] that the Revenue laws relate only to taxpayers. No procedure is prescribed for a nontaxpayer where the Government seeks to levy on property belonging to him for the collection of another's tax, and no attempt has been made to annul the, ordinary rights or remedies of a non-taxpayer in such cases. If the Government sought to levy on the property of A for a tax liability owing to B, A could not and would not be required to pay the tax under protest and then institute an action to recover the amount so paid. His remedy would be to go into a court of competent jurisdiction and enjoin the Government from proceeding against his property." In Tomlinson v. Smith, 7 Cir, 1942, 128 F.2d 808 ... the Court affirmed an order granting interlocutory injunction and noted the "distinction between suits instituted by taxpayers and non-taxpayers" (at page 811)

CONCLUSION

Plaintiffs are in no way subjected to any derivative liability for the Districts local municipal tax. The procedures set forth in 26 C.F.R. do not authorize the Secretary or his delegate to manufacture income and tax it where a Person is without the taxable class. Title 26 C.F.R., § 871 is not shrouded in fog, in that where there is no income from sources within the "United States" by a nonresident alien, the choice is delegated to that Person by

Congress as to whether a return is to be filed or not.⁴² This is why the system is repeatedly referred to as a voluntary compliance system. Where the Secretary determines the existence of taxable income when there has been no return, he should sign the substitute return and assume the responsibility for the determination.⁴³ Treasury Decision 2313 explains that the withholding agent is responsible for withholding the tax from sources within the "United States", for filing a Form 1040NR and for paying over the tax withheld from said nonresident alien.⁴⁴ Therefore, no penalties should accrue to the Plaintiffs.

Plaintiffs were not aware of the information contained in this Memorandum of Law during the early years of their lives and reported "earned income" from their labor in the foreign States of the Union, and paid a local municipal tax of the "United States". This fact in no way subjects' them to liability to the present day, nor does that fact in anyway change their status as Citizens of one of the Republic Union States. Nor does it change their status from nonresident aliens to the "individual" defined in 26 C.F.R., Section 1.1-1. Nor does it justify the Secretary's actions, taken when the Plaintiffs knowing their true status, repeatedly informed him through his agents the Internal Revenue Service, of said status. The Secretary is *presumed to function in good faith*, much, as is the criminal defendant *presumed innocent*. The Secretary is required to know the law he is administering. He is to administer said laws with justice and equality within the parameters mandated by Congress. By the Secretary's action in ignoring the law, once administratively noticed by the plaintiff, the mantel of presumed "good faith" wears perilously thin and any *good faith immunity, lost*.

Defendant United States (IRS), have not filed any Financing Statement UCC-1, with the Secretary of State of (Name), evidencing a claim against the Plaintiff. The Uniform

⁴² 26 C.F.R. §1.871-8

⁴³ 26 U.S.C. 6020(b)(1)

Commercial Code requires the filing of the U.C.C. 1 Form to verify the existence of any Claim arising under the Uniform Commercial Code against someone. The existence of a Claim under the U.C.C. is based upon the existence of a Contract between two parties and the only reason for any court action is a controversy caused by one party's breach of contract. Filing a U.C.C.-1 Form verifies the existence of a Contract of Claim. The absence of such U.C.C.-1 filing is evidence of the non-existence of any Contract or Claim against the Plaintiff and therefore no controversy can exist and the Defendant United States (IRS) alleged claim has no legal sufficiency.

The Executive branch of government, the Congress and the Courts, all discourage arbitrary and malicious actions of their agents, to do otherwise would sanction tyranny. Pursuant to Federal Rule of Evidence 301, the burden now rests with the Defendants to bring forward evidence in rebuttal of any facts stated by the Plaintiffs herein.

Respectfully submitted,

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, to the best of my knowledge and belief.

Executed on this () day of (Month, Year).

(Your Name)

(Wife Name)

⁴⁴ Treasury Decision 2313 and 26 C.F.R. 1.1461-3