

# **MEMORANDUM IN SUPPORT OF CRIMINAL COMPLAINT**

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## **A. Introduction**

1. “IRS” means Internal Revenue Service, but in this context specifically denotes the United States Department of Treasury officers, attorneys, employees, and agents who systematically misapply the federal employment tax provisions of the federal income tax statutes to non-federally-connected individuals under color of law.
2. “IRC” means the Internal Revenue Code, which is codified at Title 26, United States Code. “IRC” and “26 U.S.C.” are used interchangeably.
3. The IRS Form 1040 is referenced herein for the purpose of explaining the applicable law, however, the same law substantially applies to the IRS Forms 1040A, 1040EZ, etc..
4. The Commissioner of Internal Revenue routinely asserts the following legal argument in support of IRS policy treating “all that comes in” as statutory “gross income”:

Section 1 of the Internal Revenue Code imposes an income tax on the “taxable income” of every individual. Taxable income is calculated by first determining “gross income,” defined by I.R.C. § 61 as “all income from whatever source derived” including “[c]ompensation for services” and “[g]ross income derived from business.” Taxpayers then subtract allowable deductions to arrive at “adjusted gross income” (I.R.C. § 62) and finally “taxable income” (I.R.C. § 63).

5. The Commissioner’s interpretation of the Sec. 61(a) definition for “gross income” does not conform to the U.S. Supreme Court case law precedent on federal constitutional taxation and on the rules of statutory construction. All IRS conduct premised upon this corrupt legal position constitutes violation of IRC Sec. 7214(a).

## **B. Summary of Federal Income Taxation with respect to “Employment”**

6. In accordance with the basic principles of federal constitutional taxation as set forth by the U.S. Supreme Court in *Hylton v. United States*, 3 U.S. 171, 176-181 (1796), all taxes presently found in the IRC are **indirect** taxes (meaning circuitous modes of reaching the income of the individual), thus the statutory language in the IRC must be strictly construed in

conformity within the parameters of **indirect** taxation so as to not run afoul of the federal constitutional prohibition against Congress imposing a capitation tax (meaning a direct tax falling immediately on an individual's revenue or wages of labor), unless Congress apportions the capitation tax among the several States according to the Census. U.S. Constitution, Article I, Sec. 9.

7. It is in this Constitutional context that IRC Sec. 1 imposes a tax on (meaning *with respect to*) "taxable income". IRC Sec. 63(a) defines "taxable income" as "gross income" minus statutory deductions.
8. The duty to make a federal income tax return arises only if an individual is in receipt of "gross income" equal to or exceeding the statutory "exemption amount" together with the "basic standard deduction", for any given year. IRC Sec. 6012.
9. Under the Constitution, the legal meaning of the statutory term "gross income" as used in the IRC and defined at Sec. 61(a) is limited to **profit or gain or income derived from a taxable source**, and does not and cannot mean gross receipts, without violating Article I, Sec. 9.
10. In accordance with the parameters of indirect taxation, a **taxable source** is an **activity or event** that is the **subject** of a federal tax. Hundreds of taxable sources are defined throughout the IRC.
11. Whereas a taxable source is the **subject** of a federal tax, the income derived from the taxable source is **measured as the basis** for determining the amount of tax.
12. The Sec. 61(a) definition for "gross income" is prefaced with an exception clause pointing to other provisions in the IRC that supersede Sec. 61. When Sec. 61(a) is properly read in the context of the Constitution, it means:

Sec. 61. Gross income defined  
STATUTE

(a) General definition

**Except as otherwise provided in this subtitle**, gross income means all income from whatever **[federally taxable]** source derived, including (but not limited to) the following items:

(1) Compensation for services [as defined in Sec. 3121(b)]

(2) Gross income derived from business [as defined in Sec. 1402(c) engaged in “employment” as defined in Sec. 3121(b)]

13. The Treasury regulation at 26 CFR Sec. 1.61-1(b) clarifies the meaning of Sec. 61(a) by stating that when another section of the Code or of the regulations thereunder provides specific treatment for any item of income, that provision shall apply notwithstanding Sec. 61 and the regulations thereunder:

To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, such other provision shall apply **notwithstanding** section 61 and the regulations thereunder.

14. Literally all items of income in the IRC that are the subject of federal taxation receive special treatment by way of definitions. Therefore, when accounting for federal income tax liabilities, it is necessary to **read the definitions** accompanying each section of the IRC that imposes a tax, and to apply these definitions to the material facts in order to determine whether or not the item of income in question is derived from a taxable source.

15. IRC sections 1401, 1402, 3101 and 3121 provide specific treatment for the following items of income: “net earnings from self-employment”, “self-employment income”, “trade or business income”, and “wages”, as follows:

**Sec. 1401. Rate of tax**

*TITLE 26, Subtitle A, CHAPTER 2, Sec. 1401.*

STATUTE

**(a) Old-age, survivors, and disability insurance**

In addition to other taxes, there shall be imposed for each taxable year, on [meaning with respect to] the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

**Sec. 1402. Definitions**

*TITLE 26, Subtitle A, CHAPTER 2, Sec. 1402.*

STATUTE

**(a) Net earnings from self-employment**

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business --

**(b) Self-employment income**

The term "self-employment income" means the net earnings from self-employment derived by an individual -- **as provided by an agreement under section 233 of the Social Security Act**) during any taxable year;

**(c) Trade or business**

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment -- shall not include --

(2) the performance of service by an individual as an employee, other than -- [i.e. shall include the performance of the general class of]

(A), (B), (C), (F) & (G) **service as described in section 3121(b) --**

**(d) Employee and wages**

**The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).**

**Sec. 3101. Rate of tax**

*TITLE 26, Subtitle C, CHAPTER 21, Subchapter A, Sec. 3101.*

STATUTE

**(a) Old-age, survivors, and disability insurance**

In addition to other taxes, there is hereby imposed on [meaning with respect to] the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b)) -

**Sec. 3121. Definitions**

*TITLE 26, Subtitle C, CHAPTER 21, Subchapter C, Sec. 3121.*

STATUTE

**(a) Wages**

For purposes of this chapter, **the term "wages" means all remuneration for employment,**

**(b) Employment**

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed

(A) by an employee for the person employing him, irrespective of the citizenship or residence of either,

(i) within the [geographical] United States [as defined at Sec. 3121(e), meaning the general class of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa], or

(ii) on or in connection with an American vessel or American aircraft [as defined at Sec. 3121(f)] under a contract of service which is entered into within the [geographical] United States [as defined at Sec. 3121(e)], or

during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the [geographical] United States [as defined at Sec.

3121(e)], if the employee is employed on and in connection with such vessel or aircraft when outside the [geographical] United States [as defined at Sec. 3121(e)], or  
 (B) outside the [geographical] United States [as defined at Sec. 3121(e)], by a citizen or resident of the [geographical] United States [as defined at Sec. 3121(e)], as an employee for an American employer (as defined in subsection (h)) [meaning as an employee performing service for the United States or any instrumentality thereof, including for any individual or entity subject to the jurisdiction of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa], or  
 (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act [meaning working under an international social security old-age, survivors, disability, or derivative benefits agreement according to 42 U.S.C. Sec. 433, International Agreements];

16. The Federal Insurance Contributions Act (FICA) uses the term “United States” in a “geographical sense” (as specifically defined by statute, standing opposed to the “constitutional sense”, meaning the several States). See *Xianli Zhang, Guimin Lu, Bao Hua He v. United States*, No. 2010-5026, -5027 (Fed. Cir. 2011) (“We conclude that the Court of Federal Claims did not legally err in its determination that the FICA statutory scheme uses “United States” in a geographical sense”).
17. The items of income defined in sections 1402 and 3121 as “net earnings from self-employment”, “self-employment income”, “trade or business income”, and “wages”, are all part of the “Old-age, survivors, and disability insurance” tax codified in Subtitle A at Sec. 1401, and in Subtitle C at Sec. 3101.
18. The Subtitle A definitions provided in Sec. 1402(b), (c) & (d) explicitly rely on the Subtitle C definitions in Sec. 3121 to complete their meaning.
19. These items of income defined in sections 1402 and 3121 are merely different names for remuneration from “employment” as defined in Sec. 3121(b).
20. Sec. 3121(b) defines “employment” as service in various jurisdictional and contractual relationships to the “State, United States, and citizen” as defined in Sec. 3121(e), taken together with the complementary definitions for “American vessel and aircraft” found at Sec.

3121(f), “American employer” found at Sec. 3121(h), and “International agreements” found at 42 U.S.C. Sec. 433.

21. In accordance with the parameters of indirect taxation under the Constitution, “employment” as defined in Sec. 3121(b) is the **subject** of the “Old-age, survivors, and disability insurance” tax codified at sections 1401 and 3101, and “all remuneration” from “employment” is the **basis** for determining the amount of tax.
22. The definitions for “State, United States, and citizen” found in Sec. 3121(e) include the general class of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, but expressly omit the 50 States, to limit the scope of “employment” as defined in Sec. 3121(b) to conform to the restriction imposed on Congress at Article I, Sec. 9.
23. The material facts corresponding to these definitions providing specific treatment for these items of income determine the proper accounting of remuneration on the IRS Form 1040.

### **C. The Rules of Statutory Construction**

24. The purpose of providing a statutory definition is to supersede, not enlarge, the common or ordinary dictionary definition of a word. See *Stenberg v. Carhart*, 530 U.S. 914, 942, 120 S.Ct. 2597, 2615 (2000) (“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v. Keene*, 481 U. S. 465, 484-485 (1987) (“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term”); *Colautti v. Franklin*, 439 U. S. at 392-393, n. 10 (“As a rule, ‘a definition which declares what a term “means” ... excludes any meaning that is not stated’ ”); *Western Union Telegraph Co. v. Lenroot*, 323 U. S. 490, 502 (1945) (“Of course, statutory definitions of terms used therein prevail over colloquial meanings.”); *Fox v.*

*Standard Oil Co. of N. J.*, 294 U. S. 87, 95-96, 55 S.Ct. 333, 336 (1935) (“[A] definition by the average man or even by the ordinary dictionary with its studied enumeration of subtle shades of meaning is not a substitute for the definition set before us by the lawmakers with instructions to apply it to the exclusion of all others.”); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction §47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases.”); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438, 119 S. Ct. 755, 760 (1999) (“This Court's review -- begins with the statute's language.”); *Estate of Cowart v. Nicklos Drilling Co.*, 505 U. S. 469, 475 (1992) (“In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished. *Demarest v. Manspeaker*, 498 U. S. 184, 190 (1991).”); *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 739, 109 S. Ct. 2166, 2172 (1989) (“The starting point for our interpretation of a statute is always its language.”); *BedRoc Limited, LLC v. United States*, 541 U.S. 176, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004) (“The preeminent canon of statutory interpretation requires us to “presume that [the] legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992). Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous. -- *Connecticut Nat. Bank*, *supra*, at 254.”).

25. The taxing statutes are strictly construed. See *United States v. Stone & Downer*, 47 S. Ct. 616, 274 U.S. 225 (1927) (“The rule against enlarging the subject-matter of a statute by judicial interpretation has been applied with great particularity in the case of statutes levying taxes”); *Russello v. United States*, 464 U.S. 16, 23, 78 L Ed 2d 17, 104 S Ct. 296 (1983) (““[Where] Congress includes particular language in one section of a statute but omits it in

another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (CA5 1972)."); *Gould v. Gould*, 245 U.S. 151, 153, 38 S.Ct. 53 (1917) ("In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen."); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction §47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases).

26. When the verb "means" is used in an Internal Revenue Code definition, the term and its definition are to be interchangeable equivalents; and when the verb "includes" is used in an Internal Revenue Code definition, the definition imports a general class, some of whose particular instances are those specified in the definition. See *Helvering v. Morgan's*, 293 U.S. 121, 125 n.1, 55 S. Ct. 60, 61 n.1, 79 L. Ed. 232 (1934), wherein the U.S. Supreme Court explained the meaning of the verbs "means" and "includes" in the context of the Revenue Act of 1926, as follows:

<sup>\*fn1</sup> The terms 'means' and 'includes' are not necessarily synonymous. The distinction in their use is aptly pointed by sections 2, 200 of the act itself (26 USCA 1262, 931). Section 2(a) of the act (see 26 USCA 1262(a) and note) gives general definitions of ten terms; of these, three are stated to 'include' designated particular instances, the other seven are stated to 'mean' the definitions subsequently given. Section 200, in addition to the definitions contained in subsection (a), gives four of which two use the verb 'include' and two the verb 'means.' That the draftsman used these words in a different sense seems clear. The natural distinction would be that where 'means' is employed, the term and its definition are to be interchangeable equivalents, and that the verb 'includes' imports a general class, some of whose particular instances are those specified in the definition. This view finds support in section 2(b) of the act (26 USCA 1262(b), which reads: '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.'

Note: The definition for “includes” at Section 2(b) of the Revenue Act of 1926 cited by the Court in *Helvering v. Morgan’s* [formerly codified at 26 USCA 1262(b) in the footnote] is now codified word-for-word the same at IRC/26 U.S.C. Sec. 7701(c).

27. Throughout the remainder of this brief, when the term “includes” appears as part of an IRC definition, the term will be accompanied with “[imports the general class of]” for the purpose of clarifying the meaning of the definition in accordance with *Helvering v. Morgan’s*.
28. The principle that “includes” is “not limiting” in the context of an IRC definition does not diminish the principle established in *Helvering v. Morgan’s* that when the verb “includes” is used in an IRC definition, the definition imports a general class, some of whose particular instances are those specified in the definition. See *Brigham v. United States*, 160 F.3d 759 (1st Cir. 1998):

“but "includes" is not limiting. Rather, "[t]he terms 'includes' and 'including' . . . shall not be deemed to exclude other things otherwise within the meaning of the term defined." 26 U.S.C. § 7701(c). In light of this we apply the principle that a list of terms should be construed to include by implication those additional terms of like kind and class as the expressly included terms. \*fn2 This follows from the canon *noscitur a sociis*, "a word is known by the company it keeps." *Neal v. Clark*, 95 U.S. 704, 708-09 (1878)”

29. The U.S. Supreme Court case law precedent on statutory construction controls the legal meaning of the statutes. Any interpretation of a statutory definition by an inferior court or by the U.S. Treasury in its regulations that does not conform to the U.S. Supreme Court case law precedent on statutory construction is null and void. See *United States v. Calamero*, 77 S. Ct. 1138, 354 U.S. 351, 359 (1957) (“[W]e cannot but regard this Treasury Regulation as no more than an attempted addition to the statute of something which is not there.\*fn12 As such the regulation can furnish no sustenance to the statute. *Koshland v. Helvering*, 298 U.S. 441, 446-447.”)

#### **D. Federal Constitutional Taxation**

30. The U.S. Supreme Court unanimously affirmed the United States’ position on direct and

indirect taxation in *Hylton v. United States*, 3 U.S. 171, 176-181 (1796), which the former Secretary of the Treasury, Alexander Hamilton, had fully argued before the Court. See *The Documentary History of the Supreme Court of the United States, 1789—1800; Volume Seven; CASES: 1796—1797*. Maeva Marcus, editor; Columbia University Press, New York (2003), *Hylton v. United States*, pp. 358-505. In addition to Alexander Hamilton, the *Hylton* case involved two other framers of the Constitution, the Supreme Court Justices William Paterson and James Wilson.

31. Hamilton reiterated the same position as John Wickham, who previously argued the *Hylton* case on behalf of the United States in the Circuit Court before Justice Wilson and the District Judge Griffin. Wickham summarized the United States' position on direct and indirect taxes, and the Carriage Tax, as follows:

I shall contend that, long before the Constitution of the United States was framed, a tax upon the revenue or income of individuals, was considered and well understood to be a *direct tax*. A tax on expence or consumption an *indirect tax*—That this is a tax on expence or consumption, and therefore an indirect tax. *The Doc. Hist., Vol. Seven*, p. 413

32. Wickham and Hamilton both cited in support of their briefs and oral arguments, Adam Smith's *Wealth of Nations*, the sections entitled, "*Capitation Taxes*," and "*Taxes upon Consumable Commodities*". See *The Doc. Hist., Vol. Seven*, John Wickham's argument before the Circuit Court, published in a pamphlet entitled: *The Substance of an Argument in the Case of the Carriage Duties, delivered before the Circuit Court of the United States, in Virginia, May term, 1795, by John Wickham, Counsel for the United States vs. Hylton*, page 416; and Alexander Hamilton's "*Brief respecting the Carriage Tax*," pages 456-461. Also see *An Inquiry into the Nature and Causes of the Wealth of Nations*. Smith, A., ed. Edwin Cannan, (1904), first pub. 1776. Fifth edition. London: Methuen and Co., Ltd., page 938, quoted as follows in relevant part:

Capitation taxes, so far as they are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes.

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The impossibility of taxing people in proportion to their revenue, by any capitation, seems to have given occasion to the invention of taxes upon consumable commodities.

33. Justice Paterson reiterated Wickham's and Hamilton's reasoning and citation of Smith's *Wealth of Nations* when he rendered his opinion. See *Hylton*, 3 U.S. 171, at 176-181, and then read Justice Paterson's quote of Smith's *Wealth of Nations* in context, as found in *Book V; Chapter II; Of the Sources of the General or Public Revenue of the Society; Part II; Article IV; Capitation Taxes*; and, *Taxes upon Consumable Commodities*. Justice Paterson explained direct and indirect taxation under the Constitution as follows:

The Constitution declares, that a capitation tax is a direct tax; and, both in theory and practice, a tax on land is deemed to be a direct tax. In this way, the terms direct taxes, and capitation and other direct tax, are satisfied.

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All taxes on expenses or consumption are indirect taxes. A tax on carriages is of this kind, and of course is not a direct tax. Indirect taxes are circuitous modes of reaching the revenue of individuals, who generally live according to their income.

34. Accordingly, the following parameters of constitutional taxation were settled in *Hylton*:

- a. The U.S. Constitution divides federal taxation into two classes: direct and indirect.
- b. The constitutional reference for distinguishing a direct tax from an indirect tax is how the tax falls on the income of the individual.
- c. Direct taxes consist of a capitation tax and a tax on land.
- d. A capitation tax falls immediately on an individual's revenue or wages of labor.
- e. Indirect taxes are circuitous modes of reaching the income of the individual.
- f. Indirect taxes fall on activities or events, usually associated with expenses or consumption.

35. The Sixteenth Amendment did not authorize any new type of tax, nor repeal or modify Article I, and it does not have any enactment clause or implementing regulations or budget for implementation, thus the Amendment is merely a philosophical statement made with the

object of restraining the Supreme Court from viewing an income tax as a direct tax because of its close effect on the underlying property, as it did in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, *reh'g*, 158 U.S. 601 (1895). See *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12-19, 36 S. Ct. 236 (1916) (“[T]he contention that the Amendment treats a tax on income as a direct tax -- thus destroying the two great classifications [of direct and indirect taxation under the Constitution] is -- wholly without foundation.”); *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916), (“[B]y the previous ruling [*Brushaber*] it was settled that the provisions of the 16th Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged.”); and, *Wright v. United States*, 58 S. Ct. 395, 302 U.S. 583, 607 (1938) (“The Court has hitherto consistently held that a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole, is not to be favored. -- "From whatever source derived," as it is written in the Sixteenth Amendment, does not mean from whatever source derived. *Evans v. Gore*, 253 U.S. 245.”).

#### **E. Federal Income Taxation from a Constitutional Perspective**

36. In accordance with the basic principles of federal constitutional taxation as set forth by the U.S. Supreme Court in *Hylton v. United States*, 3 U.S. 171, 176-181 (1796), all taxes presently found in the IRC are **indirect** taxes (meaning circuitous modes of reaching the income of the individual), thus the statutory language in the IRC must be strictly construed in conformity within the parameters of **indirect** taxation so as to not run afoul of the federal constitutional prohibition against Congress imposing a capitation tax (meaning a direct tax falling immediately on an individual's revenue or wages of labor), unless Congress

apportions the capitation tax among the several States according to the Census. U.S. Constitution, Article I, Sec. 9.

37. It is in this Constitutional context that IRC Sec. 1 imposes a tax on (meaning *with respect to*) “taxable income”. IRC Sec. 63(a) defines “taxable income” as “gross income” minus statutory deductions.
38. The duty to make a federal income tax return arises only if an individual is in receipt of “gross income” equal to or exceeding the statutory “exemption amount” together with the “basic standard deduction”, for any given year. IRC Sec. 6012.
39. Under the Constitution, the legal meaning of the statutory term “gross income” as used in the IRC and defined at Sec. 61(a) is limited to **profit or gain or income derived from a taxable source**, and does not and cannot mean gross receipts, without violating Article I, Sec. 9.
40. In accordance with the parameters of indirect taxation, a taxable source is an **activity or event** that is the **subject** of a federal tax. Hundreds of taxable sources are defined throughout the IRC.
41. Whereas a taxable source is the **subject** of a federal tax, the income derived from the taxable source is **measured as the basis** for determining the amount of tax.
42. The Sec. 61(a) definition for “gross income” is prefaced with an exception clause pointing to other provisions in the IRC that supersede Sec. 61. When Sec. 61(a) is properly read in the context of the Constitution, it means:

Sec. 61. Gross income defined  
STATUTE

(a) General definition

**Except as otherwise provided in this subtitle**, gross income means all income from whatever [**federally taxable**] source derived, including (but not limited to) the following items:

(1) Compensation for services [as defined in Sec. 3121(b)]

(2) Gross income derived from business [as defined in Sec. 1402(c) engaged in

“employment” as defined in Sec. 3121(b)]

43. The Treasury regulation at 26 CFR Sec. 1.61-1(b) clarifies the meaning of Sec. 61(a) by stating that when another section of the Code or of the regulations thereunder provides specific treatment for any item of income, that provision shall apply notwithstanding Sec. 61 and the regulations thereunder:

To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, such other provision shall apply **notwithstanding** section 61 and the regulations thereunder.

44. Literally all items of income in the IRC that are the subject of federal taxation receive special treatment by way of definitions. Therefore, when accounting for federal income tax liabilities, it is necessary to **read the definitions** accompanying each section of the IRC that imposes a tax, and to apply these definitions to the material facts in order to determine whether or not the item of income in question is derived from a taxable source.

#### **F. Federal Income Taxation with respect to “Employment”**

45. Point 12 of the IRS Form 1040 says, “Business income or (loss). Attach Schedule C or C-EZ”, and provides line 12 for listing the corresponding amount. The statutory authority supporting point 12 and line 12 is IRC Sec. 1401. See Subtitle A – Income Taxes, CHAPTER 2 - TAX ON SELF-EMPLOYMENT INCOME, Sec. 1401, Rate of tax:

##### **Sec. 1401. Rate of tax**

###### **STATUTE**

###### **(a) Old-age, survivors, and disability insurance**

In addition to other taxes, there shall be imposed for each taxable year, on [meaning with respect to] the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

46. The instructions for Schedule C on page 1 state, “use Schedule C to report (a) wages and expenses you had as a statutory employee, (b) income and deductions of qualified joint ventures, and (c) certain income shown on Form 1099-MISC, Miscellaneous Income.” IRC

sections 6041 and 6041A require “all persons engaged in a trade or business” to report payments of \$600 or more to the IRS. 26 C.F.R. Sec. 1.1402-1 prescribes making these written statements on the Form 1099.

47. The definitions for Sec. 1401 are found at Sec. 1402. The definitions in Sec. 1402 point to Subtitle C – Employment Taxes, CHAPTER 21 (Sec. 3101 and following, relating to the Federal Insurance Contributions Act) including the definitions in Sec. 3121, and in particular, the definition for “employment” in Sec. 3121, to complete the meaning of Sec. 1401 and the definitions in Sec. 1402. The term “trade or business” defined at Sec. 1402(c) means the general class of service constituting employment under Sec. 3121(b):

**Sec. 1402. Definitions**

**STATUTE**

**(a) Net earnings from self-employment**

The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business --

**(b) Self-employment income**

The term “self-employment income” means the net earnings from self-employment derived by an individual -- as provided by an agreement under section 233 of the Social Security Act) during any taxable year;

**(c) Trade or business**

The term “trade or business”, when used with reference to self-employment income or net earnings from self-employment – shall not include --

(2) the performance of service by an individual as an employee, other than – [i.e. shall include the performance of the general class of

(A), (B), (C), (F) & (G) service as described in section 3121(b) --

**(d) Employee and wages**

The term “employee” and the term “wages” shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

48. Point 7 of the Form 1040 says, “Wages, salaries, tips, etc. Attach Form(s) W-2”, and provides line 7 for listing the corresponding amount. The statutory authority supporting point 7 and line 7 is IRC Sec. 6051(a), which states “Every person required to deduct and withhold from an employee a tax under section 3101 or 3402 -- shall furnish such employee -- a

written statement showing -- (3) the total amount of wages as defined in section 3401(a), [and] (5) the total amount of wages as defined in section 3121(a)". 26 CFR Sec. 31.6051-1 commands the use of the Form W-2 for making these written statements required by IRC Sec. 6051(a).

49. "Wages" is defined twice in the IRC, once at Sec. 3121(a), and again at Sec. 3401(a). The definition in Sec. 3401(a) corresponds to the federal withholding provisions imposed at Sec. 3402. See Subtitle C – Employment Taxes, CHAPTER 24 – COLLECTION OF INCOME TAX AT SOURCE ON WAGES, Sec. 3401, Definitions, and Sec. 3402, Income tax collected at source:

**Sec. 3402. Income tax collected at source**

STATUTE

**(a) Requirement of withholding**

(1) In general

Except as otherwise provided in this section, **every employer making payment of wages shall deduct and withhold upon such wages** a tax determined in accordance with tables or computational procedures prescribed by the Secretary.

50. The definition for "wages" at Sec. 3401(a) points to Sec. 3121(a) to complete its meaning. Sec. 3401(a) states in pertinent part, "For purposes of this chapter, **the term "wages" means all remuneration** -- for services performed by an employee for his employer -- except that such remuneration shall not include remuneration paid -- unless the remuneration paid for such labor is wages (**as defined in section 3121(a)**)":

**Sec. 3401. Definitions**

STATUTE

**(a) Wages**

For purposes of this chapter, **the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer,** including the cash value of all remuneration (including benefits) paid in any medium other than cash; **except that such term shall not include remuneration paid** –

(2) for agricultural labor (as defined in section 3121(g)) **unless the remuneration paid for such labor is wages (as defined in section 3121(a))**; or

51. The "employee" defined at Sec. 3401(c) (taken together with the corresponding regulation

published by Congress in the Federal Register at 8 FR 12267, Sec. 404.104) is substantially the same or a subset of the employee of the “American employer” defined at Sec. 3121(h):

#### **Sec. 3401. Definitions**

##### **(c) Employee**

For purposes of this chapter, the term "employee" includes [imports the general class of] an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a [federal] corporation.

##### **§ 404.104 - Employee.**

The term "employee" includes [imports the general class of] every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term specifically includes [imports the general class of] officers and employees whether elected or appointed, of the United States, a [federal] State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

#### **Sec. 3121. Definitions**

##### **(h) American employer**

For purposes of this chapter, the term "American employer" means an employer which is  
-

- (1) the United States or any instrumentality thereof,
- (2) an individual who is a resident of the United States,
- (3) a partnership, if two-thirds or more of the partners are residents of the United States,
- (4) a trust, if all of the trustees are residents of the United States, or
- (5) a corporation organized under the laws of the United States or of any State.

52. The corresponding definitions for “United States” and “State”, which serve to complete the meaning of these definitions, are substantially the same. The Code-wide definitions for “United States” and “State”, which serve to complete the meaning of the definition for “employee” found at Sec. 3401(c), are found at Sec. 7701(a)(9)&(10):

#### **Sec. 7701. Definitions**

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof -

##### **(9) United States**

The term "United States" when used in a geographical sense includes [imports the general class of] only the States and the District of Columbia.

##### **(10) State**

The term "State" shall be construed to include [import the general class of] the District of

Columbia, where such construction is necessary to carry out provisions of this title.

53. The definitions for “United States”, “State”, and “citizen”, which serve to complete the meaning of “American employer” as defined at Sec. 3121(h), are found at Sec. 3121(e)(1)&(2):

**Sec. 3121. Definitions**

**(e) State, United States, and citizen**

For purposes of this chapter -

**(1) State**

The term "State" includes [imports the general class of] the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

**(2) United States**

The term "United States" when used in a geographical sense includes [imports the general class of] the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

54. These definitions in Sec. 7701(a)(9)&(10) and Sec. 3121(e)(1)&(2) expressly omit the 50 States. This omission by Congress is presumed by the United States Supreme Court to be intentional. See *Russello v. United States*, 464 U.S. 16, 23, 78 L Ed 2d 17, 104 S Ct. 296 (1983); *United States v. Calamaro*, 77 S. Ct. 1138, 354 U.S. 351, 359 (1957). When Congress intends a definition for “United States” to include the 50 States, Congress states so without ambiguity. See IRC Sec. 4612(a)(4)(A):

**Sec. 4612. Definitions and special rules**

**STATUTE**

**(a) Definitions**

For purposes of this subchapter –

**(4) United States**

**(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.

55. Proper interpretation of Sec. 3121(e)(1)&(2) in strict conformity with United States Supreme Court case law precedent on statutory construction prevents the tax codified at sections 1401

and 3101 from being misconstrued as a capitation tax (meaning a direct tax falling immediately on an individual's revenue or wages of labor), as prohibited by U.S. Const. Art. I, Sec. 9.

56. The Federal Insurance Contributions Act (FICA) uses the term “United States” in a “geographical sense” (as specifically defined by statute, standing opposed to the “constitutional sense”, meaning the several States). See *Xianli Zhang, Guimin Lu, Bao Hua He v. United States*, No. 2010-5026, -5027 (Fed. Cir. 2011) (“We conclude that the Court of Federal Claims did not legally err in its determination that the FICA statutory scheme uses “United States” in a geographical sense”).

57. The definitions in Sec. 3121 correspond to the tax imposed at Sec. 3101. See Subtitle C – Employment Taxes, CHAPTER 21 – FEDERAL INSURANCE CONTRIBUTIONS ACT, SUBCHAPTER A – TAX ON EMPLOYEES, Sec. 3101, Rate of tax; and SUBCHAPTER C – GENERAL PROVISIONS, Sec. 3121, Definitions.

**Sec. 3101. Rate of tax**  
STATUTE

**(a) Old-age, survivors, and disability insurance**

In addition to other taxes, there is hereby imposed on [meaning *with respect to*] the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b)) –

58. Sec. 3121(a) defines “wages” as meaning all remuneration for “employment” as defined at Sec. 3121(b):

**Sec. 3121. Definitions**  
STATUTE

**(a) Wages**

For purposes of this chapter, the term “wages” means all remuneration for employment,

**(b) Employment**

For purposes of this chapter, the term “employment” means any service, of whatever nature, performed

(A) by an employee for the person employing him, irrespective of the citizenship or residence of either,

(i) within the [geographical] United States [as defined at Sec. 3121(e), meaning the general class of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa], or

(ii) on or in connection with an American vessel or American aircraft [as defined at Sec. 3121(f)] under a contract of service which is entered into within the [geographical] United States [as defined at Sec. 3121(e)], or

during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the [geographical] United States [as defined at Sec. 3121(e)], if the employee is employed on and in connection with such vessel or aircraft when outside the [geographical] United States [as defined at Sec. 3121(e)], or

(B) outside the [geographical] United States [as defined at Sec. 3121(e)], by a citizen or resident of the [geographical] United States [as defined at Sec. 3121(e)], as an employee for an American employer (as defined in subsection (h)) [meaning as an employee performing service for the United States or any instrumentality thereof, including for any individual or entity subject to the jurisdiction of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa], or

(C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act [meaning working under an international social security old-age, survivors, disability, or derivative benefits agreement according to 42 U.S.C. Sec. 433, International Agreements];

59. Sec. 3121(b) defines “employment” as service in various jurisdictional and contractual relationships to the “State, United States, and citizen” as defined in Sec. 3121(e), taken together with the complementary definitions for “American vessel and aircraft” found at Sec. 3121(f), “American employer” found at Sec. 3121(h), and “International agreements” found at 42 U.S.C. Sec. 433.

60. In accordance with the basic principles of Constitutional taxation, **“employment” as defined at Sec. 3121(b) is the subject of the tax** (codified at sections 1401 and 3101), and **“all remuneration” from “employment” is the basis for determining the amount of tax.**

#### **Sec. 1401. Rate of tax**

##### **STATUTE**

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there shall be imposed for each taxable year, on [meaning with respect to] the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

**Sec. 3101. Rate of tax**

**STATUTE**

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him **with respect to** employment (as defined in section 3121(b)) -

61. The material facts corresponding to the definition for “employment” in Sec. 3121 determine whether an individual’s remuneration is statutory “self-employment income” or “wages” subject to federal taxation and federal withholding.

62. The statutory definition found at IRC Sec. 3121(b)(A)(i) taken together with the complementary definitions for “State, United States and citizen” found at Sec. 3121(e) define “employment”:

“(i) within the United States”

to mean performing service by an employee for the employer within the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa:

**Sec. 3121. Definitions**

**(b) Employment**

For purposes of this chapter, the term “employment” means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States,

**(e) State, United States, and citizen**

For purposes of this chapter -

**(2) United States**

The term “United States” when used in a geographical sense includes [imports the general class of] the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

63. The statutory definition found at IRC Sec. 3121(b)(A)(ii) taken together with the complementary definitions for “State, United States and citizen” found at Sec. 3121(e), and “American vessel and aircraft” found at Sec. 3121(f), define “employment”:

“(ii) on or in connection with an American vessel or American aircraft under a contract of

service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States”

to mean performing service by an employee for the employer on or in connection with an American vessel or American aircraft under a contract of service entered into within the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, or touching at a port in the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa. See IRC Sec. 3121(f):

**Sec. 3121. Definitions**

**(f) American vessel and aircraft**

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

**(e) State, United States, and citizen**

For purposes of this chapter -

**(1) State**

The term "State" includes [imports the general class of] the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

**(2) United States**

The term "United States" when used in a geographical sense [standing opposed to the constitutional sense] includes [imports the general class of] the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

64. The statutory definition found at IRC Sec. 3121(b)(B) taken together with the complementary definitions for “State, United States and citizen” found at Sec. 3121(e), and “American employer” found at Sec. 3121(h), define “employment”:

“(B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h))”

to mean performing service for the United States or any instrumentality thereof, including for

any individual or entity subject to the jurisdiction of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa:

**Sec. 3121. Definitions**

**(h) American employer**

For purposes of this chapter, the term "American employer" means an employer which is

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(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

**(e) State, United States, and citizen**

For purposes of this chapter -

**(1) State**

The term "State" includes [imports the general class of] the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

**(2) United States**

The term "United States" when used in a geographical sense includes [imports the general class of] the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

65. The statutory definition found at IRC Sec. 3121(b)(C) taken together with the complementary definition for "International agreements" found at 42 U.S.C. Sec. 433 define "employment":

"(C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act;"

to mean working under an international social security old-age, survivors, disability, or derivative benefits agreement. Section 233 of the Social Security Act is codified at 42 U.S.C.

Sec. 433, as follows:

**§ 433. International agreements**

**(a) Purpose of agreement**

The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this subchapter and the social security system of any foreign country, for

the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this subchapter and the social security system of such foreign country.

Definitions

(b) For the purposes of this section—

(1) the term “social security system” means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term “period of coverage” means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this title or under the social security system of a country which is a party to an agreement entered into under this section.

### **G. The IRS Imprest Fund Account**

66. One of the more shocking revelations discovered in reference to IRS systematic misapplication of federal employment taxes is a federal statutory scheme which allows the federal government to pay “undisclosed cash awards” to federal judicial officers, including federal attorneys, magistrates and judges, out of an Imprest Fund Account set up for the express purpose of rewarding those who assist with IRS prosecutions. Further, a review of the public records of federal court cases involving issues of controversy concerning federal employment taxes, including in the United States Tax Court, all United States District Courts, and all United States Courts of Appeals, reveals a shocking pattern of judicial misconduct which makes no sense unless the judicial officers were receiving “undisclosed cash awards” from their employer. These public records show that in every case, the judge failed or refused to perform the following essential judicial functions: (1) declare the law of the case between the parties; (2) make a finding of material fact corresponding to the law of the case; and (3) apply the law of the case to these facts to render a decision or judgment on the merits. Absent the performance of these essential judicial functions, the “alleged taxpayer” is deprived of a fair and impartial arbiter of the case, and systematically deprived

of due process of law, which leads to the obvious question, “How can an ‘alleged taxpayer’ obtain justice under these circumstances?”

67. Title 5, U.S.C. Sec. 4502 authorizes **federal agencies** to provide “cash awards” of up to \$25,000 to government employees, in addition to their regular pay.

#### SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

##### § 4502. GENERAL PROVISIONS

(a) **Except as provided by subsection (b) of this section, a cash award under this subchapter may not exceed \$10,000.**

(b) **When the head of an agency certifies to the Office of Personnel Management** that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, **a cash award in excess of \$10,000 but not in excess of \$25,000 may be granted** with the approval of the Office.

(c) **A cash award under this subchapter is in addition to the regular pay of the recipient.**

68. In accordance with Sec. 4502, the IRS maintains an Imprest Fund Account for the purpose of rewarding those who assist in IRS prosecutions. See the Internal Revenue Manual at: [http://www.irs.gov/irm/part1/irm\\_01-032-008.html#d0e33](http://www.irs.gov/irm/part1/irm_01-032-008.html#d0e33)

#### Section 8. Investigative Imprest Funds

##### 1.32.8.1 (01-14-2011)<sup>[1]</sup><sub>SEP</sub> Overview

1. **This IRM provides policies and procedures for establishing and managing investigative imprest funds.**

2. The Chief Financial Officer, Internal Financial Management Unit, Office of Financial Management Policy, develops and maintains this IRM.

##### 1.32.8.5 (01-14-2011)<sup>[1]</sup><sub>SEP</sub> Definitions

###### Definitions

1. In this IRM, the terms below have the following meanings:

F. **Imprest Fund - cash advanced to a duly authorized cashier which is charged against a Government appropriation account.**

69. Title 5, U.S.C. Sec. 3371(3) defines the Administrative Office of the United States Courts as a “federal agency”.

#### § 3371. DEFINITIONS

For the purpose of this subchapter—

(3) **“Federal agency” means** an Executive agency, military department, a court of the United States, **the Administrative Office of the United States Courts**, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Regulatory Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management;

70. Title 5, U.S.C. Sec. 7342 defines the Administrative Office of the United States Courts as the “employing agency” for judges and judicial branch employees.

§ 7342. RECEIPT AND DISPOSITION OF FOREIGN GIFTS AND DECORATIONS

(a) For the purpose of this section—

(6) **“employing agency” means—**

(C) **the Administrative Office of the United States Courts, for judges and judicial branch employees;**

71. Title 5, C.F.R. Sec. 870.101 defines the Administrative Office of the United States Courts as the “employing office” for judges for all United States Courts of Appeals; All United States District Courts; The Court of International Trade; The Court of Federal Claims; and The District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands.

§ 870.101 Definitions

(1) The Administrative Office of the United States Courts is the employing office for judges of the following courts:

(i) All United States Courts of Appeals;

(ii) All United States District Courts;

(iii) The Court of International Trade;

(iv) The Court of Federal Claims; and

(v) The District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands.

72. Title 28, U.S.C., Chapter 41, (Administrative Office of United States Courts) Sec. 602 authorizes compensation to judicial officers in accordance with the Administrative Office of the United States Courts Personnel Act of 1990. **Sec. 3(a)(4) of the Act (Pub. L. 101–474) provides for “incentive awards” to enhance the pay of these judicial officers.**

§ 602. EMPLOYEES

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the Administrative Office of the United States

Courts Personnel Act of 1990.

NOTES:

Administrative Office of United States Courts Personnel

Sections 1 to 4 and 6 of Pub. L. 101–474 provided that:

**“SEC. 3. ESTABLISHMENT OF PERSONNEL MANAGEMENT SYSTEM.**

**“(a) The Director shall, by regulation,** establish a personnel management system for the Administrative Office which provides for the appointment, pay, promotion, and assignment of all employees on the basis of merit, but without regard to the provisions of title 5, United States Code, governing appointments and other personnel actions in the competitive service, or the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. The system shall apply to all Administrative Office employees except those referred to in section 603 of title 28, United States Code, and shall, at a minimum—

**“(4) establish procedures for employee evaluations, the granting of periodic pay adjustments, incentive awards,** and resolution of employee grievances;

73. The statutory scheme that allows the federal government to pay “incentive awards” to judicial officers also prohibits the pay from being publicly disclosed. See “The Ethics in Government Act of 1978” found in the Title 5, U.S.C. Appendix (§§ 101—505), which, at Sec. 102, specifically forbids the disclosure of monies earned from the federal government.

**§ 102. CONTENTS OF REPORTS**

**(a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:**

**(1)**

**(A) The source, type, and amount or value of income** (other than income referred to in subparagraph (B)) **from any source (other than from current employment by the United States Government)**,

74. The Ethics in Government Act exists ostensibly to discourage conflicts of interest between private industry and government employees, between private individuals and government employees, between foreign entities and government employees. However, the Ethics in Government Act ironically fails to protect the general public from any knowledge of graft, corruption or bribery within the government itself. Furthermore, personal financial information is exempt from disclosure under the Privacy Act. Federal judges can thus be paid

off completely privately and secretly and lawfully by their employer, the federal government, with a payment statutorily dubbed in this case an “incentive award”, also referred to as a “cash award.” In the case of a private individual, if he or she tried to offer a federal judge a secret “incentive award” or a “cash award,” it would be called a “bribe”. The attempt of a private individual to bribe a judge is classified by the government as a felony.

#### **H. Extortion and willful oppression under color of law, IRC Sec. 7214(a)**

75. IRC Sec. 7214(a)(1,2&7) makes it a felony crime for any officer or employee or agent of the United States acting in connection with any revenue law of the United States to engage in extortion or willful oppression under color of law, including knowingly demanding other or greater sums than are authorized by law, or making or signing any fraudulent entry in any book, certificate, return, or statement. The offending officer or employee shall be dismissed from office or discharged from employment. Upon conviction, the offending officer or employee shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both. The court also shall render judgment against the officer or employee for the amount of damages sustained in favor of the injured party, to be collected by execution. (6 years statute of limitations, IRC Sec. 6531(7)).

#### **I. Conspiracy against rights, 18 U.S.C. Sec. 241**

76. Title 18, U.S.C. Sec. 241 makes it a felony crime for two or more persons to conspire to injure, oppress, threaten, or intimidate any person in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised rights secured or protected by the Constitution or laws of the United States. The offending persons shall be fined under Title 18, or imprisoned not more than ten years, or both. Sec. 241 applies to all persons engaged in unauthorized assessment, demand,

lien, levy, or prosecution activity conducted under color of law because such activity necessarily involves two or more persons engaged in conspiracy against rights. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**J. Deprivation of rights under color of law, 18 U.S.C. Sec. 242**

77. Title 18, U.S.C. Sec. 242 makes it a felony crime to act under color of any law, statute, ordinance, regulation, or custom to willfully subject any person to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. The offending persons shall be fined under Title 18, or imprisoned not more than one year, or both. Sec. 242 applies to all persons depriving another of meaningful access to proper administrative remedy or judicial due process of law. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**K. Extortion, 18 U.S.C. Sec. 872**

78. Title 18, U.S.C. Sec. 872 makes it a federal offense for any officer or employee or agency of the United States to commit or attempt an act of extortion. The offending persons shall be fined under Title 18, or imprisoned not more than three years, or both. Sec. 872 applies to all officers, employees or agents of the United States using illegal methods of persuasion to obtain money or property in the guise of a tax. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**L. Mail fraud, 18 U.S.C. Sec. 1341**

79. Title 18, U.S.C. Sec. 1341 makes it a federal offense to send or to cause to be sent through the Postal Service or through any private or commercial interstate carrier, any communication constituting a scheme or artifice to defraud, or devised or intended for obtaining money or property by means of false or fraudulent pretenses, representations, or

promises. The offending persons shall be fined under Title 18, or imprisoned not more than 20 years, or both. Sec. 1341 applies to all persons sending extortionate demands through the mail in the guise of a tax. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**M. Honest services fraud, 18 U.S.C. Sec. 1346**

80. Title 18, U.S.C. Sec. 1346 defines (for the purposes of chapter 63—mail fraud and other offenses) the term “scheme or artifice to defraud” to include a scheme or artifice to deprive another of the intangible right of honest services. Section 1346 applies to any person having a public duty, whether administrative or judicial, who, with respect to any assessment, demand, lien or levy in the guise of a tax, deprives another of their right to honest services. For an example of indictment, plea agreement, and criminal judgment against a judge for theft of honest services fraud, see *United States v. Blich*, No. 5:08-CR-40 (M.D.Ga. 2009), docket entries 1, 357, and 378. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**N. Attempt and Conspiracy, 18 U.S.C. Sec. 1349**

81. Title 18, U.S.C. Sec. 1349 makes all persons who attempt or conspire to commit any offense under chapter 63—mail fraud and other offenses, subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

**O. Witness tampering, 18 U.S.C. Sec. 1512(b)**

82. Title 18, U.S.C. Sec. 1512(b) makes it a federal offense for any officer or employee of the United States to knowingly use intimidation, to threaten, or corruptly persuade another person, or to attempt to do so, or to engage in misleading conduct toward another person with intent to influence, delay, or prevent the testimony of any person in an official proceeding (suborn perjury). The offending persons shall be fined under Title 18, or imprisoned not more

than 20 years, or both. Sec. 1512(b) applies to all officers, employees or agents of the United States attempting to corruptly persuade an individual to issue a false information return or to change the testimony appearing on the face of his or her tax return, or in an IRS administrative or judicial proceeding, to no longer conform to the material facts corresponding to the pertinent statutory definitions. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**P. Subornation of perjury, 18 U.S.C. Sec. 1622**

83. Title 18, U.S.C. Sec. 1622 makes it a felony crime to procure another to commit any perjury.

The offending persons shall be fined under Title 18, or imprisoned not more than five years, or both. Sec. 1622 applies to all officers, employees or agents of the United States who suborn perjury by corruptly persuading another individual to make a false information return or tax return or statement not conforming to the material facts corresponding to the pertinent statutory definitions. (5 years statute of limitations, 18 U.S.C. Sec. 3282(a)).

**Q. Jurat**

84. Under penalty of perjury, I declare that I have examined this memorandum in support of my criminal complaint, and to the best of my knowledge and belief, it is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
David P. Fontaine

