

by Dan Meador, 2003

## Examination Request

July 20, 2003

POSTAL CERTIFICATION NO: \_\_\_\_\_

Mike Birdsong, State-Federal Liaison Officer  
Oklahoma City Post of Duty  
Internal Revenue Service  
55 N. Robinson  
Oklahoma City, Oklahoma 73102

IDENTIFICATION: John Doe, SSN 555-55-5555;

SUBJECT: Request for examination decision to determine requirement to keep books and records and file returns or collect taxes imposed by Subtitles A & C of the Internal Revenue Code and/or qualified state income tax;

YEARS AT ISSUE: Calendar years ending December 31, 1994 through 2003;

ENCLOSURE: Status & Disclosure Affidavit of Material Facts;

CURRENT ISSUES: I have received Letter 2050 notices for calendar years 1994, 1997 and 1999 from offices in Cincinnati, Ohio and Bensalem, Pennsylvania.

Dear Mr. Birdsong:

It appears that Internal Revenue Service personnel responsible for examination and collection procedure are operating under color of law. Most particularly, I've been deprived of examination due process requirements secured by the Administrative Procedures Act and IRS procedural regulations at 26 CFR § 601.105. To date facts and law that make me a person liable for keeping books and records and filing returns, or for collecting any tax imposed by internal revenue laws of the United States, have not been affirmatively established in record. Without satisfying these procedural requirements, initiatives of IRS personnel are void – per the Supreme Court of the United States, notice and the opportunity to be heard are essentials of administrative as well as judicial due process of law. Contested naked claims have no lawful effect unless or until all contested matters of fact and law are affirmatively resolved. The hard-copy case file, when assembled at an Oklahoma examination office, will verify that IRS examination personnel deprived me of rights and remedies prescribed in IRS procedural regulations published at 26 CFR § 601.105.

In spite of extensive research, I have been unable to determine whether or not I am liable for income and employment taxes imposed by Subtitles A & C of the Internal Revenue Code and qualified state resident and nonresident income taxes subject to state-federal piggybacking agreements authorized by 31 CFR Part 215, or if I am required to collect any of the taxes. Therefore, I need Internal Revenue Service assistance in determining if I am liable for any given tax imposed by Subtitles A & C of the Internal Revenue Code, or if I am required to collect taxes imposed by Subtitles A & C, and what qualified state income tax I am personally liable for or am required to collect.

Per 26 CFR § 601.201(a)(1), "It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration, as to their status for tax purposes and as to the tax effects of their acts or transactions."

Because I have been unable to determine liability on my own, I am submitting this examination request in order to secure a comprehensive decision that of necessity will include findings of fact and conclusions of law. Therefore, please forward this request to an examination officer located in Oklahoma. I would submit the request directly but I have been unable to locate a directory that identifies IRS office functions, divisions and personnel, and personnel responsibilities, in Oklahoma. You are required by one-step service policy to assist by forwarding this request to IRS personnel responsible for resolving matters at issue (IRS Policy Statement

P-6-13).

Enclosed you will find my Status & Disclosure Affidavit of Material Facts. The affidavit has been notarized by a notary public commissioned by the state so it qualifies as testimony under both state and federal rules of procedure and evidence. The testimony concerning my status, sources of income, etc., is being submitted to satisfy requirements of 26 U.S.C. § 7602(a)(3): “For the purpose of ascertaining the liability of any person for any internal revenue tax or collecting any such liability, the Secretary is authorized – (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.”

Per 26 CFR § 601.105(b)(1), “The original examination of income estate, gift, excise, employment, exempt organization, and information returns is a primary function of examiners in the Examination Division of the office of each district director of internal revenue” Even though IRS eliminated district offices in October, 2000, the U.S. Constitution secures my right to resolve cases and controversies within the state and district where I live and conduct my affairs.

Issues framed by the following questions incorporate assorted collateral challenges such as Internal Revenue Service standing and subject matter jurisdiction within States of the Union. For example, since Congress did not legislatively create the Internal Revenue Service, it is obvious that IRS is not the delegate of the Secretary of the Treasury, as the term “delegate” is defined at 26 U.S.C. § 7701(a)(12)(A), and since the Secretary of the Treasury has never established internal revenue districts in States of the Union, as required by 4 U.S.C. § 72, 26 U.S.C. § 7621, 3 U.S.C. § 301 and Executive Order #10289, as amended, IRS bears the burden of proving standing, venue and subject matter jurisdiction – standing, which is the threshold element of subject matter jurisdiction, and venue are fact issues that must affirmatively appear in the record. Therefore, the examination officer to whom this request is assigned will want to request a national office technical advice memorandum to determine law applicable to facts stated in my affidavit (26 CFR § 601.105(b)(5)). Per 26 CFR § 601.105(b)(5)(ii)(b), “District directors are encouraged to request technical advice on any technical or procedural question that develops during an audit or examination” In the event a national office technical advice memorandum is requested, the examination officer is required to provide notice. See 26 CFR § 601.105(b)(5)(iii) generally. Notice necessarily requires statements of fact and law being submitted. See 26 CFR § 601.105(b)(5)(iii)(b).

National office technical advice memorandums are defined at 26 CFR § 601.105(b)(5)(i)(a):

(5) Technical advice from the National Office--(i) Definition and nature of technical advice. (a) As used in this subparagraph, "technical advice" means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon request of a district office in connection with the examination of a taxpayer's return or consideration of a taxpayer's return claim for refund or credit. It is furnished as a means of assisting Service personnel in closing cases and establishing and maintaining consistent holdings in the several districts. It does not include memorandums on matters of general technical application furnished to district offices where the issues are not raised in connection with the examination of the return of a specific taxpayer.

Issues raised in questions below cannot reasonably be resolved by front-line examination personnel who are not attorneys versed in the evolution and peculiarities of tax law. The national office technical advice memorandum, under authority of 26 U.S.C. §§ 6103 & 6110, is the device prescribed for that purpose.

While I may or may not have a theory concerning liability for income and employment taxes imposed by Subtitles A & C of the Internal Revenue Code, at this time I am not submitting points and authorities memoranda as to do so would mire the resolution process in needless haggling. There are currently so many theories concerning proper application of income and employment taxes that wading through them to decide which is correct and which is incorrect is an almost insurmountable proposition. To date I haven't found a federal court decision that comprehensively treats most issues raised by my questions. However, I reserve the right to contest and/or appeal IRS findings of fact and conclusions of law.

The enclosed affidavit may be construed as an information return for purposes of 26 CFR § 601.105(b)(1) and 26 U.S.C. § 6011.

The examination office decision, whether supported by a national office technical advice memorandum or not, must comply with requirements of 5 U.S.C. §§ 556(d) & (e):

(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.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

Until such time as there are findings of fact and conclusions of law to warrant examination of books, records and other items, my testimonial affidavit is sufficient. To the best of my knowledge and belief, fact statements concerning my status and sources of income are adequate to determine whether or not I own taxable items or am or have been involved in taxable activity or transactions within an internal revenue district of the United States.

IRS efforts to secure information other than status and disclosure statements included in my affidavit, whether from me or third parties, must satisfy all four elements of the Powell test: Inquiries, whether by summons or otherwise, (1) must be based on a legitimate purpose, (2) must seek information relevant to that purpose, (3) must seek information not already in IRS possession, and (4) all prior administrative steps required by the Internal Revenue Code and Treasury regulations must be satisfied. See *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

The first requirement to establish a legitimate purpose is to demonstrate application of implementing regulations that require me to keep books and records and file returns, or to collect any given tax imposed by Subtitles A & C of the Internal Revenue Code. Findings of fact and conclusions of law must demonstrate how such regulations apply to my status and fact circumstance. See particularly, 26 U.S.C. § 6001:

§ 6001. Notice or regulations requiring records, statements, and special returns.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a). (Underscore added for emphasis)

To confirm the assertion that it is mandatory for implementing regulations to be promulgated by the Secretary (Commissioner in past times), consult *California Bankers Assn. v. Schultz*, 39 L.Ed. 2d 812 at 820: "Because it has a bearing on some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone." In *U.S. v. Murphy*, 809 F. 2d 1427 at 1430 (9<sup>th</sup> Cir. 1987), following California Bankers Association rationale, the court said "The reporting act is not self-executing; it can impose no reporting duties until implementing regulations have been promulgated." In *U.S. v. Reinis*, 794 F.2d 506 at 508 (9<sup>th</sup> Cir. 1986) the court said, "An individual cannot be prosecuted for violating this Act unless he violates an implementing regulation. The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other." *U.S. v. Mersky*, 361 U.S. 431, 4 L.Ed. 2d 423, 80 S.Ct. 459 (1960), agreed with in *Leyeth v. Hoey, supra*, *U.S. v. \$200,00 in U.S. Currency*, 590 F.Supp. 866; *U.S. v. Palzer*, 745 F.2d 1350 (1984); *U.S. v. Cook*, 745 F.2d 1311 (1984); *U.S. v. Gertner*, 65 F.3d 963 (1<sup>st</sup> Cir. 1995); *Diamond Ring Ranch v. Morton*, 531 F.2d 1397, 1401 (1976); *U.S. v. Omega Chemical Corp.*, 156 F.3d 994 (9<sup>th</sup> Cir. 1998); *U.S. v. Corona*, 849 F.2d 562, 565 (11<sup>th</sup> Cir. 1988); *U.S. v. Esposito*, 754 F.2d 521, 523-24 (1985); *U.S. v. Goldfarb*, 643 F.2d. 422, 429-30 (1981). "For Federal tax purposes, the Federal Regulations govern. *Lyeth v. Hoey*, 1938, 305 U.S. 188, 59 S.Ct. 155, 83 L.Ed.

119,” quoted in *Dodd v. U.S.*, 223 F.Supp. 785 (1963).

Unless or until a person liable for keeping books and records and filing returns, or for collecting a tax, receives notice by regulations applicable to the person’s status and fact circumstance, or direct written notice, there is no liability under Internal Revenue laws of the United States, or for qualified state income tax subject to a state-federal piggybacking agreement authorized by 31 CFR Part 215. Internal Revenue Code § 6011(a) speaks to the matter:

§ 6011. General requirement of return, statement, or list.

(a) General rule. When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations. [Underscore added for emphasis]

To the point the examination officer to whom this request is assigned provides written findings of fact and conclusions of law that comply with requirements of 5 U.S.C. §§ 556(d) & (e), the examination will be by correspondence only. However, the hard-copy case file should be assembled at the Oklahoma office where the examination officer is located so I can examine it or secure the file ledger and contents from the local disclosure officer. As required by 5 U.S.C. § 552, the examination officer to whom this request is assigned should notify me of receipt and the estimated time for returning a decision within 20 calendar days after you’ve forwarded it to the appropriate office. You will please notify me of disposition within 20 days of receiving the request.

The following questions are submitted for examination resolution for years specified above:

1. What class or classes of tax are at issue, i.e., what taxing and liability statutes, along with implementing regulations, make me a person liable for keeping books and records and filing returns for any given tax imposed by internal revenue laws of the United States? (Sixth Amendment right to know the nature and cause of the action; see requirement for notice at 26 U.S.C. §§ 6001 & 6011(a))
2. What statute or statutes, along with implementing regulations, require me to collect income and/or employment taxes imposed by Subtitles A & C of the Internal Revenue Code? (Sixth Amendment right to know the nature and cause of action; see requirement for notice at 26 U.S.C. §§ 6001 & 6011(a))
3. What qualified state resident or nonresident income tax administered under a state-federal piggybacking agreement authorized by 31 CFR Part 215 am I liable for? (See 5 U.S.C. § 5517 & Executive Order #11997)
4. Does transfer of obligations of the United States, whether in the form of Federal Reserve Notes or bank credits hypothecated on credit of the United States (public money), constitute payment of debt or deferred payment until a future date yet to be determined?
5. Does deferred payment constitute gross income, as defined by the Internal Revenue Code? (26 U.S.C. § 61)
6. Does deferred payment constitute taxable income, as defined by the Internal Revenue Code? (26 U.S.C. § 63)
7. Is determination of the previous three questions predicated on laws of the United States applicable in States of the Union or Acts of Congress applicable solely in territories and insular possessions of the United States? (See “laws of the United States” designation in the “arising under” clause in Article III § 2 of the Constitution of the United States distinguished from “Acts of Congress” in 28 U.S.C. § 1366 and application of “Acts of Congress” to territories and insular possessions of the United States in the former Rule 54(c) of the Federal Rules of Criminal Procedure)
8. What internal revenue district, established in compliance with requirements of 4 U.S.C. § 72, 26 U.S.C. § 7621, 3 U.S.C. § 301 and Executive Order #10289, is the situs of the taxable articles, activities and/or transactions from which the alleged taxable income was derived?
9. What delegated authority, whether statutory or otherwise, does IRS have for administering the class or classes of tax at issue? (See 5 U.S.C. § 558(b); see also, 26 U.S.C. §§ 6301, 7701(a)(12)(A) & 7805(a))
10. What “officer, employee, or agency of the Treasury Department [or] other officer of the United States” is

the delegate of the Secretary for purposes of collecting income and employment taxes imposed by Chapters 1, 2 and 21 of the Internal Revenue Code in States of the Union? (26 U.S.C. §§ 6301, 7701(a)(12)(A) & 7805(a))

11. What order, agreement, contract or other legal document or device does the Internal Revenue Service have that authorizes examination and collection activity on behalf of the “delegate” of the Secretary, as defined at 26 U.S.C. § 7701(a)(12)(A), in States of the Union? See § 1001(b)(2) of P.L. 105-206, 5 U.S.C. § 552 and 26 U.S.C. §§ 6301 & 7805(a).
12. What is the geographical limitation (venue) of IRS statutorily authorized delegated authority for administering the class or classes of tax at issue? (See 4 U.S.C. § 72; see also, 26 U.S.C. §§ 6301, 7701(a)(12)(B) & 7805(a))
13. What evidence of facts, documentary or otherwise, does IRS have that establishes liability for the class or classes of tax at issue? (Sixth Amendment right to know the cause of action; see also, administrative due process requirements at 5 U.S.C. §§ 556(d) & (e))
14. What testimony (affidavits) does IRS have verifying evidence of liability for the class or classes of tax at issue? (Sixth Amendment right to confront adverse witnesses; see also, administrative due process requirements at 5 U.S.C. §§ 556(d) & (e))
15. What fact and/or expert witnesses will IRS rely on to verify facts and law that establish liability for any given class of tax that is lawfully administered by the Internal Revenue Service? (Sixth Amendment rights to confront adverse witnesses and compel testimony; see also, administrative due process requirements at 5 U.S.C. §§ 556(d) & (e))
16. What regulation, with a currently valid Office of Management and Budget number, requires me to keep books and records and file returns? The conclusion must be based on facts specified in the enclosed affidavit or alternative facts that IRS personnel have sufficient evidence to prove. (Paperwork Reduction Act; see OMB number listings at 26 CFR § 602.101)
17. Based on facts set forth in the enclosed affidavit, or alternative facts IRS has sufficient evidence and testimony to prove, what federal income tax return am I required to file? (See 26 CFR §§ 1.6091-1 through 1.6091-4; per 26 CFR § 602.101(b), the only OMB number listed, #1545-0089, specifies income tax returns required to be filed with the Director of International Operations. See OMB number listing at 26 CFR § 602.101)
18. Based on facts set forth in the enclosed affidavit, or alternative facts IRS has sufficient evidence and testimony to prove, what return for qualified state income tax am I required to file? (See 31 CFR Part 215, 5 U.S.C. § 5517 & Executive Order #11997)

Please note that in my affidavit, I deny having signed the Form 870 examination agreement form (26 CFR § 601.105(b)(5)(i)(e)) or any other waiver, agreement or consent form. I was never notified of the right to pursue resolution of contested matters of fact and law via a national office technical advice memorandum or any other IRS instrument that satisfies requirements of 5 U.S.C. §§ 556(d) & (e). Therefore, the examination officer or officers responsible for initial examination proceedings deprived me of procedural due process rights secured by the Administrative Procedures Act and Internal Revenue Service examination procedure published at 26 CFR § 601.105. All subsequent IRS proceedings are therefore void and should be retracted, terminated, rescinded or otherwise vacated and nullified.

For national office technical advice publication, standard omissions prescribed by 26 U.S.C. §§ 6103 & 6110 are adequate.

Please be advised that in the event you and a state-based examination officer fail to timely respond, I reserve the right to initiate an appeal, per 5 U.S.C. § 552 & 26 CFR § 601.103(c), or if there is no response within 31 days from the date you receive this request, apply for shelter of a Taxpayer Assistance Order (26 U.S.C. § 7811; Internal Revenue Manual Part 13).

Regards,

John Doe