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David P. Fontaine

AFFIDAVIT IN RESPONSE TO SUMMONS

REFERENCES:

1. Summons from Internal Revenue Officer Scott Blanchard
2. Documents in Massachusetts Federal Civil Case # 30080-MAP
3. Affidavit dated April 14, 2000, filed with the IRS

VIA CERTIFIED MAIL TO:

Scott Blanchard, Revenue Officer # 04-03878
Internal Revenue Service
Boland Federal Building
1550 Main St., Room #113
Springfield, MA 01103-1472

The filing of this Instrument with specific governmental administrative agencies, in this case, the **Federal Internal Revenue Service** (hereinafter referenced as **IRS**), renders all such "persons", as well as the above named employee, responsible and liable for the contents herein. It is the duty of each and every District Director, revenue agent, special agent, office-holder, and all other IRS employees, to forward this Instrument onto any "person" or "persons" who may directly or indirectly affect this matter, purpose and intent relevant to the inherent rights of David P. Fontaine, so construed for the protection against any erroneous enforcement of the 50 Titles of the **United States Code** (hereinafter referenced **USC**) and the **Code of Federal Regulations** (hereinafter referenced **CFR**), respectively (See Executive Order 12776, 8/23/91, entitled, "CIVIL JUSTICE REFORM.").

The pronouns "you" and "your", as used throughout this entire Legal Instrument, refer to each and every person and department listed above.

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I. Overview

This document contains my legal basis regarding your summons and the meeting you have set up at 10:00 am. on September 29th, 2005.

Please understand that I am 100% American; I firmly believe this Country is the best place on Earth. I completely support the government's need for revenue, however "The end does not justify the means". The "end" can never justify the "means". No matter how vital revenue is to government, **"We, the People" have "certain Unalienable Rights" (Freedom)**, which can never be compromised.

certain - as the sun rising every morning

Unalienable – cannot be lost through misapplication of law, procedure, misunderstanding, or trick

Rights – Natural-born, not given to us by government, but Constitutionally guaranteed to us and protected by government

Please understand that I bear you no malice personally, but neither will I allow myself to be persuaded by deception or force into paying a "tax" which I now know does not apply to me. Therefore and until you can prove otherwise, I am not a "taxpayer", nor an "individual" who is required to file a tax return, nor was I a "taxpayer", nor an "individual" who was required to file a tax return for the years 1999, 2000, and/or 2001. This is based on the fact that I did not engage in a privileged activity for which I could be assessed an "income tax". My "gross income" from which to base the amount of such a tax was \$0.00, legally substantiating my action not to file a return for those years (reference your Instruction Booklet on minimum Gross Income). Since my "gross income" (from privileged activities) was zero, I have no tax liability.

Your summons is based on fraudulent tax assessments and collection actions. Since I legally did not file, you took it upon yourselves to file "for me". You took on the responsibility to accurately file. Instead, you fabricated a document containing fraudulent data, violating your oath and committing Fraud. All of your other documents sent to me only serve to perpetuate this Fraud and escalate your actions into Extortion. I have sent numerous documents, dating back to April 2000, disputing your data. You have not once justified your fraudulent claims.

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The data contained in this document directly informs you of my legal basis, which summarizes 7 years of my personal research. I urge you to examine it carefully. You may think you are legally justified, but do not base your next actions on your assumptions. "Ignorance is no excuse for the Law". You can be held personally responsible in a Court of Law for numerous criminal charges, as listed herein. Your failure to take positive action on my behalf to correct the fraudulent assessments also constitutes criminal action.

I suggest you examine the documents you used to fabricate your initial fraudulent assessment(s), from which you must be basing all of your subsequent (fraudulent) actions. Those document(s) and/or your initial assessments directly contradict the Case Law cited herein. I did not prepare those document(s). I did not send them to you. They are not my responsibility. Since you relied on them, their accuracy is your responsibility. You are required by law to correct your data. You need to re-examine your basis for summoning me.

In order to properly defend myself, I require the following information:

1. Your summons states that I am "required to appear". Am I, or is a "taxpayer" required to appear? Is "required" an accurate term? If so, what authority do you have to require me (not a "taxpayer") to appear and what jurisdiction are you representing? This is notification that I am not a "taxpayer", not within jurisdiction of 26 USC "income tax", and therefore not legally bound by your summons.
2. Am I being summoned to a Court or to your office to "give testimony"? In either case, it appears that you are requiring me to "give testimony" about myself. You will be violating my 5th Amendment Constitutional Right not to be a witness against myself.
3. When you initially assessed me, you fabricated "income" as a target for "income tax". What "Privileged" activity did I engage in that became the source of this (these) fabricated number(s)?
4. Is this meeting for the purpose of collecting the alleged tax you claim I owe for year(s) 1999, 2000, and/or 2001?

Please forward to me a letter rescinding your fraudulent tax claims, or else produce the documentation with legal references, properly signed, answering my questions and defining the exact activity which I engaged in, that required me to file a tax return for these years, or required me to pay an "income tax" for these years.

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Your documents/actions have fraudulently labeled me as a taxpayer and fraudulently downgraded my "UNALIENABLE Rights". You insinuate my "Rights as a Taxpayer" in IRS Publication 1, which you have included with every document you have sent; however, I am not a "taxpayer". I refute the applicability of these diminished rights. I am a Sovereign American and exert all RIGHTS protected under the Constitution of the United States. It is your primary duty (sworn oath) as a federal government employee/agency to also protect my SOVEREIGN RIGHTS.

I have supplied you with the information contained herein. You are now fully informed. I believe you are misapplying your limited power over "taxpayers" to solicit information from me, based on your fraudulent tax bills. I believe you do not have jurisdiction; you have escalating fraudulently based claims created by your other employees (Conspiracy).

Scott Blanchard, you are one of the few IRS employees who actually signed any of the many documents I have received from the IRS. I find that fact puzzling, in itself. You are personally, directly responsible for this matter now. I will be including you in any future Criminal or Civil Court proceedings, should they become necessary. Please investigate all of this matter for yourself, very carefully. My research is accurate. It matters not what the IRS has been doing for 80 plus years. The IRS has stolen my property, and you are perpetuating the theft.

I require written response to this document before September 29th, 2005. If you require additional time, please inform me in writing before this time. Once I receive answers to the information I requested, I require 30 days additional time to prepare my defense, should one be necessary. In your written response to my questions, please include a new date and time for a meeting, if one is legally necessary.

If you supply legal justification, I will meet with you, but under threat, duress, and/or coercion. It will not be voluntary, as I firmly believe you are presently conspiring to defraud me of my Rightful property. This is based on your persistence to apply 26 USC income taxation/collection on my "Right to Labor", directly contradicting the Legal Basis I have included herein. I declare that the only activity I have ever engaged in is my "Right to Labor"; it is not a "Privilege"; and therefore it cannot be taxed as one. I will be bringing an audio recorder to any meeting. I will have a person accompany me as a witness to any meeting. I may also bring a Lawyer.

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II. Declarations

I, David P. Fontaine, the undersigned, do hereby avow and certify that I am the natural born State Citizen making this affidavit; and if called upon as a witness, I will testify to the following facts, which I believe to be true and accurate to the best of my knowledge and understanding. I do Lawfully Affirm as follows this date:

A. State Citizenship / Residence

I am a NATURAL-BORN, FREE adult Citizen of the Massachusetts Republic by birth, thus of America, and an inhabitant of the Massachusetts Republic, thankfully endowed by our Creator God with Unalienable Rights enumerated in America's founding organic documents. I am a member of the Posterity defined in the Preamble to the Constitution for the united States of America (1791), having full rights and immunities of such specified State Citizen.

I was born in Massachusetts, a child of parents whose ancestors had migrated to the united States. The Constitution acknowledges my citizenship and my right to change it as I move from one of the States to another. (US Constitution 4:2 – “The Citizens of each State shall be entitled to all Privileges and Immunities of the Citizens of the several States”)

I am a (Sovereign) Citizen of a State. The united States did not give me my American citizenship. I possess citizenship in this nation as a derivative right by virtue of my birth in a State. As a Citizen, both the territory and the government of the united States belong to me as comprising a portion of the body known as "the people."

My citizenship is mine as an inherent and unalienable right (defined by the Declaration of Independence) which preceded the adoption of the Constitution. (US Constitution 2:1, 2:4, and 4:2; Van Valkenburg v. Brown, 43 Cal. 158.) and cannot be modified or controlled by the federal government. A (Sovereign) Citizen is any person who is a Citizen of the united States under the provisions of the Declaration of Independence. (Declaration of Independence, Paragraph 2: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness...")

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I reject any implication that I am a foreigner in Massachusetts State, although I believe that I am a nonresident alien to the political jurisdiction of the United States.

Let all to whom this Affidavit is sent be aware that I am NONE of the following:

- A citizen or resident of Washington, D.C., any enclave, territory, or insular possession of the United States, or of the United States as those terms are used in the 14th Amendment, the Internal Revenue Code, or the Regulations
- An immigrant to America
- A naturalized citizen of any country
- A person who is subject to the jurisdiction of the United States
- A person held to service or otherwise in any position of villeinage
- A natural resource or other form of property of the United States
- A taxpayer
- A person subject to any INDIRECT INCOME tax described in the Internal Revenue code
- A person indebted on any LEGAL outstanding tax obligation to the United States
- An employee, officer or agent of the United States or of any State
- A fiduciary agent of a nonresident alien
- A person engaged in, or receiving income from any trade or business subject to regulation by the United States, or from any government contract
- A citizen of the United States who is living abroad and receiving foreign earned income
- A person with an Internal Revenue Account
- A person with a Social Security Account or Number; any number the government connects with me under such designation is the property of the government, not of myself
- A knowing, willing, and intentional volunteer into either the Social Security System or the Internal Revenue Tax System

B. Jurisdiction

I am not "subject to" the territorially-limited "exclusive Legislation" and its foreign jurisdiction mandated for Washington, D.C., etc. in our U.S. Constitution's Article 1:8:17-18. I have given no such "WAIVERS of Constitutional Rights" by "knowingly intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences", as is required (Brady v. U.S., 397 U.S. 742 at 748).

I am non-resident to, and not within the "State of the forum" of 26 USC, Subtitle A. I do not live, work, conduct any "trade or business", or profession, nor have I earned income in, or from, any source within the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, or any federal enclave, instrumentality or other territory within or belonging to the United States, having its origin and jurisdiction from Article I, Section 8, Clause 17 of the Constitution of the United States. I am a private, natural born Citizen of, and domiciled in, one of the several states of these United States of America.

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I am not now, nor have I ever been, a citizen of the United States or a resident of the State, as defined in the illegal 14th Amendment that created a second class of citizen, which are statutory subjects under the municipal jurisdiction of Congress, wherever they are resident. Any allegations to the contrary of entering such status are made without my full knowledge and consent; they are obtained through fraud, deceit, misrepresentation and/or coercion, and are hereby repudiated by this Affidavit.

I have never with knowingly intelligent acts waived any of my Constitutionally guaranteed Rights and I freely choose to obey all American Law and pay all Lawful taxes in jurisdictions applicable to me for the common good. I stand in Proper Person with Assistance, Special. The foregoing, including my STATUS and Unalienable Rights (U.S. Constitution Article 1:2:3, 2:1:5, 3:2:1, and 4:2:1), are not negotiable.

With all of the above in mind, it appears that this private Citizen is by Law, as "Foreign" and "Non-Resident Alien" to the Article 1:8:17-18's Washington, D.C., as to another country.

C. "Right to Labor"

I have researched the UNITED STATES income tax laws, the statutes, codes, case law, and other legal/lawful documents. In-depth research has convinced me of the data contained herein.

Referencing my Legal Basis herein, it is **my good faith belief that**:

- I am a person who has engaged only in my Sovereign Right to Labor, my fundamental property, to support my family and myself. The "fruits of my own Labor", my income from this activity, is also my Property. My "Right to Labor" is essential to existence and therefore necessary and unavoidable. The income from this activity is also essential to existence and therefore necessary and unavoidable. This activity cannot be taxed as a Privilege. The income from this activity (property) cannot be taxed as a Privilege.
- Your "Income Tax" is an "indirect tax", synonymous with "Excise Tax" and "Privilege Tax". There is no misunderstanding this. It is crystal clear in Case Law cited herein.

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- “Income” is not the subject of “income tax”. A “Privileged Activity” is the subject of “income tax”. The income generated from a “Privileged Activity” is used as a measurement to determine the amount of “income tax”. There is no misunderstanding this, either. It is crystal clear in Case Law cited herein.
- Since the target of “income tax” is “Privileged” activities, the “income” stipulated in Your Instruction Booklet and on your forms can only legally be income from “Privileged” (avoidable) activities. I have not previously participated in, nor presently participate in any “Privileged” activity, therefore my “gross income” used to determine the amount of “income tax” is zero. Per your Instruction Booklet, I am not a person legally required to file any Federal Income Tax Return. I can find no law, statute, regulation, or federal register citation, applicable to me, imposing a tax liability or legal requirement for me to file such “income tax” forms for the only activity I’ve ever engaged in, my “Right to Labor”.
- By its very definition, an “Excise” (“Privilege”) Taxable activity must be avoidable. My repeated written requests for information (Petitions) documented back to April, 2000, remain unanswered. You have not defined any privileged activity which I could have engaged in which would then subject me to an “income tax”. Failing to supply a clear list of “Privileged” activities, you have ensured that it is impossible for me to avoid them.
- Since you do not define what activities are “Privileged” (avoidable), I cannot avoid them. There can be none. I cannot be a “taxpayer”.
- Since I have no “privileged” activity subject to taxation, I cannot be a person subject to any “income tax”. Again, I cannot be a taxpayer. Your fraudulent assessment cannot make me something I am not.
- You cannot tax something as a “Privilege” unless it is first a “Privilege”.
- The “Right to Labor” is not a “Privilege”; therefore, it cannot be taxed as a “Privilege”.
- I am not a person who previously engaged in, or presently engages in, any “Privileged” activity, which would make me liable for an “income tax”. I have not had, nor presently have, any privileged activity income for which an “income tax” could be calculated.

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- I have not knowingly participated in a "Privileged" activity; therefore I have not become a "taxpayer". Furthermore, requiring me to complete and sign your "Income Tax Form" directly violates my 5th Amendment Right not to be a witness against myself.
- Your income tax assessments/presentments mailed to me for the years 1999, 2000, and 2001 are fraudulent. Since I had no "Privileged" activity for these years, I had no "Privileged" activity income. My "Gross Income" subject to this "income tax" for these years is zero. There can be no tax.
- I am not liable for your fraudulently based income tax presentments. The use of penalties, interest, and liens constitutes escalation of your fraudulent tax assessment to an act of Extortion. Your refusal to supply the information requested in numerous documents constitutes Dereliction of Duty. The persistence to execute collection of these fraudulent assessments, considering the information I sent you numerous times over the past 5 years, is Harassment and Willful Blindness. The documented fact that you continue to shuffle my file around the country is Incompetence.
- By assessing me, you are claiming that I participated in a "Privileged" activity, without my express knowledge of doing so. You assume I engaged in "Privileged" activities, but have no legal basis. You unconstitutionally applied your "income tax" assessment/collection process to me (Abuse of Power), fraudulently downgrading my Sovereign "UNALIENABLE RIGHTS" to a subject Citizen, a second classification of Citizen, a 2nd class citizen (a taxpayer), who now has a reduced set of rights ("taxpayer rights"), as stipulated in your Publication 1. There is no Constitutional authority for 2 classifications of Citizen. There is only one class, "We, the People".
- You fabricated taxable income where no such thing existed (fraudulently extended Constitutionally limited power to tax), and then executed collection actions (extorted payment) under reduced "taxpayer rights" procedures.

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- I declare your use of redefinition and complicated tax law language to be part of a fraudulent scheme and a direct assault on my Constitutionally protected "Unalienable Rights" as a Natural Born Citizen. I further declare that the misrepresentation of "withholding" from my wages as REQUIRED is FRAUD. I declare that you have not properly represented the loss of "**Unalienable Rights**" in your presentation of income tax laws on your forms and instruction booklets.
- I cannot participate in, nor validate any existing income tax forms. You have fraudulently represented them. There is NO law that would or can require me to participate in, or perpetuate Fraud.
- In lieu of the above, I cannot find any legal IRS documentation or procedures pertaining to my natural born status, my "Right to Labor", or my "Right to the Fruits thereof".
- I would have no current tax liability whatsoever, except for my having signed various documents (i.e. employer withholding) and filed various IRS forms, wherein I unwittingly volunteered to pay income taxes and assessed myself. Since all of these documents were prepared without my awareness that my "Right to Labor" and the "Fruits thereof" are not subject to this indirect taxation, and that I was not required by any law applicable to myself to prepare or file these returns, or that such returns would constitute a waiver of my right to refuse to give evidence against myself, or that the verification of such a return was inappropriate for one such as myself who is "**without the United States**", I am entitled to be protected against the consequences of my misunderstanding (UCC sec. 3305(2)(a) and (c)).
- On April 14, 2000, I filed an Affidavit with you revoking all of my signatures on all your forms I had previously filed. Your fraudulent assessments then followed. The Affidavit dated April 14, 2000, and this Instrument is prima facie evidence that I am not required, nor have any legal or lawful duty to file or make any federal Individual Income Tax Return or forms; nor do I have any outstanding income tax bill or obligation from any prior year(s).

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- Due to your shrewd entrapments, over the years I have unwittingly signed many of the related documents or contracts, some even under the "perjury" jurat as was supposedly required. I hereby again REVOKE all such past signatures and render them null and void, except for those that I choose to have measured as being under "TDC" (threat, duress and/or coercion) and/or "without prejudice" (per UCC 1-207). This is also my Lawful Notice that all such signatures of mine in the future, with such governmental sources, are to be considered as under "TDC" and/or "without prejudice", whether appearing therewith or otherwise, including banks, licenses, etc.. So be it, respectfully demanding that my UNALIENABLE RIGHTS defined by the DECLARATION OF INDEPENDENCE and my Constitutional "Privileges and Immunities" (Article 4:2) are apart from 1:8:17-18's Washington, D.C., and shall not by Law be violated ever.
- **You FRAUDULENTLY enforce (ABUSE OF POWER) Indirect Taxation (Income Taxation) on my "Right to Labor" and /or "Right to the Fruits Thereof". You FRAUDULENTLY confiscated portions of my property and are using EXTORTION (threats of penalties, interest, liens, summons, etc) to illegally confiscate more. You are using EXTORTION to force compliance with FRAUDULENTLY represented INDIRECT TAXATION POWER. You are actively violating my Constitutionally protected Rights, threatening my Liberty, inhibiting my "Pursuit of Happiness", and performing numerous other criminal and civil violations.**

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D. Exemption of Property, Assets, and Possessions

I do hereby declare the exemption of all of my real property, and other assets and possessions, from any and all claims of government, whether federal, state, or local, based upon any purported "income tax" claims, demands, liabilities, penalties, interest, liens, levies, or other encumbrances of similar import, which have no application to me, and I do hereby assert all of the Exemptions to which I am entitled under the Constitution and Laws of Massachusetts State, the Constitution and Laws of the United States, and by reason of all other applicable laws and principles, whether arising by common law, statute, precedent, or otherwise, and I do further assert and claim all other Rights and Exemptions appertaining to me by reason of my Status as a Massachusetts State citizen, specifically including the Rights and Status more particularly set forth herein. I do also hereby cancel, rescind and revoke all of those documents, signatures and actions which through inadvertence, fraud (United States v. Throckmorton, 98 US 1, 65, 66), or mistake (UCC sec. 3305), have placed me in that system and otherwise subjected me to tax liabilities not applicable to Citizens of my Status (to wit: a Sovereign), exercising my "Right to Labor" as hereinabove set forth.

E. Obstruction of Justice

Since April 14, 2000, I have asked for each and every claim of jurisdiction and/or authority the IRS enjoys and/or otherwise claims to have over me, to include constitutional, statutory, contract and/or merchant law(s). Said information is necessary to enable me to adequately defend my personal property and myself; thus protecting my right to due process and equal protection. Failure to supply the requested information will be treated as "OBSTRUCTION OF JUSTICE".

I am informed and believe that you are operating under a secret jurisdiction and, as such, are operating unlawfully. Without knowledge of jurisdiction, I cannot and do not know under which jurisdiction I must prepare my defense. By keeping me insulated from knowledge of jurisdiction, you have, in effect, insulated me from my rights to due process, equal protection, and access to the courts, in which I desire to redress my grievance(s). Such is a violation of 42 USC 1983 and/or 18 USC 241 and 242, under which sections this Sovereign will sue, should this matter prevail.

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Should you claim contract/law jurisdiction, I do hereby demand to know what contract (including, but not limited to, title date, witness(es) thereto, and all parties thereto) I have knowingly and willfully entered into to provide any such alleged jurisdiction. Also, please take notice that should any contract(s) currently exist I DO HEREBY REVOKE MY SIGNATURE ON ANY AND ALL SUCH CONTRACTS AND DO CHALLENGE THEM.

PLEASE TAKE NOTICE that I do challenge your jurisdiction and/or authority in this matter, and do further revoke any and all signatures I have placed on any and all document(s) which are in effect with your agency.

I HAVE NEVER VOLUNTEERED AND DO NOT WISH TO VOLUNTEER MY INVOLVEMENT WITH YOUR AGENCY OR ANY OF ITS SUBDIVISIONS; ANY SUCH DEALINGS ARE WITHOUT MY EXPRESS KNOWLEDGE AND CONSENT, AND, AS SUCH, ARE UNLAWFUL.

It is a principle of law that, once challenged, the person asserting jurisdiction must prove that jurisdiction to exist as a matter of law.

See: Griffin v. Matthews, 310 F. Supp. 341, 423, F. 2d 272
McNutt v. G.M., 56 S.Ct. 789, 80 L.Ed. 1135
Basso v. U.P.L. 495 F. 2d 906
Thomson v. Gaskiel, 62 S.Ct. 673, 83 L.Ed. 111.

Supported by "the supreme Law of the Land" (Constitution 6:2), I Lawfully "squarely challenge" the fraudulent, usurping entanglement of JURISDICTION/AUTHORITY (cited above) which does not apply to me (ref: Hagan v. Lavine (1974), 415 U.S. 528 at 533). It is therefore now mandatory for any personnel of Article 1:8:17-18's "IRS" to first prove its "jurisdiction" if any over me before any further procedures can take place in my regard (5 USC 556(d)); or else its personnel and accomplices willfully violating this can, and shall be personally charged as citizens under 18 USC 241, 242, 1001 and/or otherwise.

Please note that jurisdiction was challenged in April, 2000, has been challenged numerous times since, and has now been challenged again. By this and the supporting documents, I require your written proof of jurisdiction.

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F. Slavery, Involuntary Servitude

I have never received an accurate "income tax" assessment from any government agency. It is the responsibility of the Secretary of the Treasury to accurately complete a tax assessment (26 USC 6201).

My "**Right to Labor**" (Property) has been fraudulently debited an outrageous amount of "income tax" (**over-taxation and "taxation without representation"**), **enslaving** me to save all of my receipts; study all of the tax procedures; determine all of the correct forms to use, and fill out every one of them completely and accurately; and sign the forms, allowing you to prosecute me for any inaccuracy or misunderstanding of the extremely complex rules (**witness against myself**). You have stolen property from me, are attempting to steal whatever I have left, and are **forcing** me to reprove that it rightfully belongs to me.

G. Criminal / Civil Charges

The PRIVACY ACT of 1974, makes provisions for litigation against the IRS. Subsection (g)(1)-(5) of the Privacy Act creates injunction and tort type actions against the agency involved.

Specifically, an individual has the right to seek an injunction ordering the production of any agency record allegedly improperly withheld from the individual; in addition, an individual may seek an injunction ordering the agency to amend an individual's record in accordance with their request.

Tort actions may also be brought for damages for the willful and intentional failure by an agency to maintain personally identifiable records accurately, relevantly and in a timely and complete fashion where an adverse determination has been made by an agency against the individual; the Act further provides for a tort suit for damages occasioned where an agency improperly releases information about an individual without consent. In general, See USAM 1-5000. SPECIAL AGENTS HANDBOOK, TITLE 6, TAX DIVISION.

The following is a partial list of charges you may face:

- US Constitution Violation of 1st, 4th, 5th, 8th, 13th Amendments
- 18 USC 242 Deprivation of rights under color of law
- 42 USC 1981 Equal rights under the law
- 42 USC 1983 Civil action for deprivation of rights
- 18 USC 245(b)(1)(B) Federally protected activities – interference/Intimidation of individuals in pursuit of activity administered by US
- Violation of Constitutional Taxation Power – non-uniform indirect taxation, Excess taxation, Double / Triple Taxation, illegal taxation, illegal tax collection procedures
- 18 USC 1584 Sale into involuntary servitude
- 18 USC 1001 Statements or entries generally
- 18 USC 1341 Frauds and swindles
- 18 USC 1957 Engaging in monetary transactions in property derived from specified unlawful activity
- 18 USC 4 Misprision of felony
- 42 USC 1985 Conspiracy to interfere with civil rights
- Conspiracy to commit fraud
- 18 USC 241 Conspiracy against rights
- 18 USC 872 Extortion by officers or employees of the United States
- Conspiracy to commit extortion
- 18 USC 876 Mailing threatening communications
- 18 USC 1512 Tampering with a witness, victim, or an informant
- 18 USC 1513 Retaliating against a witness, victim, or an informant
- 18 USC 3 Accessory after the fact

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- 18 USC 2075 Officer failing to make returns or reports
- 18 USC 2315 Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps
- Article VI, Cl 2 & 3 Dereliction of duty
- Willful blindness
- 42 USC 1986 Action for neglect to prevent
- Neglect of Human Decency

III. Legal Basis

My legal basis is Case Law. Quoted on point, in context, and verbatim, it is outlined below.

A. There are only 2 classes of taxes, direct and indirect.

“In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises.”

Brushaber v. Union Pac. R. R. Co., 240 U.S. 1, 13, 36 S. Ct. 236, 60 L. Ed. 493 (1916).

B. As a result of the 16th Amendment, the Income Tax is definitely an indirect tax.

“The 16th Amendment conferred no new power of taxation but simply prohibited the income tax from being taken out of the category of indirect taxation to which it inherently belonged...”

Stanton v. Baltic Mining Co., 240 U.S. 103.

“One adverse criticism upon [Cook’s claim] is that it is clearly established that since the adoption of the Sixteenth Amendment, an income tax is never a direct tax. The effect of that change in the Constitution was to take a tax upon income derived from sources which had therefore made it a direct tax, out of that category, and put it in the class of excises, duties, and imposts.” Cook v. Tait, Collector of Internal Revenue, 286 Fed. 409, at 412 (D.C. Md. 1923) (citations omitted), aff’d 265 U.S. 47, 44 S. Ct. 444, 68 L. Ed. 895 (1924)

“Income taxes are classified as duties, imposts and excises or, in other words, indirect taxes and, therefore, must be uniform.” Apache Bend Apts. Ltd., v. United States, 702 F. Supp. 1285, 295 (n.D. Tex. 1988).

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This “effect of the 16th Amendment was also expounded upon by respected law encyclopedias of that era. See, e.g., Ruling Case Law, Volume 26, Taxation, Section 119, at page 146 (1929); Corpus Juris, Volume 33, Internal Revenue, Section 46, note 37(c), page 295 (1924).

C. Thus being classified as indirect, the income tax is an excise tax.

“The tax is, of course, an excise tax, as are all taxes on income, but it is not rendered void on that account” *White Packing Company v. Robertson*, 89 F.2d 775, 779 (4th Cir. 1937).

“The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges, which is measured by reference to the income which they produce. The income is not the subject of the tax, it is the basis for determining the amount of the tax.” Congressional Record, Volume 89, Part 2, page 2580 (78th Congress, First Session, March 27, 1943).

“Brushaber and the Congressional Record excerpt do indeed state that for constitutional purposes, the income tax is an excise tax. This statement is reiterated in *Stanton*, and *Flint* discusses the scope of the term ‘excise tax’” *United States v. Gaumer*, 972 F.2d 723, 725 (6th Cir. 1992).

“Therefore it can be clearly determined from the decisions of the United States Supreme Court that the income tax is an indirect tax, in the nature of an excise tax.” American Law Division of the Congressional Research Service, Library of Congress, Report No. 80-19A (1980)

D. Indirect taxes (which include excises) cannot be laid upon property.

“Excises are ‘taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.’” *Flint v. Stone Tracy co.*, 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389 (1911)

“The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods, which may be the same, whether done by corporations or individuals.” *Flint v. Stone Tracy co.*, 220 U.S. 107, 31 S.Ct. 342, 55 L.Ed. 389 (1911)

“A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax” *Tyler v. United States*, 281 U.S. 497, 502, 50 S.Ct. 356, 74 L.Ed. 991 (1930)

E. An Individual's own labor is his property.

“The property which every man has is his own labor, as it is the original foundation of all other property” *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 4 S.Ct. 652, 28 L.Ed. 585 (1884).

“The right to follow any of the common occupations of life is an inalienable right, it was formulated as such under the phrase 'pursuit of happiness' in the declaration of independence, ...” *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 4 S.Ct. 652 (1884).

F. The income from an Individual's own labor is also his property.

“Included in the right of personal liberty and the right of private property —partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.” *Coppage v. Kansas*, 236 U.S. 1, 14, 35 S.Ct. 240, 59 L.Ed. 441 (1915).

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G. An excise tax is a privilege tax.

“The terms excise tax and privilege tax are synonymous.” *American Airways v. Wallace*, 57 F.2d 877, 880 (D.C. Tenn. 1932), *aff’d* 287 U.S. 565, 53 S.Ct. 15, 77 L.Ed. 498 (1932).

“The terms ‘excise tax’, ‘license tax’, and ‘privilege tax’ are synonymous and are used interchangeably to the extent that they are all ‘indirect taxes’ which are imposed upon the acts of persons, whereas a ‘direct tax’ is one which is imposed upon persons themselves or upon property owned by them.” *Roberts v. City of Baton rouge*, 108 So.2d 111, 236 La. 521 (1958), *reh’g denied*.

H. Privilege tax (excise) is unlawful upon the right to exist (one’s own labor).

“[E]very man has a natural right to the fruits of his own labour” *In re Antelope*, 23 U.S. 66, 120, 6 L.Ed. 268 (1825).

“Since the right to receive income or earnings is a right belonging to every [natural] person, this right cannot be taxed as a privilege.” *Jack Cole Company v. MacFarland*, 337 S.W. 2d 453, 456 (Tenn. 1960).

“Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege.” 206 Tenn. 694, 337 S.W.2d 453 (1960).

“The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual’s rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed.” *Redfield v. Fisher*, 292 P. 813, 819 (Ore. 1930) (citations omitted), *cert. Denied*, 284 U.S. 617, 52 S. Ct. 6, 76 L.Ed. 526 (1931).

“Individual, unlike corporation, cannot be taxed for mere privileges of existing and owning property, which are natural rights.” 135 Or. 180, 292 P. 813 (1930).

“Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but legislature cannot name something to be a taxable privilege unless it is first a privilege.” Const. art. 2, § 28. 206 Tenn. 694, 337 S.W.2d 453 (1960).

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I. Constitutionally correct Property Tax must be apportioned

Referring back to Section A, Income is property and property must be taxed through Apportionment among the States. There are no other Constitutionally correct classifications.

J. Tax on Property - Tax not Indirect, must be Direct

"A tax upon income from money on deposit or at interest, from bonds, notes or other debts due, and as dividends from stocks, coupled with exemption from all other taxation of the principal from which such income flows, is in substance and effect a tax upon the property from which it is derived. A tax upon the income of property is in reality a tax upon the property itself. Income derived from property is also property. Property by income produces its kind, that is, it produces property and not something different. It does not matter what name is employed. The character of the tax cannot be changed by calling it an excise and not a property tax. In its essence a tax upon income derived from property is a tax upon the property. This was decided after most elaborate consideration, with affluent citation of authorities, in *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 581, 15 S. Ct. 673, 39 L. Ed. 759; *Id.*, 158 U. S. 601, 15 S. Ct. 912, 39 L. Ed. 1108. We do not need to review that ground or to restate the arguments in its support. It follows that a tax upon such income is a property and not an excise tax." 135 Or. 180, 292 P. 813 (1930).

"In fact, the courts have so many times announced the conclusion that a tax upon income is a tax upon the property which produced the income that the editor of *Ruling Case Law* thus expresses the rule: "It is probably now generally conceded that a tax laid directly upon the income of property is a tax upon the property itself." 26 R. C. L. Taxation, § 116, p. 141. Credits, the right to receive money of the debtor, are always held taxable as a species of property. In re Opinion of the Justices, 77 N. H. 611, 93 A. 311. Without setting forth any further review of the authorities, we believe that the conclusion is well justified that a tax laid directly upon the income of property, real or personal, may well be regarded as a tax upon the property which produced the income." 135 Or. 180, 292 P. 813 (1930).

K. Unclear Legal Duty.

One cannot be held responsible for violating an unclear legal duty. (*United States v Critzer*, 498 F.2d 1160 (4th Cir 1974))

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L. Unalienable Rights protected.

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” *Miranda v Arizona*, 384 U.S. 436 p 491 (1966).

M. Unconstitutional statutes and laws.

“The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose; since its unconstitutionality dates from the time of its enactment... In legal contemplation, it is as inoperative as if it had never been passed... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superceded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it.” 16 Am Jur 2d S177 through S256, @ S203

“All laws which are repugnant to the Constitution are null and void.” *Marbury vs Madison* 5 U.S. 137, 174, 176

N. Violation of 5TH Amendment Right

You cannot compel me, against my will, to file a 1040 Form, providing information the Supreme Court has stated, constitutes a witness against myself. To make such a filing requirement mandatory would unlawfully force me to waive my 5th Amendment Right under the Constitution of the united States. It is my good faith belief that, because it is not within the power of the government to compel me to waive any of my rights against my consent, the filing of a 1040 Form cannot be mandatory and, therefore, must be and is voluntary.

“There can be no question that one who files a return under oath is a witness within the meaning of the Amendment.” *Sullivan v. U.S.*, 274 U.S. 259

“The information revealed in the preparation and filing of an income tax return is, for Fifth Amendment analysis, the testimony of a ‘witness’ as that term is used herein.” *Garner v. the U.S.* (1976)

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“The Fifth Amendment provision that the individual cannot be compelled to be a witness against himself cannot be abridged.” *Miranda v. U.S.*, 424 U.S. 648

“There is no tax exception to the Fifth Amendment... We need not consider how or in what manner the 5th Amendment may be invoked as a defense for failure to file tax returns.” *U.S. v. Troescher*, 9th Circuit Court of Appeals, November 7, 1996

Further, the Privacy Act Notice in the 1040 Instruction Booklet, as well as 26 USC 6103(d) – (p) and 301.6103, authorize the release of information contained in 1040 Forms to numerous entities, including, but not limited to, the Department of Justice, the U.S. Attorney, the Grand Jury, and/or any federal agency engaged in the preparation of any proceeding, pertinent to the enforcement of federal criminal statutes (whether or not such proceeding involves a tax matter). It is my belief that such Notices and Regulations constitute a “Miranda” type warning to me that “any information I provide on a 1040 Form can be used against me in criminal and civil proceedings.” My decision to not file a 1040 form constitutes a lawful exercise of my 5th Amendment right to remain silent and not be a witness against myself. It is a further exercise of my right to privacy. If your position is that filing a 1040 Form is mandatory, please supply and sign an immunity guarantee document. If your position is that filing a 1040 Form is voluntary, this constitutes constructive notice that I do not volunteer.

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O. Highest Laws - "Morality and Reason" superior to law of the land.

"As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the declaration of independence, that new evangel of liberty to the people: 'We hold these truths to be self- evident'--that is, so plain that their truth is recognized upon their mere statement--'that all men are endowed'--not by edicts of emperors, or decrees of parliament, or acts of congress, but 'by their Creator with certain inalienable rights.'--that is, rights which cannot be bartered away, or given away, or taken away, except in punishment of crime--'and that among these are life, liberty, and the pursuit of happiness; and to secure these'--not grant them, but secure them--'governments are instituted among men, deriving their just powers from the consent of the governed.' **Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.**" Butchers' Union slaughter-House v. Crescent city livestock landing, 111 U.S. 746, 4 S.Ct. 652 (1884).

"Besides, the Spanish law is not only contrary to ours, but is inconsistent with the law of nature, which is a sufficient reason for maintaining the supremacy of our own code." In re Antelope, 23 U.S. 66, 74 (1825).

The average American, with average intelligence, cannot accurately negotiate the huge volumes of complex tax law, and definitely cannot accurately complete the myriad of forms stipulated by your procedures. The reward for anyone who tries is possible prosecution for tax fraud and/or tax evasion. Filing a complete return, taking full advantage of all legal deductions, is essential to getting the most tax refund. Spelled out in legal reference, the government overtaxes its citizens and exploits their ignorance or lack of education. Uniform taxation does not do this. "Morality and Reason" dictate that this is fundamentally opposite the "American way" as originally defined by our founding documents. The amount of blood that was shed in our battle with the King of England over taxation atrocities (Reference the Declaration of Independence) magnifies your tax assessment/collection abuse existing today.

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IV. Correction of Records

This Legal Instrument is prepared, sent, and submitted for the additional purpose of amending and correcting my records in possession of, or maintained by, any governmental authority, which is inconsistent herewith, in accordance with 5 USC sec. 552a.

THIS INSTRUMENT OF AFFIRMATION (AFFIDAVIT) IS TO BE FILED AND MADE A PERMANENT PART OF DECLARANT'S ADMINISTRATIVE FILE, SPECIFICALLY THE SYSTEMS OF RECORDS IDENTIFIED AS IRS/IMF 24.030 AND IRS/AIMS 42.008. FAILURE TO RESPOND WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS INSTRUMENT WILL BE PRIMA FACIE PROOF THAT IT IS HEREBY UNDERSTOOD AND AGREED THAT ALL STATEMENTS SET FORTH HEREIN ARE ACCEPTED AS TRUE, CORRECT AND COMPLETE AND THAT ALL AVAILABLE RIGHTS AND/OR REMEDIES TO QUASH, COUNTERCLAIM OR SUBMIT A CROSS-DECLARATION OF SUCH REMEDIES ARE HEREBY FOREVER WAIVED. CONSEQUENTLY, THE ERRONEOUS STATEMENTS CONTAINED IN DECLARANT'S ADMINISTRATIVE FILE, IDENTIFIED AS IMF 24.030 AND AIMS 42.008, AND/OR ANY OTHER SYSTEMS OF RECORDS PERTAINING THERETO, ARE DEEMED AS INTENTIONAL AND TO BE KNOWINGLY FALSE. THEREFORE, THE PERSON OR PERSONS RESPONSIBLE FOR PERPETRATING AND ASCRIBING SUCH STATEMENTS AND/OR REFUSAL TO AMEND AND DELETE SUCH STATEMENTS, IS/ARE GUILTY OF MAKING FALSE STATEMENTS, SUBJECT TO THE FINES AND PENALTIES PURSUANT TO USC 18, SEC. 1001.

September 19, 2005

V. CLOSING

I am denying your presentments WITHOUT DISHONOR since I am not required to participate in the perpetuation of a fraud. I have made a diligent search, both researching and studying the U.S. Constitution, the Internal Revenue Code, the Statutes at Large, the Code of Federal Regulations and Case Law. Based upon such information, it is my Declaration and firm belief premised on "open mind" approach and "good faith" analysis that I am not liable for the payment of the money claimed in your presentments that you continue to mail monthly, perpetuating fraud, extortion, abuse of power, harassment, and many other violations of law.

Although tax law only allows refunds of overpaid taxes for the last 3 years, make no mistake that this is in no way a statement of overpayment. This document declares ONGOING FRAUD AND EXTORTION. The CRIMINAL ACTIVITY IS STILL OCCURRING. I REQUIRE THAT ALL OF MY PROPERTY BE RETURNED, AT FULL VALUE, FROM THE DATE THESE CRIMES BEGAN.

If you have any questions concerning this Affidavit, you may write to me at the address shown above. Please sign all papers so that I know whom I am dealing with. If you do not find this time period reasonable, please request an extension, in writing.

I explicitly reserve all of my common law and fundamental rights, as an unenfranchised Sovereign Citizen of the Massachusetts Republic, by the authority of UCC 1-207.

The toll you have already placed on my family's health and relationship, the fear of unjust reprisal, and the lost time in my family's enjoyment of life, liberty, and the pursuit of happiness are major factors I am pursuing in the highest Court(s) possible.

I am a (Sovereign) Citizen of the united States of America. My rights are defined. It is your responsibility to figure out who, among you, has done which parts to create, support, and perpetuate the crimes listed above. It is appalling that any of you holding government office consider yourselves American, or that this system you continue to support could, in any way, represent the "American Way".

September 19, 2005

VI. AFFIDAVIT STATEMENT

I, David P. Fontaine, hereby affirm that, to the best of my knowledge and belief based on exhaustive research, that all of the information contained herein is true and correct, that this document contains consecutively numbered pages ending with this page, and that a true copy of all pages are being mailed by U.S.P.S., Certificate of Mailing, on Sep 19, 2005, to all persons/agencies listed at the top of this document.

WITNESSES TO DAVID P. FONTAINE'S MAILING of this Affidavit to each entity listed at the top of this document on Sep 19, 2005:
(Date)

<div style="border: 1px solid black; width: 500px; height: 25px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; width: 500px; height: 25px; margin-bottom: 5px;"></div>	Name Signature	<u>9/19/05</u> Date <u>9/19/05</u> Date
---	-------------------	--

**Without Prejudice, UCC 1-207
Under Threat, Duress, and/or Coercion**

David P. Fontaine

David P. Fontaine
Signature

Sep 19, 2005
Date

STATE OF Massachusetts) SS
COUNTY OF Hampden)

On this 19th day of September, in the year 2005, before me, the undersigned, a Notary Public in and for the State of Massachusetts, personally appeared **David P. Fontaine**, proved to me on the basis of satisfactory evidence to be the Citizen who subscribed to the within instrument and acknowledged to me that he/she executed it.

Catherine W. Buonsicenti
Notary Public in and for said State & County

Seal:

03/17/2011
My commission expires

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SCOTT BLANCHARD
INTERNAL Revenue Service
BOLAND Federal Building
1550 MAIN ST Rm 113
Springfield, MA 01103-
1472

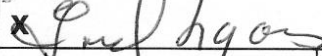
2. Article Number

7003 1010 0001 6728 0154

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

9-20-05

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540