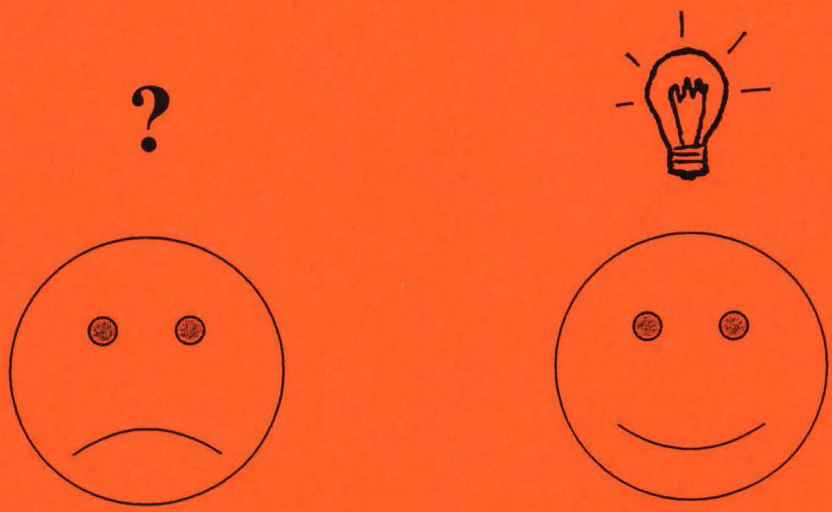
* REBUTTAL *



IRS Presumption **Your Rebuttal**

What is an IRS presumption?

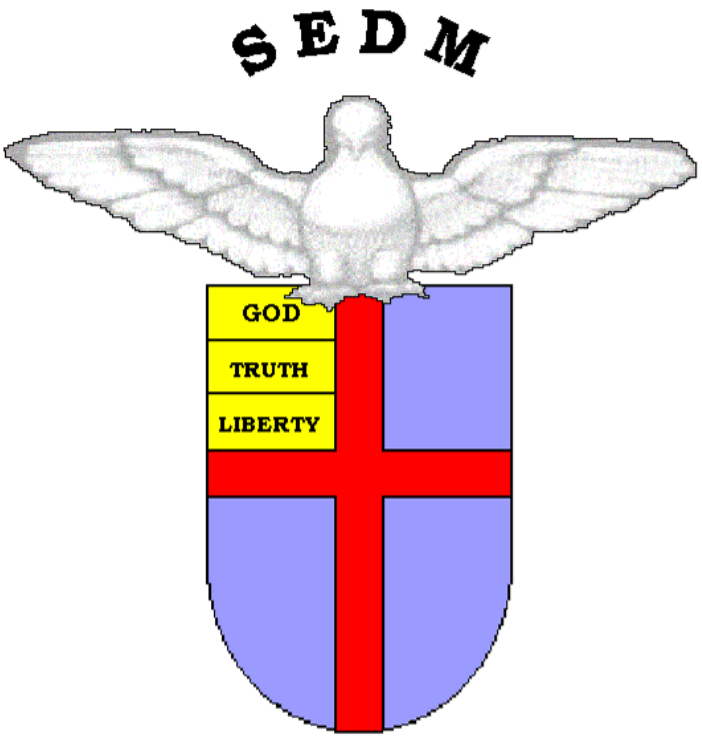
What is a rebuttal?

Why do you need to rebut?

How do you rebut?

What happens if you don't rebut?

Volume 9, September 2002



REBUTTAL

SEPTEMBER

2002

Table of Contents

Introduction to the Rebuttal Process

A. If you have studied the previous "VIP DISPATCHES" and listened to the tapes that came with them, you probably realize that something is very wrong with the system. We have now given you the ability to document it within the records that the government maintains on you.

B. We have had three federal judges tell us that a tax case is determined on an individual case by case, year by year, method.

   1. We have also been told that the IRS is very selective concerning the actual cases they choose to bring into court.

   2. In other words they want to make sure they have a 100% winnable case.

   3. Very few Federal Judges actually get a chance to hear substantive or credible evidence in a tax case because the prosecutors screen out those cases. Therefore, the judge is able to slam-dunk the remaining legal idiot arguments and create bad case law.

C. Before we can even start talking about "rebuttals" we have to go back to "prima facie", "presumptions", and then "rebuttals".

   1. Anything that is "prima facie" or a presumption, if not rebutted, stands as a fact.

   2. This is similar to making objections in court when the prosecutor makes a statement or attempts to enter something into evidence with which you do not agree You must "OBJECT."

      a. If you do not "OBJECT" then you cannot raise that issue in your appeal.

      b. We have read a number of appellate decisions say that if the defendant would have "OBJECTED" concerning a particular issue we (the court) would have overturned his conviction. However, since the record is silent, he must have agreed with the evidence that prosecutor presented.

D. When you receive that first letter or notice from any government entity it is usually a prima facie presumption that will stand unless rebutted.

   1. We are aware that some people tell you to "send back unopened government letters", "do not answer them", and "if it comes certified don't sign for it or pick it up," take your mailbox down," "use general delivery." The bottom line is that we have never seen any of these approaches work.

2. Another good one we hear is "they put my name in all caps so that cannot be my name on that letter or notice."

    a. So maybe, all of a sudden, you have that great revelation revealed unto you. But, how is some governmental entity supposed to know that?

    b. Before you had that great revelation you must have been under some type of contract whether it was visible or invisible.

    c. So now people who have this great revelation want to use it ex-post-facto, throwing law and procedures out the window.

    d. "THIS WILL NOT WORK"

E. We want to help you acquire the background knowledge so we can assist you with paperwork that will be useful to you in the long run and that meets the criteria required by the Rules of Evidence.

F. You have to deal with a "presumption" which is "a rule of law, statutory or judicial, by which finding of basic fact gives rise to existence of presumed fact, until the presumption is rebutted."

    1. How would you go about rebutting a presumption?

    2. What facts would you use?

    3. How would you ensure that what you send in will meet the Rules of Evidence?

    4. Do you know what to rebut?

    5. If you do rebut something, to whom are you going to send it to?

    6. What is your purpose in rebutting and how effective will it be?

G. We could do several "VIP DISPATCHES" concerning rebuttal of presumptions and prima facie evidence. In this issue we hope to give you the basic understanding of the process with the supporting background information and to convince you of the importance of rebutting all of these fictional arguments in a timely manner.

A Must Read Federal Court Case
John W. Bradshaw, Plaintiff vs. Unity Marine Corporation, INC.

A. After you read this case you will have an excellent understanding of how the Federal Court System actually works.

B. The Judge in this case pulls no punches and tells it exactly as it is.

C. After reading this case you will know exactly how attorneys think and work.

D. Yes, this is a civil case. Cases can start as a civil case and lead to a criminal case. Administrative cases are civil in nature, but the information gained in them can be used in a subsequent criminal trial.

E. These are two very skilled Attorneys going after each other.

1. When you read this Judge's order, remember these Attorneys are not government attorneys, but high priced private attorneys!

2. In other words this is the elegant work of two high priced private attorneys. Just think how exquisite the paperwork of lowly paid, government attorneys must be.

F. This points out very well why it is so important that you do intelligent, on point rebuttal letters; so that when they look at your administrative case file, they do not want to touch your case.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, GALVESTON DIVISION

June 26, 2001, Decided June 27, 2001, Entered ,

JOHN W. BRADSHAW, Plaintiff, v. UNITY MARINE CORPORATION, INC.; CORONADO, in rem; and PHILLIPS PETROLEUM COMPANY, Defendants.

CIVIL ACTION NO. G-00-558

DISPOSITION: Defendant's Motion for Summary Judgment GRANTED.

COUNSEL: For JOHN W BRADSHAW, plaintiff: Harold Joseph Eisenman, Attorney at Law, Houston, TX.

For CORONADO, UNITY MARINE CORPORATION, INC., defendants: Ronald L White, White Mackillop et al, Houston, TX.

For PHILLIPS PETROLEUM COMPANY, defendant: Charles Wayne Lyman, Giessel Barker & Lyman, Houston, TX.

For UNITY MARINE CORPORATION, INC., cross-claimant: Ronald L White, White Mackillop et al, Houston, TX.

For PHILLIPS PETROLEUM COMPANY, cross-defendant: Charles Wayne Lyman, Giessel Barker & Lyman, Houston, TX.

JUDGE: SAMUEL B. KENT, UNITED STATES DISTRICT JUDGE.

OPINION:

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff brings this action for personal injuries sustained while working aboard the M/V CORONADO. Now before the Court is Defendant Phillips Petroleum Company's ("Phillips") Motion for Summary Judgment. For the reasons set forth below, Defendant's Motion is GRANTED.

I. DISCUSSION

Plaintiff John W. Bradshaw claims that he was working as a Jones Act seaman aboard the M/V CORONADO on January 4, 1999. The CORONADO was not at sea on January 4, 1999, but instead sat [*2] docked at a Phillips' facility in Freeport, Texas. Plaintiff alleges that he "sustained injuries to his body in the course and scope of his employment." The injuries are said to have "occurred as a proximate

result of the unsafe and unseaworthy condition of the tugboat CORONADO and its appurtenances while docked at the Phillips/Freeport Dock."

Plaintiff's First Amended Complaint, which added Phillips as a Defendant, provides no further information about the manner in which he suffered injury. However, by way of his Response to Defendant's Motion for Summary Judgment, Plaintiff now avers that "he was forced to climb on a piling or dolphin to leave the vessel at the time he was injured." This, in combination with Plaintiff's Complaint, represents the totality of the information available to the Court respecting the potential liability of Defendant Phillips.

Six days after filing his one-page Response, Plaintiff filed a Supplemental Opposition to Phillips Petroleum Company's Motion for Summary Judgment. Although considerably lengthier, the Supplement provides no further illumination of the factual basis for Plaintiff's claims versus Phillips. Defendant now contends, in its Motion for Summary Judgment, that the Texas two-year statute of limitations for personal injury claims bars this action.

Plaintiff suffered injury on January 4, 1999 and filed suit in this Court on September 15, 2000. However, Plaintiff did not amend his Complaint to add Defendant Phillips until March 28, 2001, indisputably more than two-years after the date of his alleged injury. Plaintiff now responds that he timely sued Phillips, contending that the three-year federal statute for maritime personal injuries applies to his action.

Before proceeding further, the Court notes that this case involves two extremely likable lawyers, who have together delivered some of the most amateurish pleadings ever to cross the hallowed causeway into Galveston, an effort which leads the Court to surmise but one plausible explanation. Both attorneys have obviously entered into a secret pact -- complete with hats, handshakes and cryptic words -- to draft their pleadings entirely in crayon on the back sides of gravystained paper place mats, in the hope that the Court would be so charmed by their childlike efforts that their utter dearth of legal authorities in their briefing would go unnoticed. Whatever actually occurred, the Court is now faced with the daunting task of deciphering their submissions.

With Big Chief tablet readied, thick black pencil in hand, and a devil-may-care laugh in the face of death, life on the razor's edge sense of exhilaration, the Court begins.

Summary judgment is appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. When a motion for summary judgment is made, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. Therefore, when a defendant moves for summary judgment based upon an affirmative defense to the plaintiff's claim, the plaintiff must bear the burden of producing some evidence to create a fact issue some element of defendant's asserted affirmative defense.

Defendant begins the descent into Alice's Wonderland by submitting a Motion that relies upon only one legal authority. The Motion cites a Fifth Circuit case which stands for the whopping proposition that a federal court sitting in Texas applies the Texas statutes of limitations to certain state and federal law claims. That is all well and good -- the Court is quite fond of the Erie doctrine; indeed there is talk of little else around both the Canal and this Court's water cooler. Defendant, however, does not even cite to Erie, but to a mere successor case, and further fails to even begin to analyze why the Court should approach the shores of Erie.

Finally, Defendant does not even provide a cite to its desired Texas limitation statute. A more bumbling approach is difficult to conceive-- but wait folks. There's More!

Defendant submitted a Reply brief, on June 11, 2001, after the Court had already drafted, but not finalized, this Order. In a regretful effort to be thorough, the Court reviewed this submission. It too fails to cite to either the Texas statute of limitations or any Fifth Circuit cases discussing maritime law liability for Plaintiff's claims versus Phillips.

Plaintiff responds to this deft, yet minimalist analytical wizardry with an equally gossamer wisp of an argument, although Plaintiff does at least cite the federal limitations provision applicable tc maritime tort claims. Naturally, Plaintiff also neglects to provide any analysis whatsoever of why his claim versus Defendant Phillips is a maritime action. Instead, Plaintiff "cites" to a single case from the Fourth Circuit.

Plaintiff's citation, however, points to a nonexistent Volume "1886" of the Federal Reporter Third Edition and neglects to provide a pinpoint citation for what, after being located, turned out to be a forty-page decision. Ultimately, to the Court's dismay after reviewing the opinion, it stands simply for the bombshell proposition that torts committed on navigable waters (in this case an alleged defamation committed by the controversial G. Gordon Liddy aboard a cruise ship at sea) require the application of general maritime rather than state tort law. See Wells v. Liddy, 186 F.3d 505, 524 (4th Cir. 1999) (What the ..)?!

The Court cannot even begin to comprehend why this case was selected for reference. It is almost as if Plaintiff's counsel chose the opinion by trowing long range darts at the Federal Reporter (remarkably enough hitting a nonexistent volume!). And though the Court often gives great heed to dicta from courts as far flung as those of Manitoba, it finds this case unpersuasive. There is nothing in Plaintiff's cited case about ingress or egress between a vessel and a dock, although counsel must have been thinking that Mr. Liddy must have had both ingress and egress from the cruise ship at some docking facility, before uttering his fateful words.

Further, as noted above, Plaintiff has submitted a Supplemental Opposition to Defendant's Motion. This Supplement is longer than Plaintiff's purported Response, cites more cases, several constituting binding authority from either the Fifth Circuit or the Supreme Court, and actually includes attachments which purport to be evidence. However, this is all that can be said positively for Plaintiff's Supplement, which does nothing to explain why, on the facts of this case, Plaintiff has an admiralty claim against Phillips (which probably makes some sense because Plaintiff doesn't).

Plaintiff seems to rely on the fact that he has pled Rule 9(h) and stated an admiralty claim versus the vessel and his employer to demonstrate that maritime law applies to Phillips. This bootstrapping argument does not work; Plaintiff must properly invoke admiralty law versus each Defendant discretely. Despite the continued shortcomings of Plaintiff's supplemental submission, the Court commends Plaintiff for his vastly improved choice of crayon-- Brick Red is much easier on the eyes than Goldenrod, and stands out much better amidst the mustard splotched about Plaintiff's briefing. But at the end of the day, even if you put a calico dress on it and call it Florence, a pig is still a pig.

Now, alas, the Court must return to grownup land. As vaguely alluded to by the parties, the issue in this case turns upon which law --state or maritime -- applies to each of Plaintiff's potential claims versus Defendant Phillips. And despite Plaintiff's and Defendant's joint, heroic efforts to obscure it, the answer to this question is readily ascertained.

The Fifth Circuit has held that "absent a maritime status between the parties, a dock owner's duty to crew members of a vessel using the dock is defined by the application of state law, not maritime law. Specifically, maritime law does not impose a duty on the dock owner to provide a means of safe ingress or egress. Therefore, because maritime law does not create a duty on the part of Defendant Phillips vis-a-vis Plaintiff, any claim Plaintiff does have versus Phillips must necessarily arise under state law. Take heed and be suitably awed, oh boys and girls -- the Court was able to state the issue and its resolution in one paragraph ... despite dozens of pages of gibberish from the parties to the contrary!

The Court, therefore ... applies the Texas statute of limitations. Texas has adopted a two-year statute of limitations for personal injury cases. Plaintiff failed to file his action versus Defendant Phillips within that two-year time frame. Plaintiff has offered no justification, such as the discovery rule or other similar tolling doctrines, for this failure. Accordingly, Plaintiff's claims versus Defendant Phillips were not timely filed and are barred. Defendant Phillips' Motion for Summary Judgment is GRANTED and Plaintiff's state law claims against Defendant Phillips are hereby DISMISSED WITH PREJUDICE.

A Final Judgment reflecting such will be entered in due course.

II. CONCLUSION

After this remarkably long walk on a short legal pier, having received no useful guidance whatever from either party, the Court has endeavored, primarily based upon its affection for both counsel, but also out of its own sense of morbid curiosity, to resolve what it perceived to be the legal issue presented. Despite the waste of perfectly good crayon seen in both parties' briefing (and the inexplicable odor of wet dog emanating from such) the Court believes it has satisfactorily resolved this matter. Defendant's Motion for Summary Judgment is GRANTED.

At this juncture, Plaintiff retains, albeit seemingly to his befuddlement and/or consternation, a maritime law cause of action versus his alleged Jones Act employer, Defendant Unity Marine Corporation, Inc. However, it is well known around these parts that Unity Marine's lawyer is equally likable and has been writing crisply in ink since the second grade. Some old-timers even spin yarns of an ability to type. The Court cannot speak to the veracity of such loose talk, but out of caution, the Court suggests that Plaintiff's lovable counsel had best upgrade to a nice shiny No. 2 pencil or at least sharpen what's left of the stubs of his crayons for what remains of this heart-stopping, spine-tingling action.

In either case, the Court cautions Plaintiff's counsel not to run with a sharpened writing utensil in hand -- he could put his eye out.

IT IS SO ORDERED.

DONE this 26th day of June, 2001, at Galveston, Texas.

SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE

Legal Fictions

A. Illinois Law Review, Volume XXV 1930-1931 by Northwestern University Press 1931, pages 393-399.

B. Some of you already have this entire book which is #157 on our list. If you do not, we strongly suggest that you get it and read it carefully.

C. Pages 393 through 399 deal with Fictions and Legal Presumptions which you should hopefully read more than once.

D. We have already covered a number of these legal terms so reading these seven pages should increase your understanding of these issues and help you to focus your rebuttals to these legal fictions.

E. On page 14 we have a basic chart concerning an IRS fiction.

F. The first paragraph on page 393 shows you exactly how they twist the law.

   1. But this is good for you. Or didn't you know that? At least those who profit from creating these legal fictions tell us it is a good thing.

      a. For them it is, no doubt.

   2. Most people just sit on their butts wondering what is going on. What they have been taught to believe as truth, is actually a "legal fiction."

   3. In other words, the government, the media, and churches do their best to impose twisted legal fictions upon the people hoping the people will accept it at face value and not question it.

   4. Get the people to spend their time worrying about their golf game, dumb ball games, and other distractions instead of thinking about anything of substance.

G. As you have seen in the past or may see in the future, a lot of what the IRS does and the paperwork they send to you are LEGAL FICTIONS.

   1. They change your status in your record from an IMF to a BMF.

   2. They incorrectly post information or erroneous amounts to your records.

   3. They make you appear to be involved in activities that you are not.

4. The list goes on and on and on.

H. How do you disprove those allegations?

I. We want to make sure you understand this important point. You cannot defeat a Negative.

1. You have to overcome a negative with stronger evidence that will turn the negative allegation in to a positive in the form of a rebuttal.

J. For instance, when a prosecutor and an IRS Special Agent said that our hero could not claim or exercise his constitutional rights in a civil hearing, the Federal judge said that our hero can most certainly exercise his constitutional rights, but you Mr. Prosecutor and Special Agent "can only claim constitutional privileges."

1. The IRS can create legal fictions against its own employees. This is one of the reasons they have an employee Union so they can have a hearing and to protect their "rights."

2. So they go ahead and develop a fiction in your record (something known to be false is assumed to be true) knowingly or unknowingly, intentional or unintentional. But, after all, they are "just doing their job."

   a. We have asked a number of agents just exactly what their job function is and they have yet to tell us.

K. Going back to the chart on page 14. We are trying to show you just how their scheme is supposed to work and what effort it takes from you to bust it wide open.

1. As we go through this rebuttal "VIP DISPATCH", hopefully you will get the grist of what we are trying to teach you so you will be more savvy and wise in the future.

L. Page 394, of this Legal Fiction piece, third paragraph tells us the sequence that Fictions turn into over a matter of time and the rules that develop around the fiction.

1. There are certain rules for rebutting the prima facie presumption depending upon the circumstances.

M. Page 395, first full paragraph discusses how easy it is to rebut a presumption. But, remember, this was written in 1931.

1. It says, "any pertinent evidence may be considered as overcoming it."

2. Nowadays, the main problem with many rebuttal letters is that they are inept, spineless, poorly written, off point arguments, using improper procedures.

N. One important reason for putting together the "VIP DISPATCH" is to give people information that is meaningful, that works, and has a track record of being effective.

O. Page 397, first full paragraph identifies the three requirements for rebuttal.

P. To properly rebut a presumption you want to make sure that the rebuttal is a solid document that is non-rebuttal which is designed to be used a number of ways and is expandable.

Q. This Legal Fiction was written in 1931, before the March 1933 bankruptcy and prior to the 1938 Erie Railroad vs. Thompkins Supreme Court decision.

1. Most of the fictions above have been implemented using the doctrines of Legal Fictions, which are now accepted as being fact in many peoples belief systems.

R. Today it is very important to be savvy when it comes to rebutting current fictions.

1. Most people, including the Legal Profession, do not even recognize Legal Fictions as fictions because these concepts have been around for so long.

S. We wanted you to read the first section in this "VIP DISPATCH" so you could see how those two attorneys in Texas were caught by Judge Kent when they went overboard with their Legal Fictions.

T. Contact us if you need help doing those rebuttals.

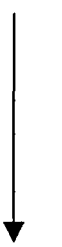
REBUT, REBUT, REBUT

IRS
Sends you a

FICTION OF LAW
Which is

PRIMA FACIE
Evidence of a

PRESUMPTION
Which will stand unless



REBUTTED

Legal Fictions

From

Illinois Law Review

Volume XXV

1930 – 1931

Northwestern University Press
1931

tract ("as if"-contract) from being fictional. If it is not felt as a fiction the reason lies in the fact that it is not regarded as containing an element of pretense; it is, in the terminology established earlier in this article, a dead fiction, a term of classification and analysis, merely.

Fictions and Legal Presumptions

A distinction commonly taken between the fiction and the legal presumption runs something as follows: A fiction assumes something which is known to be false; a presumption (whether conclusive or rebuttable) assumes something which may possibly be true.[77] This distinction is regarded as being reinforced, as it were, in the case of the rebuttable presumption because such a presumption assumes a fact which *probably* is true.

How valid is this distinction? And, what is more important, how significant is it, assuming that it states at least a partial truth? In attempting an answer to these questions it will be convenient to start with the conclusive presumption.

Now in the first place it is fairly clear, I think, that the conclusive presumption is generally applied in precisely those cases where the fact assumed is false and is known to be false. For example, there is said to be a presumption that the grantee of a gift has accepted it.[78] In practice the only cases in which this presumption is invoked are cases where the grantee did not know of the gift and hence could not possibly have "accepted" it. Hence, the statement that a conclusive presumption assumes a fact which may be true is at least misleading in that it ignores the circumstance that the occasion to use the conclusive presumption generally arises only in those cases where the fact is known to be false. When the fact is present it may usually be proved and there is no occasion for the presumption.

But this is not always so. Conceivably the presumed fact may be present in reality in a case where the party chooses to rely on the conclusive presumption, either because proof would be difficult or because he does not know whether the fact is present or not.[79] In such a case does the application of the presumption involve any fiction? I think that it does.

---

77. *Best* "Presumptions of Law and Fact" sec. 20; *Lecocq* "De la fiction comme procédé juridique" p. 29.

78. *Thompson* v. *Leach* (1691) 2 Vent. 198.

79. The presumption of "fraudulent intent" on the part of one who has given away his property while insolvent might be invoked by a creditor in a case in which the debtor actually did make the conveyance for the purpose of evading the claims of his creditors.

A conclusive presumption is not a fiction because the fact assumed is false, because in that event it would cease to be a fiction if the fact happened to be true.[80] The ordinary fiction simply says, "Fact A is present" and would cease to be a fiction if Fact A were in reality present in the case. But the conclusive presumption says, "The presence of Fact X is conclusive proof of Fact A." This statement is false, since we know that Fact X does not "conclusively prove" Fact A. And this statement, that Fact X proves the existence of Fact A, remains false, even though Fact A may by chance be present in a particular case.[81] The conclusive presumption attributes to the facts "an arbitrary effect beyond their natural tendency to produce belief."[82] It "attaches to any given possibility a degree of certainty to which it normally has no right. It knowingly gives an insufficient proof the value of a sufficient one."[83]

But what of the rebuttable presumption? Can it clear itself of the charge of being fictitious?

In the first place it should be noted that the difference between the rebuttable presumption and the conclusive presumption may, in some cases, become a matter of degree. Some of our rebuttable presumptions have, in the course of time, gathered about them rules declaring what is sufficient to overcome them. So soon as you have begun to limit and classify those things which will rebut a presumption you are importing into the facts "an arbitrary effect" beyond their natural tendency to produce belief. No presumption can be wholly non-fictitious which is not "freely" rebuttable. To the extent that rebuttal is limited, the prima facie or rebuttable presumption has the same effect as a conclusive presumption.

In the second place, it is clear that a rebuttable presumption will be regarded as establishing a fiction if we feel that the inference

80. *Lecocq* "De la fiction comme procédé juridique" at page 29, contains a remarkable bit of reasoning. He says that it might seem that we ought to say that the presumption is a fiction when the fact assumed is false, and not a fiction when the assumed fact is true. But, he says, this would involve an error, because it would be "anti-juridical" to inquire whether the fact is true or not because the presumption is set up for the express purpose of avoiding that inquiry!

81. A creditor sets aside a gift made by his debtor while insolvent. Now even though the fact is that the debtor actually intended to defraud his creditor in making the conveyance, the pretense involved in the presumption —that this fact is conclusively proved by the circumstance that he was giving away his property while insolvent—remains false.

82. *Best* "Presumptions of Law and Fact" p. 19.

83. *Tourtoulon* "Philosophy in the Development of Law" p. 398. Tourtoulon would regard this statement as applying also to the rebuttable presumption.

which underlies it is not supported by common experience. Some courts have applied a prima facie presumption that where a child is injured or killed in the streets the parents must be considered as having been guilty of negligence.[84] Now, even though this presumption may be rebutted by any pertinent evidence, most of us would not hesitate to say that it contains an element of fiction. We do not feel that the inference it establishes is justified by ordinary experience.

If, therefore, we are to have any hope of escaping fiction in a discussion of presumptions we must narrow our inquiry to the case of the presumption which is freely rebuttable and which establishes an inference justified by ordinary experience. There is a presumption that a deed in the possession of the grantee has been delivered.[85] The presumption is freely rebuttable; any pertinent evidence may be considered as overcoming it. Furthermore, it may be argued, the presumption establishes an inference which experience and common sense justify; it is based on the fact of social life that deeds in the hands of grantees have usually been delivered. Does such a presumption involve any fiction?

But first it will be legitimate to inquire, if the presumption is so reasonable and so much a matter of common sense, might it not be safe to assume that the judge or jury would have made exactly the same inference without the presumption? In other words, is a presumption which merely states a proposition of common sense a significant rule of law? Does it really affect the administration of justice?

It may be urged in answer to these inquiries that that which seems "reasonable" and a "mere matter of common sense" to the author of the presumption, may not seem so to the agency (the judge or the jury) which applies the presumption. It may be urged that the function of the sort of presumption we are here considering is simply to prevent the judge or jury from departing from the ordinary principles of ratiocination. The law is as much concerned that its agencies shall follow common sense in deciding disputes, as it is that they shall apply legal doctrine correctly. And the presumption may be simply a way of insuring the application of common sense.

If we regard a particular presumption in this light—and I think, incidentally, that the number of those which are entitled to

84. (1927) 75 U. P. Law Rev. 476.

85. 2 *Tiffany* "The Law of Real Property" (2d ed.) p. 1750.

be so regarded is extremely small—then it must be admitted that the presumption would involve no fiction were it not for the fact that we habitually treat the presumption, not as directing a disposition of the case, but as "directing an inference" or as commanding an "act of reasoning." [86] Now the presumption may have been the product of a process of inference on the part of the one originally conceiving it. But if the presumption is treated by the judge and jury as a rule of law, it is clear that it is not an "inference" as to them. If I am merely accepting someone else's ready-made inference, I am not "inferring." There is then a fiction in the case of any rebuttable presumption in the sense that we ordinarily treat that as an "inference" which is in reality merely obedience to a command. The fiction here relates, not to the subject matter of the presumption, but to its effect in the administration of justice.

These points may perhaps be made clearer by a simile. We may treat the presumption as a lens held before the facts of reality. Now if the lens produces a *distortion* of reality—as in the case of the presumption of negligence where a child is injured in the streets —we do not hestitate to attribute a fictional character to the image produced. On the other hand we may be convinced that a particular lens produces a *true* image of nature. Now if we are willing to attribute to the judge or jury normal vision (ordinary powers of ratiocination) does it not follow that if our lens gives a true picture of reality it must in fact be of plain glass, i. e., produce no alteration at all? On the other hand, if we conceive of our lens as a *corrective* device—if we recognize that we are curing a defect—then there is no fiction *if we recognize that we are changing the image.* But our

86. Abbott, C. J., in *Rex* v. *Burdett* (1820) 4 B. & Ald. 161, "A presumption of any fact is properly an inferring of that fact from other facts which are known; it is an act of reasoning." In 5 *Wigmore* on "Evidence" (2d ed.) sec. 2491, the view is taken that a presumption is not an "inference" but merely a rule "attaching to one evidentiary fact certain procedural consequences as to the duty of production of other evidence by the opponent." This, as Dean Wigmore's own remarks show, is intended as a statement of how we *ought* to regard the presumption, rather than as a factual description of how it is commonly regarded by the profession.

It might be remarked parenthetically that a complete discussion of the presumption would have to distinguish presumptions according to the manner in which they are applied. Some presumptions simply operate to "shift the burden of proof." In some jurisdictions the same presumptions which "shift the burden of proof" are also presented to the jury as having a probative force to be considered along with the other evidence of the case. (*Wigmore*, op. cit., p. 452, note 5.) Some presumptions are not applied procedurally at all, but are only intended, apparently, as somewhat cryptic statements of a general principle, as the presumption that every man "intends the normal consequences of his acts." I have attempted to make my remarks sufficiently general to cover any case of the presumption, however applied.

professional linguistic habits tend to keep us in the paradoxical position of insisting that the lens *does not change* and at the same time of asserting that it is *necessary*—that without it a different result might be reached. We tend to assume, not that we have corrected the vision of the judge or jury by artificial means, but that by a kind of legal miracle we have given normal sight to the astigmatic. We tend to assume what unfortunately cannot be—that the law has a "mandamus to the logical faculty."[87]

A presumption, if it is to escape the charge of "fiction" must, then, comply with at least three requirements: (1) Be based on an inference justified by common experience. (2) Be freely rebuttable. (3) Be phrased in realistic terms; order, not an "inference," but a disposition of the case in a certain contingency.

Assuming that a presumption has met all of these requirements has it established its right to be considered wholly non-fictitious? There is a presumption of death where one has been absent, unheard from, for a period of seven years.[88] It is possible to consider this presumption as meeting all three of the requirements enumerated. The presumption may be regarded as based on an inference warranted by experience. When people have been gone for seven years and have not been heard from *usually* they are dead. The presumption is freely rebuttable. And it may be—though usually it is not—phrased in non-fictitious terms, i. e., not as ordering an "inference" of death but as ordering the judge or jury to treat the case as they would one of death. Does it follow that the presumption establishes a proposition which is wholly non-fictitious, i. e., entirely "true"? It is apparent at once that the "truth" of this presumption is a conventionalized, formalized truth. Why should the period be set at exactly seven years? Why should one disposition of a case be made when the absence is six years and eleven months, and a different disposition be made one month later?

This formal, arbitrary element is very conspicuous in the presumption just mentioned. To some extent it is perhaps inherent in all presumptions of whatever character. A formal rule, no matter how firmly rooted its foundations may be in reality, tends to gather about itself a force not entirely justified by its foundations. It crystallizes and formalizes the truth which it expresses. If the presumption is given any weight at all by the judge or jury, there

87. *Thayer* "A Preliminary Treatise on Evidence" p. 314, note. "The law has no mandamus to the logical faculty; it orders nobody to draw inferences,—common as that mode of expression is."

88. 5 *Wigmore* on "Evidence" (2d ed.) sec. 2531 (b).

is probably a tendency to give it too much weight. [89] In the language of the figure adopted previously, no lens is a perfect lens. In correcting a defect of sight, the lens produces its own peculiar distortions and that which was intended merely as a correction is usually an over-correction. In this sense every presumption is perhaps a distortion of reality. But this fact probably does not justify the application of the term "fiction." As has been said previously, we reserve the term "fiction" for those distortions of reality which are outstanding and unusual. And the distortion produced by the formal, imperative quality of the presumption is an inevitable incident of the process of reducing a complex truth to a simple, formal statement.

The close kinship of the ordinary fiction and the presumption is shown by the fact that the two meet upon a common grammatical field in such expressions as "deemed" and "regarded as." "The testator must be deemed to have intended to attach a condition upon his gift." Does this mean, "Conceding that the testator had no such intent in fact, we feel it advisable to treat the case as if that had been his intent"? Or does it mean, "Although the evidence is not clear, we feel justified in inferring that the testator in fact intended to attach a condition on his gift"? In truth probably the statement meant neither of these things—and both. That is to say, the mind of the author of this statement had not reached the state of clarification in which this distinction would become apparent. He probably would have agreed with either interpretation of his meaning. This example indicates, I think, that the mental process in-

89. This point may be illustrated by the following case. Two years after the death of Q, X claims Blackacre under a deed now in his possession and signed by Q. The facts show that X never made any claim to the land during the life of Q, and that after the death of Q he had access to Q's papers. X relies on the presumption that a deed in the possession of the grantee has been delivered. Do these facts "rebut" the presumption? Or, what is the same thing, do they prevent its "arising"? Now if the judge in passing on this question is simply weighing the fact of social life, that deeds in the possession of the grantee are usually delivered, against the peculiar circumstances of this case, then he is not using the presumption at all. He is using his own reasoning powers. But if the judge is attributting a special significance to the circumstance that the above-mentioned fact of social life has been incorporated into a rule of law, then the presumption is having an "artificial effect." If the judge is saying to himself, "Deeds in the hands of grantees are usually delivered, and *I must remember that this fact has been specifically recognized by the law in a formal presumption,*" then he is dealing, to some extent, with proofs which are formal and not real. Since the question when a presumption "arises," or, what is the same thing, when it is "rebutted" always involves a certain discretion, it may be said that whenever the presumption has any effect at all, its effect is a formal and artificial one.

volved in the invention of the ordinary fiction is at least a close relation to that involved in the establishment of a presumption, and suggests the possibility that there may be a primitive undifferentiated form of thought which includes both.*

*To be continued.

IRS Magic, Part One

A. Before we can even bring up the rebuttal process we need to lay some groundwork.

B. In order to even begin to try to explain what happens in the IRS world of false illusions, and double speak, we have to back up and start with FICTIONS OF LAW.

C. FICTION OF LAW, from Blacks law dictionary 5th edition, Exhibit A, "An assumption of law that something which is or maybe false is true or that a state of facts exists which has never really taken place," look here, we are not making this up.

1. If false is true, then can true be false?

2. If facts exist which have really never taken place, then can facts that have taken place never have existed?

3. "An assumption, for purpose of justice, of a fact that does not or may not exist."

   a. The injustice system is openly allowed to make up anything it wants in order to protect itself. More importantly the inside system is hidden behind the veil. That's where the red guy with the horns and pointed tail sits and pulls the strings or manipulates politicians, Judges, prosecutors and making them dance to all the laws that benefit them.

   b. They will charge you and convict you in a heartbeat using laws that do not exist and with nonexistent regulations.

4. "A rule of law which assumes to be true, and will not allow it to be disproved, is something which is false, but not totally impossible."

   a. "Will not allow it to be disproved," "wow", "pop", "zam", we're going up against something that does not exist, "Batman, what do we do?" Just pretend you are protecting the public. You haven't seen anything yet Robbin.

D. Exhibit A, 2 of 3 from Bouvier's 1934, (This is the last law dictionary published before the March 9th, 1933 bankruptcy was put into full force and effect, and before Erie Railroad vs. Thompkins 1938 Supreme Court Case).

1. Exhibit A, 3 of 3, FICTION: "The legal assumption that something which is or may be false is true." This statement has been used by the system since the Roman Empire. So there is nothing new under the sun.

2. Make sure you also read Fictitious Action.

    a. "A suit brought on pretense of a controversy when no such controversy in truth exists."

    b. Now this takes some real professional word twisters to create fictions of law on such a grand scale after all they have had hundreds of years to perfect their art of word smithing and those who have the most money can hire the best wordsmiths.

E. On pages 28 and 29 you will find some interesting statements concerning fictions. Please read.

F. You are probably aware that not only do we have Legal Fictions but we also have Media Fictions and Religious Fictions.

G. We hope we have opened your mind to the concept of Fictions.

H. From Fictions we are going into Prima Facie, which we have touched upon in other "VIP DISPATCHES". You should have some prior knowledge of this subject.

    1. Prima Facie is in many ways developed from the principles of Legal Fictions.

Fictio legis neminem lædit /fíksh(iy)ow líyjəs némənəm líydət/. A fiction of law injures no one. 3 Bl.Comm. 43.

Fiction of law. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. An assumption, for purposes of justice, of a fact that does not or may not exist. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Ryan v. Motor Credit Co., 30 N.J.Eq. 531, 23 A.2d 607, 621.

These assumptions are of an innocent or even beneficial character, and are made for the advancement of the ends of justice. They secure this end chiefly by the extension of procedure from cases to which it is applicable to other cases to which it is not strictly applicable, the ground of inapplicability being some difference of an immaterial character.

See also **Legal fiction.**

Estoppels distinguished. Fictions are to be distinguished from estoppels; an estoppel being the rule by which a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part or the part of those under whom he claims, or by an adjudication upon his rights which he cannot be allowed to question.

Presumptions distinguished. Fictions are to be distinguished from presumptions of law. By the former, something known to be false or unreal is assumed as true; by the latter, an inference is set up, which may be and probably is true, but which, at any rate, the law will not permit to be controverted. It may also be said that a presumption is a rule of law prescribed for the purpose of getting at a certain conclusion, though arbitrary, where the subject is intrinsically liable to doubt from the remoteness, discrepancy, or actual defect of proofs.

Fictitious. Founded on a fiction; having the character of a fiction; pretended; counterfeit. Feigned, imaginary, not real, false, not genuine, nonexistent. Arbitrarily invented and set up, to accomplish an ulterior object.

Fictitious action. An action brought for the sole purpose of obtaining the opinion of the court on a point of law, not for the settlement of any actual controversy between the parties. See **Declaratory judgment; Feigned action; Feigned issue.**

Fictitious name. A counterfeit, alias, feigned, or pretended name taken by a person, differing in some essential particular from his true name (consisting of Christian name and patronymic), with the implication that it is meant to deceive or mislead. See also **Alias.**

Fictitious payee. Negotiable instrument is drawn to fictitious payee whenever payee named in it has no right to it, and its maker does not intend that such payee shall take anything by it; whether name of payee used by maker is that of person living or dead or one who never existed is immaterial. Goodyear Tire & Rubber Co. of California v. Wells Fargo Bank & Union Trust Co., 1 Cal.App.2d 694, 37 P.2d 483. The test is not whether the named payee is "fictitious" but whether the signer intends that he shall have no interest in the instrument. U.C.C. § 3–405.

Fictitious person. A person, who, though named as payee in a check has no right to it or its proceeds because the drawer of it so intended. Johnston v. Exchange Nat. Bank of Tampa, 152 Fla. 228, 9 So.2d 810, 811, 812. See **Fictitious payee.**

Fictitious plaintiff. A person appearing in the writ, complaint, or record as the plaintiff in a suit, but who in reality does not exist, or who is ignorant of the suit and of the use of his name in it. It is a contempt of court to sue in the name of a fictitious party.

Fictitious promise. See **Promise.**

Fide-commissary /fáydiy kóməsèhriy/. A term derived from the Latin *"fidei-commissarius,"* and occasionally used by writers on equity jurisprudence as a substitute for the law French term *"cestui que trust,"* as being more elegant and euphonious. See Brown v. Brown, 83 Hun. 160, 31 N.Y.S. 650.

Fidei-commissarius /fáydiyay kòməsériyəs/. In the civil law, this term corresponds nearly to our *"cestui que trust."* It designates a person who has the real or beneficial interest in an estate or fund, the title or administration of which is temporarily confided to another.

Fidei-commissum /fáydiyay kəmísəm/. In the civil law, a species of trust; being a gift of property (usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift. Elements of "fidei commissum" are that donee or legatee is invested with title and charged or directed to convey it to another or to make particular disposition of it. Succession of Abraham, La.App., 136 So.2d 471, 478.

Fide-jubere /fáydiy jəbíriy/ fáydiy júwbiyz? fáydiy júwbiyow/. In the civil law, to order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo:* Do you pledge yourself? I do pledge myself. One of the forms of stipulation.

Fide-jussio /fáydiy jásh(iy)ow/. An act by which any one binds himself as an additional security for another. This giving security does not destroy the liability of the principal, but adds to the security of the surety.

Fide-jussor /fáydiy jásər/. In Roman law, a guarantor; one who becomes responsible for the payment of another's debt, by a stipulation which binds him to discharge it if the principal debtor fails to do so. 3 Bl.Comm. 108. He differs from a co-obligor in this, that the latter is equally bound to a debtor, with his principal, while the former is not liable till the principal has failed to fulfil his engagement. The obligation of the fide-jussor was an accessory contract; for, if the principal obligation was not previously contracted, his engagement then took the name of mandate. The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated *"fide jussors."* 3 Bl.Comm. 108.

Fidelitas /fədíylətæs/. Fealty; fidelity. See **Fealty.**

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramen-

BOUVIER'S
LAW DICTIONARY

BALDWIN'S STUDENTS EDITION

1934

EDITED BY

WILLIAM EDWARD BALDWIN, D.C.L.

Editor, Officially Certified Code of Ohio, 1930; Official Statutes of Kentucky; Baldwin's Indiana Statutes; Official Codes of Practice of Kentucky; Tennessee Code Supplement; Michigan Compiled Laws, Supplement; Baldwin's Ohio Civil Practice Manual; Baldwin's Ohio Criminal Practice Manual; Baldwin's Law Dictionary.

BANKS-BALDWIN LAW PUBLISHING COMPANY

Oldest Law Publishing House in America—Established 1804

CLEVELAND

NOTE: *This Dictionary is not published by the original publishers of Bouvier's Law Dictionary or their successors. It is published by the oldest law publishing house in America and is a complete revision.*

Exhibit A 2 of 3

Prin. 421.

FIARS PRICES. The value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiar's prices, or when no price has been stipulated. Ersk. 1, 4, 6.

FIAT. An order of a judge or of an officer whose authority, to be signified by his signature, is necessary to authenticate the particular acts. A short order or warrant of the judge, commanding that something shall be done. See 1 Tidd, Pr. 100, 108. See JOINT FIAT.

FIAT IN BANKRUPTCY. An order of the lord chancellor that a commission of bankruptcy shall issue. 1 Deac. Bank. 106.

Fiats are abolished by 12 & 13 Vict. c. 116.

FIAUNT. An order; command. See FIAT.

FICTION. The legal assumption that something which is or may be false is true.

The expedient of fictions is sometimes resorted to in law for the furtherance of justice. The law-making power has no need to resort to fictions: it may establish its rules with simple reference to the truth; but the courts, which are confined to the administration of existing rules, and which lack the power to change those rules, even in hard cases, have frequently avoided the injustice that their application to the actual facts might cause, by assuming, in behalf of justice, that the actual facts are different from what they really are. Thus, in English law, where the administration of criminal justice is by prosecution at suit of the crown, the courts, rather than disregard the rules under which all other parties stand in respect to their neglect to appear and prosecute their suits, adopt the fiction that the king is legally ubiquitous and always in court, so that he can never be non-suited. The employment of fictions is a singular illustration of the justice of the common law, which did not hesitate to conceal or affect to conceal the fact, that a rule of law has undergone alteration, its letter remaining unchanged.

Fictio in the old Roman law was properly a term of pleading and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse: as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction; Maine, Anc. Law 25.

Fictions are to be distinguished on the one hand from presumptions of law, and on the other hand from estoppels. A presumption is a rule of law prescribed for the purpose of getting at a certain conclusion, though arbitrary, where the subject is intrinsically liable to doubt from the remoteness, discrepancy, or actual defect of proofs.

Thus, an infant under the age of seven years is conclusively presumed to be without discretion. Proof that he had discretion the court will not listen to. In the nature of the subject, there must be a limit, which it is better should be a general though arbitrary one than be fluctuating and uncertain in each case. An estoppel, on the other hand, is the rule by which a person is precluded from asserting a fact by previous conduct inconsistent therewith on his own part or the part of those under whom he claims, or by an adjudication upon his rights which he cannot be allowed to question.

This distinction is thus expressed by a Scotch writer:—"A *fictio juris* differs from a presumption. Things are presumed which are likely to be true; but a fiction of law assumes for truth what is either false, or at least is as probably false as true. Thus, an heir is feigned or considered in law as the same person with his ancestor; thus, also, writings against which certification is obtained in a reduction-improbation are judged to be false, *fictione juris*, though the most convincing proof shall be brought that they once existed and were genuine. Fictions of law must in all their effects be always limited to the special purpose of equity for which they were introduced. Ersk. Prin. 351.

The familiar fictions of the civil law and of the earlier common law were very numerous: but the more useful of them have either been superseded by authorized changes in the law or have gradually grown as it were into distinct principles, forming exceptions or modifications of those principles to evade which they were at first contrived. As there is no just reason for resorting to indirection to do that which might be done directly, fictions are rapidly disappearing before the increasing harmony of our jurisprudence. See 4 Benth. Ev. 300; 3 Pothier, Obl., Evans' ed. 43. But they have doubtless been of great utility in conducing to the gradual amelioration of the law; and, in this view, fiction, equity, and legislation have been named together as the three instrumentalities in the improvement of the law. They have been employed historically in the order here given. Sometimes two of them will be seen operating together, and there are legal systems which have escaped the influence of one or the other of them. But there is no instance in which the order of their appearance has been changed or inverted. Maine, Anc. Law 24.

Theoretical writers have classified fictions as of five sorts: *abeyance*, when the fee of land is supposed to exist for a time without any particular owner during an outstanding freehold estate; 2 Bla. Com. 107; 1 Cruise, Dig. 67; 1 Com. Dig. 175; 1 Viner, Abr. 104; the doctrine of *remitter*, by which a party who has been disseised of his freehold, and afterwards acquires a defective title, is remitted to his former good title; that one thing done to-day is considered as done at a preceding time by the doctrine of *relation*; that, because one thing is proved, another shall be presumed to be true, which is the case in all *presumptions*; that the heir, executor, or administrator stand by *representation* in place of the deceased. Again, they have been classified as of three kinds: positive, when a fact which does not exist is assumed; negative, when a fact which does exist is ignored; and fictions by relation, when the act of one person is taken as if it were the act of a different person,—*e. g.*, that of a servant as the act of his master; when an act at one time or place is treated as if performed at a different time or place; and when an act in relation to a certain thing is treated as if it were done in relation to another thing which the former represents,—*e. g.*, where delivery of a portion of goods sold is treated as giving possession of the whole; Best, Pres. 27.

Fictions being resorted to simply for the furtherance of justice; Co. Litt. 150; 10 Co. 42; 1 Cowp. 177; several maxims are fundamental to them. *First*, that that which is impossible shall not be feigned; D'Aguesseau, *Œuvres*, tome iv. pp. 427, 447 *e*, *Plaidoyer*; 2 Rolle 503. *Second*, that no fiction shall be allowed to work an injury; 3 Bla. Com. 43; 17 Johns. 348. *Third*, a fiction is not to be carried further than the reasons which introduced it necessarily require; 1 Lilly, Abr. 610; 2 Hawk. Pl. Cr. 320; Best, Pres. § 20.

Consult Dalloz, Dict.; Burg. Ins. 139; Ferguson, Moral Phil. pt. 5, c. 10, § 3; 1 Toullier 171, n. 203; 2 *id.* 217, n. 263; 11 *id.* 10, n. 2; Maine, Anc. Law; Benth. Jud. Ev.; 1 Poll. & Maitl. 469.

FICTION OF LAW. A legal assumption that a thing is true, which is either not true, or which is as probably false as true.

FICTITIOUS ACTION. A suit brought on pretence of a controversy when no such controversy in truth exists. Such actions have usually been brought on a pretended wager, for the purpose of obtaining the opinion of the court on a point of law. Courts of justice were constituted for the purpose of deciding really existing questions of right between parties; and they are not bound to answer impertinent questions which persons think proper to ask them in the form of an action on a wager; 12 East 248. Such an attempt has been held to be a contempt of court; and Lord Hardwicke in such a case committed the parties and their attorneys: Rep. t. Hardw. 237. See, also, Comb. 425; 1 Co. 93; 6 Cra. 147; FEIGNED ACTIONS.

FICTITIOUS PARTY. Where a suit is brought in the name of one who is not in being, or of one who is ignorant of the suit and has not authorized it, it is said to be brought in the name of a fictitious plaintiff. To bring such a suit is deemed a contempt of court; 4 Bla. Com. 133.

FICTITIOUS PAYEE. When a contract, such as negotiable paper, is drawn in favor of a fictitious person, and has been indorsed in such name, it is deemed payable to bearer as against all parties who are privy to the transaction; and a holder in good faith may recover on it against them; Pars. Bills & N. 591, n.; 2 H. Bla. 178, 288; 19 Ves. 311; 30 Miss. 123; 54 Ill. 339; 11 Barb. 348; 2 Yeates 480. And see 10 B. & C. 468; 3 Sandf. 38; 2 Duer 131; 104 Mass. 336; 3 Neb. 29.

The maker of such a note, by negotiating it, transfers title to it without indorsement, and it is presumed that the note came into the possession of the holders with the names of all the indorsers on it, and *prima facie* he is created as a holder for value; 5 N. Y. Supp. 753; 6 Bosw. 202; 3 Hill 113; provided that the acceptor or indorser be ignorant of the fact that the payee is fictitious; 21 Ohio St. 483; 1 Camp. 130; and to entitle the holder of such a note to a recovery it must appear affirmatively that he was ignorant of the fact that the payee was a fictitious person; 4 E. D. Sm. 83. It was said by Lord Ellenborough that as between the original parties who put it into circulation with a knowledge of the fiction, it might be held void as an inoperative instrument, but if money from the holder actually gets into the hands of the acceptor it may be recovered back as money had and received; 1 Camp. 130; *id.* addenda, 180 *b*. 9. See also Peak. Add. Cas. 146; Sto. Prom. Notes 39. In the hands of a *bona fide* holder the note or bill is good against the maker; 79 N. Y. 536; 22 Ia. 404; 11 Ind. 103; 40 N. H. 21.

A *bona fide* holder for a valuable consideration of a bill drawn payable to a fictitious person and indorsed in that name by the drawer may recover the amount of it in an action against the acceptor for money paid or money had and received upon the idea that there was an appropriation of so much money to be paid to the person who should become the holder of the bill; 3 Term 174; and the mere fact of the acceptance of such a bill is evidence that the value has been received for it; *id.* 182; in this case three judges thought that the bill was to be considered as payable to bearer, and in the leading case of Minet *v.* Gibson that view was taken and it was held that a recovery from the acceptor may be had upon a count upon a bill payable to bearer, where such acceptor is aware that the payee is a fictitious person; 3 Term 481. This judgment was affirmed by the House of Lords, though with a dissent by Eyre, C. B., and Heath, J., judges, with whom Lord Thurlow coincided; 1 H. Bla. 569; s. c. 6 Bro. P. C. 235. The case has been termed "anomalous" by a text writer who quotes the dissenting opinion of Eyre, C. B., as one "whose reasoning, it is conceived, has never been refuted;" 2 Ames, Bills & Notes 864. But the same writer admits that "the doctrine of the case has been generally adopted;" *id.* In an action on such a bill, to show that the acceptor is aware that the payee is a fictitious person, evidence is admissible to show the circumstances under which he had received other bills payable to fictitious persons; 2 H. Bla. 187, 288. See also 18 C. B. N. S. 694; L. R. 1 C. P. 463.

When a note is made payable to the name of some person not having any interest, and not intended to become a party to the transaction, whether a person of such a name is or is not known to exist, the payee may be deemed fictitious; 2 N. H. 446.

A note payable to a company or firm having no existence legal or *de facto*, has been held to be such a note; 11 Ind. 101; 40 N. H. 31; 4 E. D. Smith 83. See 6 Wend. 627; Byles, Bills, Wood's ed. 383.

FICTITIOUS PERSON. A person having no real existence. A patent to a fictitious person is in legal effect no more than a declaration that the Government thereby conveys the property to no one, and in such a case the doctrine that a subsequent *bona fide* purchaser is protected does not apply. 199 U. S. 63.

FICTITIOUS STOCK. See STOCK.

FIDE-JUBERE. In Civil Law. To become *fide-jussor*; to pledge one's self; to act as surety for another. Among the words designated as words of obligation or forms of stipulation. *Fide-jubes?* do you make yourself *fide-jussor*? *Fide-jubeo*, I do make myself *fide-jussor*. Inst. 3. 15. 1.

FIDE-JUSSIO. An act by which any one binds himself as an additional security for another. This giving security does not destroy the liability of the principal, but adds to the security of the surety. Vicat, Voc. Jur.; Hallifax, Annals, b. 3, c. 16, n. 10.

FIDE-JUSSOR. In Civil Law. One who becomes security for the debt or an

Fiction Statements
Cross Reference
Legal Fictions

A. "When logic and the policy of a state conflict with a fiction due to historical tradition, the "fiction must give way."

B. A fiction is defined to be a false averment on the part of the plaintiff, which the defendant is not allowed to traverse; the object being to give the court jurisdiction.

C. "Fiction" is that species of literature which is concerned with the narration of imaginary events and portraiture of imaginary characters.

D. Existence of a corporate entity separate and distinct from stockholders who own it is a "fiction" created and recognize by law as possessing substance for tax purposes.

E. Though a corporation is a "fiction" in certain respects, it would not be equitable to treat corporation created by partnership to deter one partner's creditors as a fact against creditors, and as a fiction against the government with respect to income and excess profits taxes.

F. "Fictions" are invented and instituted for the promotion of justice. It is a certain rule that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted. There is no sound reason why the principles applicable to fictions in general should not apply to the fiction that a corporation is a person. Where therefore, the corporate fiction is urged for fraudulent or perverted purposes, the courts may properly disregard it and look to the responsible human beings, the living members, who compose the corporation and are hidden behind the juristic screen. To bear this simple thought in mind solves many important corporation problems, for it is absurd and unjust to urge that people can do under cover of a corporation that which they could not legally do as individuals. There is no magic in the creation and employment of a corporation-too often an empty dummy-which will whitewash wrongdoing or furnish absolution for the actions of fraudulent marauders.

Fiction of Law Statements

A. By a "fiction of law" something known to be false is assumed to be true.

B. A "fiction of law" is an assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place.

C. "It seems to be a rule founded in common sense, as well as strict justice, that 'fictions of law' shall not be permitted to work any wrong, but shall be used ut res magis valeat quam pereat."

D. A fiction in law is the assumption or invention that something is true which is or may be false, but which is made to advance the ends of justice.

E. A fiction of the law is deemed to be a legal assumption that a thing is true which is either not true, or which is as probably false as true; the rule on this subject being that the court will not endure that a mere form or fiction of law, introduced for the sake of justice, should work wrong, contrary to the real truth and substance of the thing.

F. A fiction of law is an allegation in legal proceedings that does not accord with the actual facts of the case, which may be contradicted for every purpose except to defeat the beneficial end for which the fiction is invented and allowed.

G. "Fictitious" means that which is not real but imaginary.

H. "Fictitious" means founded on fiction, having the character of a fiction; false, feigned, or pretended. Trade Commission, C.A., 244 F.2d 270, 281.

IRS Magic, Part Two

A. Read "Prima Facie" Evidence statements pages 32 and 33.

B. The IRS takes the Legal Fictions that it creates and then turns them into Prima Facie Evidence Statements.

C. Compare the statement about a fiction with the Prima Facie statements.

1. Start with statement A, on page 32, "evidence sufficient to establish a fact unless and until rebutted."

   a. Where does this evidence come from if it can be rebutted?

   b. A legal fiction.

D. Go to B, if you do not rebut it then it stands.

1. This is something we have seen happen to people over and over again.

   a. They do not rebut, rebut, or rebut but they will waste their resources on all kinds of outright goofy programs, which usually do little to help them.

   b. When you try to warn them they usually will take great offense to your warning and plunge over the falls.

E. Next go to I, which is the real meat of this section.

1. Statement I, lays out what needs to be accomplished in order to rebut Prima Facie Evidence.

2. When it comes to an IRS fiction/Prima Facie evidence statement you have to disprove it with facts.

   a. Quoting sections out of Title 26 will not do it.

   b. Quoting case law will not do it.

   c. Attorneys for the most part will not do it.

   d. Using Idiot Legal arguments will not do it.

3. So what will?

   a. Now this depends upon the status you find yourself in as a individual and what the IRS is trying to do to you.

   b. It also depends upon what paperwork they are sending you.

   c. This is where all your personalized FOIA requests come into play.

   d. This is also where procedure is very relevant.

4. The way you rebut is also very important.

5. Who you send your Rebuttal to is also very important.

Prima Facie Evidence Statements

A. "Prima Facie evidence" is evidence sufficient to establish a fact unless and until rebutted.

B. "Prima Facie evidence" is such as in judgment of law is sufficient to establish the fact and, if unrebutted, remains sufficient for that purpose.

C. "Prima Facie evidence" is that which suffices for the proof of a particular fact, until contradicted or overcome by other evidence.

D. "Prima Facie Evidence" means evidence which, if credited, is sufficient to established fact or facts which it is adduced to prove.

E. Phrase "prima facie evidence" means evidence which, if credited, is sufficient to establish fact or facts which it is adduced to prove.

F. "Prima facie evidence" means evidence which, if credited, is sufficient to establish the fact or facts which it is adduced to prove.

G. "Prima Facie evidence" means such evidence which is in law sufficient to establish fact, and if not rebutted it remains sufficient to support judgment on fact so established.

H. The words "prima facie evidence" mean such evidence which is in law sufficient to establish the fact and, if not rebutted, to support a judgment upon the fact so established.

I. "Prima facie evidence" is such evidence as, in judgment of law, is sufficient, and if not rebutted, remains sufficient; it may be rebutted by developing additional facts consistent with its truth, but tending to an opposite conclusion, or by proving it untrue or untrustworthy in whole or in some material.

J. "Prima Facie evidence" means sufficient evidence upon which a party would be entitled to recover providing his opponent produces no further testimony.

K. "Prima Facie evidence" is a minimum quantity, and is that which is enough to raise a presumption of fact or is sufficient if not rebutted to establish the fact.

L. "Prima Facie evidence" of a fact is merely such evidence as suffices for proof of the fact until contradicted and overcome by other evidence.

M. "Prima Facie evidence" is not conclusive evidence, but simply denotes that the evidence may suffice as proof of a fact until contradicted and overcome by other evidence.

N. "Prima Facie evidence" is simply a first view of the evidence which will serve the purpose of the litigant who brings it before the court to establish his cause of action or defense sufficiently on which to base a judgment, if no further and better evidence that such first view is adduced by his adversary.

IRS Magic, Part Three

A. We have lightly covered Fiction evidence and Prima Facie evidence so now we want to cover Presumptive Evidence. Pages 35 and 36.

B. Read B on page 35, "Presumptive Evidence" and "Prima Facie evidence" are synonymous.

   1. So there is a tie in between the two.

C. Read G and see how "presumptive evidence" can also be referred to as circumstantial evidence.

   1. How many times have you seen or read about someone being convicted on circumstantial evidence?

D. Go to J and look at what has to be rebutted.

E. You can rarely ever "rebut" presumptive evidence or circumstantial evidence with Prima Facie evidence, which is what most people are led to believe.

Presumptive Evidence Statements
Cross Reference
Prima Facie Evidence

A. "Circumstantial evidence" or "presumptive evidence" as a basis for deductive reasoning in determination of civil issues is a mere preponderance of probabilities, and, therefore, a sufficient basis for decision.

B. "Presumptive evidence" and "prima facie evidence" are synonymous terms.

C. "Presumptive evidence" is the proof of one fact, which, when shown, has a legitimate tendency to lead the mind to the conclusion that another fact to be proven is in existence.

D. A certificate of acknowledgment, authenticated by notary public, is merely "presumptive evidence."

E. "Presumptive evidence" is authorizes but does not require conviction.

F. "Presumptive evidence" is indirect or circumstantial evidence. "Circumstantial evidence" is evidence, which is not direct and positive.

G. The term "presumptive evidence" is sometimes used to designate what is ordinarily known as circumstantial evidence.

H. Circumstantial or presumptive evidence is that which shows the existence of one fact by proving the existence of others, from which the first may be inferred.

I. "Presumptive evidence" consists in the proof of minor or other facts incidental to or usually connected with the fact sought to be proved, which, when taken together, inferentially establish or prove the fact in question to a reasonable degree of certainty.

J. The word "presumptive is used to define evidence that must be received and treated as true "until rebutted by other testimony, which may be

introduced by the defendant," and is therefore synonymous with "prima facie."

K. "Presumptive evidence" is synonymous with prima facie evidence and means evidence competent and sufficient to justify jury in finding defendant guilty, if it does in fact, satisfy them of his guilt beyond reasonable doubt.

Learning How to Slay the IRS Fictional Dragon

A. At last we are going to start into the "rebuttal process" by understanding the terminology associated with rebuttal.

B. Exhibit A comes from Black Law Dictionary 5th ed., You can look up the word "rebut" in any legal dictionary.

1. In Blacks we find rebut, rebuttable presumption, rebuttal evidence, and rebutter. You can see and read for your self these very important definitions.

2. Now you can look all those cases up and read them as we did years ago or you can simply read the next few pages to get a good perspective concerning "rebuttal."

3. After you read these definitions we hope the importance of rebutting IRS presumptive, Prima Facie fictions sinks into your mind. So, you will realize under the administrative equity system that you ask the question "How do I rebut this document that they sent me" or "How can I turn this around and use it to my benefit?"

C. Page 41 goes into rebuttal statements.

D. Page 42 takes you through Rebutting Evidence Statements.

1. Go to statement G, you must make sure what you use to rebut repels or counteracts the prima facie evidence they are trying to use against you.

2. Statement H, says that you even have to rebut any witness they bring against you.

   a. Sometimes if you practice it first you can even get a witness to rebut what they testified to.

3. The IRS uses professionally trained witnesses who are paid to travel around the country just testifying against people.

   a. For example we have seen one of those type of witnesses in Cincinnati who testified in three different court cases. And she used a different name each time.

   b. When we tell most people about the extremes the IRS and U.S. Attorneys will go to for a conviction, they think we are making it up.

4. The last statement K, remember your evidence must be complete as you can get it with substantive facts that cannot be rebutted by the IRS.

    a. This is not a hard task to accomplish but it is still a pain to have to go through.

E. Page 42, Rebuttal Evidence Statements item F.

1. You want to develop such substantive evidence so that the state has little room to rebut anything.

2. Points O and Q should be studied as to what you must do.

F. These points are why you have to send a rebuttal to any letter or notice you receive from a government entity under the administrative equity process back to all the proper or necessary parties.

G. If you have not been filing, after two or three years you will get a address correction notice from the IRS wanting you to fill it out.

1. Then they will usually send you a CP-515 wanting to know where your tax return is.

2. Next you will receive a CP-518 letter concerning your over due taxes.

3. Then comes a 4549 CG Notice which is their accounting of what you owe.

4. Next you might get a Notice of Defiency as to the amount you owe.

5. Then they will send you a notice that they are going to lien or levy you if they do not hear from you ASAP.

H. It does not always go that way however what we wanted to show you is just how many times you have to rebut their "fictional" "prima facie" "presumptions" with substantive documented evidence and build your file that they created concerning you.

1. Everybody who has ever filed a return has their own unique file that the IRS has created for them and that is why you should highly consider personalizing your rebuttals back to them.

Definition of Rebut from Blacks Law Dictionary, 5th Ed.

A. Here are the different definition's concerning Rebut, Rebuttable presumption, Rebuttal evidence, and Rebutter.

B. Just like OBJECT, OBJECT, OBJECT, you need to REBUT, REBUT, REBUT.

C. Your Rebutable work will usually always happen before you get to the OBJECTION stage.

D. Most of the time your Rebuttals will be in paper format where as your OBJECTIONS are usually verbally.

E. There are some people and groups doing so called rebuttal letters, which are very bad and totally off point even though some of it sounds really cute.

F. Then there are some people and groups doing good letters.

G. We want to try to show you why, it is so important to do a good rebuttal letter to counter an IRS or for that manner any government entity letters that they may send you.

H. IMPORTANT: If you have been the victim of bad rebuttal letters or like some people who have tried to do their own letters then we want you to know that **you can redo those rebuttal letters**.

   1. For some reason people have it in their heads that you only get one shot at doing a rebuttal letter. NOT SO! People have us help them redo letters all the time.

I. Then there are those people who have never rebutted anything and they have a number of stale letters from the IRS.

   1. Yes, you can still rebut those also as we help a number of people who are in that situation.

Where contract does not fix a time for performance, the law allows "reasonable time" for performance, defined as such time as is necessary, conveniently, to do what the contract requires to be done, as soon as circumstances will permit. Houston County v. Leo L. Landauer & Associates, Inc., Tex.Civ.App., 424 S.W.2d 458, 463.

See also **Time.**

Reasonable use theory. A riparian owner may make reasonable use of his water for either natural or artificial wants. However, he may not so use his rights so as to affect the quantity or quality of water available to a lower riparian owner.

Reassessment. Re-estimating the value of a specific property or all property in a given area for tax assessment purposes.

Reassurance. Exists where an insurer procures the whole or a part of the sum which he has insured (*i.e.*, contracted to pay in case of loss, death, etc.) to be insured again to him by another insurer. See also **Reinsurance.**

Rebate. Discount; deduction or refund of money in consideration of prompt payment. A deduction from a stipulated premium on a policy of insurance, in pursuance of an antecedent contract. A deduction or drawback from a stipulated payment, charge, or rate (as, a rate for the transportation of freight by a railroad), not taken out in advance of payment, but handed back to the payer after he has paid the full stipulated sum. See also **Discount.**

Portion of a transportation charge refunded to a shipper. Rebates are forbidden by the Interstate Commerce Act.

Tax rebate is an amount returned (*i.e.* refunded) to the taxpayer after he has made full payment of the tax.

See also **Elkins Act; Kickback; Refund.**

Rebellion. Deliberate, organized resistance, by force and arms, to the laws or operations of the government, committed by a subject. Crashley v. Press Pub. Co., 74 App.Div. 118, 77 N.Y.S. 711. It is a federal crime to incite, assist, or engage in any rebellion or insurrection against the authority of the United States or the laws thereof. 18 U.S.C.A. § 2383.

In old English law, also a contempt of a court manifested by disobedience to its process, particularly of the court of chancery. If a defendant refused to appear, after attachment and proclamation, a "commission of rebellion" issued against him. 3 Bl.Comm. 444.

Rebellious assembly. In old English law, a gathering of twelve persons or more, intending, going about, or practicing unlawfully and of their own authority to change any laws of the realm; or to destroy the inclosure of any park or ground inclosed, banks of fish-ponds, pools, conduits, etc., to the intent the same shall remain void; or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coneys in any warren, dovehouses, etc.; or to burn sacks of corn; or to abate rents or prices of victuals, etc. See also **Unlawful assembly.**

Rebus sic stantibus /ríybəs sik stǽntəbəs/. Lat. At this point of affairs; in these circumstances. A name given to a tacit condition, said to attach to all treaties, that they shall cease to be obligatory so soon as the state of facts and conditions upon which they were founded has substantially changed.

Rebut. In pleading and evidence, to defeat, refute, or take away the effect of something. When a plaintiff in an action produces evidence which raises a presumption of the defendant's liability, and the defendant adduces evidence which shows that the presumption is ill-founded, he is said to "rebut it." See **Rebuttable presumption; Rebuttal evidence.**

Rebuttable presumption. In the law of evidence, a presumption which may be rebutted by evidence. Otherwise called a "disputable" presumption. A species of legal presumption which holds good until evidence contrary to it is introduced. Beck v. Kansas City Public Service Co., Mo.App., 48 S.W.2d 213, 215. It shifts burden of proof. Heiner v. Donnan, 285 U.S. 312, 52 S.Ct. 358, 362, 76 L.Ed. 772. And which standing alone will support a finding against contradictory evidence. Lieber v. Rigby, 34 Cal.App.2d 582, 94 P.2d 49, 50. See also **Presumption.**

Rebuttal evidence. Evidence given to explain, repel, counteract, or disprove facts given in evidence by the acverse party. That which tends to explain or contradict or disprove evidence offered by the adverse party. Layton v. State, 261 Ind. 251, 301 N.E.2d 633, 636. Evidence which is offered by a party after he has rested his case and after the opponent has rested in order to contradict the opponent's evidence.

Also evidence given in opposition to a presumption of fact or a *prima facie* case; in this sense, it may be not only counteracting evidence, but evidence sufficient to counteract, that is, conclusive. See **Rebuttable presumption.**

Rebutter. In common law pleading, a defendant's answer of fact to a plaintiff's surrejoinder; the third pleading in the series on the part of the defendant.

Recall. A method of removal of official in which power of removal is either granted to or reserved by the people. Jones v. Harlan, Tex.Civ.App., 109 S.W.2d 251, 254. Right or procedure by which a public official may be removed from office before the end of his term of office by a vote of the people to be taken on the filing of a petition signed by required number of qualified voters. Wallace v. Tripp, 358 Mich. 668, 101 N.W.2d 312, 314. Recall may also be applicable to judges.

To summon a diplomatic minister back to his home court, at the same time depriving him of his office and functions.

Recall a judgment. To revoke, cancel, vacate, or reverse a judgment for matters of fact; when it is annulled by reason of errors of law, it is said to be "reversed."

Recant. To withdraw or repudiate formally and publicly. Pradlik v. State, 131 Conn. 682, 41 A.2d 906, 907.

Recapitalization. An arrangement whereby stock, bonds or other securities of a corporation are adjusted as to type, amount, income or priority. United

Rebuttal Statements

A. It is "rebuttal", to show that statement of witnesses as to what occurred is not true.

B. Any evidence that repels, counteracts, or disapproves evidence given by a witness is proper "rebuttal".

Rebutting Evidence Statements
Cross References
Rebuttal References

A. "Rebutting evidence" is that which is given to explain, repel, counteract, or disprove testimony or facts given in evidence by the adverse party.

B. "Rebutting evidence" is that evidence, which has become relevant only as an effect of some evidence introduced by the adverse party, and its function is to explain repel evidence of the adverse party.

C. Bouvier says that rebutting evidence, which is that evidence which is given by a party in a case to counteract or disprove facts which have been given in evidence by the other party.

D. "Rebutting evidence" is that which is given to explain, repel, counteract, or disprove facts given in evidence by adverse party.

E. "Rebutting evidence" is that which is given to explain, repel, counteract or disprove testimony or facts introduced by or on behalf of the adverse party.

F. "Rebutting evidence means not merely evidence which contradicts the evidence on the opposite side, but evidence in denial of some affirmative fact which the answering party is endeavoring to prove."

G. Rebutting evidence is that which repels or counteracts the effect of evidence which has preceded it. Evidence which shows that the evidence of the opposite party was not entitled to force and effect which the law imputes to it prima facie must in its strictest sense be rebutting.

H. "Rebutting evidence" means not merely evidence which contradicts the witnesses on opposite side and corroborates those of party who began, but evidence in denial of some affirmative fact which opposite party has endeavored to prove.

I. "Rebutting evidence" means not merely evidence which contradicts witness on opposite side, but also evidence in denial of some affirmative fact which answering party has endeavored to prove and embraces al

testimony which tends to counteract or overcome legal effect of evidence for adverse party.

J. "Rebutting evidence" means not merely evidence which contradicts the witnesses on the opposite side and corroborates those of the party who began, but evidence in denial of some affirmative fact which the answering party has endeavored to prove.

K. "Rebutting evidence" is that which is given by a party in a cause to explain, repel, contradict, or disprove the facts given in evidence by the other side. Evidence which shows that the evidence of the opposite party was not entitled to the force and effect which the law imputes to it prima facie must in its strictest sense be rebutting.

Rebuttal Evidence Statements

A. "Rebuttal evidence" is evidence tending to disprove new points first opened up by opposite party.

B. "Rebuttal evidence" is that which explains, contradicts or otherwise refutes defendant's evidence.

C. "Rebuttal evidence" embraces all testimony, which tends to counteract or overcome legal effects of opponent's evidence.

D. "Rebuttal evidence" is proof of facts tending to explain, repeal, counteract, or disprove matters given in evidence on the other side.

E. "Rebuttal evidence" generally is receivable only where new matter has been developed by evidence of one party and is ordinarily limited to reply to new points.

F. "Rebuttal evidence" in criminal case is that given by state to explain, repel, counteract, contradict, or disprove evidence introduced by or on behalf of defendant.

G. "Rebuttal evidence" is that given by one party to contradict, repel, explain, or disprove evidence produced by the other party, and tending directly to weaken or impeach the same.

H. Rebuttal evidence in criminal case is that which is given by the state to explain, repel, counteract, or disprove evidence introduced by or on behalf of the defendant.

I. Though "rebuttal evidence" is that which tends to meet affirmative case set up by defendant's testimony, it is not ground of objection that such evidence tends also to corroborate case made by plaintiff's evidence in chief.

J. "Rebuttal evidence" is competent only when it is evidence in denial of some affirmative case or fact which the adverse party has attempted to prove, or repels or explains it.

K. Rebuttal evidence is that which is given to explain, repel, counteract, or disprove facts given in evidence by the adverse party. Anything may be given as rebuttal evidence which is a direct reply to that produced by the other side.

L. "Rebutting evidence" means not merely evidence which contradicts the witnesses on opposite side and corrobates those of party who begin, but evidence in denial of some affirmative fact which opposite party has endeavored to prove.

M. Cross-examination is not "rebuttal testimony."

N. "Rebuttal testimony" should rebut the testimony advanced by the other side, and should consist of nothing which could properly have been received as proof in chief.

O. Rebuttal testimony is that testimony, which is given to explain, repel, counteract, disprove, or destroy facts given in evidence by an adverse party. Any evidence may be given in rebuttal, which is a direct reply to that produced by the other side or a contradiction thereof, or which tends to destroy the effect of the same.

P. The word "rebutting" has a twofold signification, both in common and legal parlance. It sometimes means contradictory evidence only. At other times conclusive or overcoming testimony. It may be employed as contravening, or opposing, as well as overcoming proof.

Q. The expression "rebutting," or the "rebuttal" of, a presumption is often used with a twofold signification; one in the sense of establishing to the satisfaction of the jury facts which disprove the presumption, and the other in the sense of the mere introduction of evidence sufficient to contradict the presumption.

27 CFR 250.11

A. One of the items that you may wish to have in your inventory is 27 CFR 250.11, which contains the definition of a Revenue Agent.

1. This entire section contains three pages of which the definition of a Revenue Agent is on the third page.

B. These three pages when you use them are called an Exhibit.

1. Page 48, which is titled: Title 27-Alcohol, Tobacco Products and Firearms and right below that say, "This index contains parts 200 to end."

2. Now look down the "part" to 250 which is titled "Liquors and Articles from Puerto Rico and the Virgin Islands."

3. Now beginning on page 49 is the entire 250.11 section which when you use this on them by making it an Exhibit it seems like the IRS personnel do not like having their noses rubbed in this document.

    a. As a matter of fact they dislike it so much they had the entire section removed from 27 CFR.

4. This was removed just a couple of months ago and in order to show you this go to page 52 which shows Title 27 CFR, part 250.

5. Now if you go to Part 250 on page 53 what comes up, "Requested Section was not found."

6. Now to double check, go to page 54 from the National Archives and Records Administration and click on Volume 2 Revised April 1, 2002.

7. Page 55 shows the new index Part 200-250 is now (reserved).

    a. In order to do this congress would have had to pass a public law, which should be found in the Federal Register. We have this on our list of items of things to look for.

C. This is not the first time they have done this little act.

1. It goes to show you what lengths they will go to keep from being exposed.

2. When they pull this kind of a stunt we usually find a number of items to replace it.

D. This does not mean that we have to stop using the part.

1. But it does mean you might have to be a little more savvy in the use of it.

Title 27--Alcohol, Tobacco Products and Firearms

(This index contains parts 200 to End)

CHAPTER I--BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

§ 250.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including applications, reports, returns, and records. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF-92, 46 FR 46920, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5963, Feb. 27, 1987; T.D. ATF-372, 41 FR 20725, May 8, 1996]

Subpart B—Definitions

§ 250.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Article. Any preparation unfit for beverage use, made with or containing:

(1) Wine or beer;

(2) Distilled spirits or industrial spirits; or

(3) Denatured spirits when such preparation is not manufactured under the provisions of this chapter.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed, or produced from malt, wholly or in part, or from any substitute therefor.

Bottler. Any person required to hold a basic permit as a bottler under 27 U.S.C. 203(b)(1).

Bulk container. Any container having a capacity of more than 1 gallon.

Bulk distilled spirits. The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of 1 gallon.

Bureau of Alcoholic Beverage Taxes. Bureau of Alcoholic Beverage Taxes of the Commonwealth of Puerto Rico.

Business day. Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and all legal holidays in the Commonwealth of Puerto Rico.)

Chief, Puerto Rico Operations. The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms. His complete address is: Chief, Puerto Rico Operations, Bureau of Alcohol, Tobacco and Firearms, U.S. Courthouse and Federal Building, Room 659, Avenida Carlos Chardon, Hato Rey, Puerto Rico 00919.

Commercial bank. A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Denatured spirits. Industrial spirits denatured in accordance with approved formulas in distilled spirits plants established and operated under the provisions of this chapter relating to the establishment and operation of plants qualified to denature spirits in the

United States or, in respect of a product of the Virgin Islands, shall also mean spirits denatured in accordance with approved formulas in plants established under the provisions of the Virgin Islands regulations and shall include, unless otherwise limited, both completely and specially denatured spirits.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of the service center. A director of an internal revenue service center.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but shall not include industrial spirits as defined in this part except when used in reference to such spirits which would be subject to tax if brought into the United States.

District director. A district director of internal revenue.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 7652 is paid or determined.

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

Eligible article. Any medicine, medicinal preparation, food product, flavor, flavoring extract or perfume which contains distilled spirits, is unfit for beverage purposes, and has been or will be brought into the United States from Puerto Rico or the Virgin Islands under the provisions of 26 U.S.C. 7652(g).

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document, or where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Fiscal year. The period which begins October 1 and ends on the following September 30.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Importer. Any person who imports distilled spirits, wines, or beer into the United States.

Industrial spirits. As to products of Puerto Rico, distilled spirits produced and warehoused at and withdrawn from distilled spirits plants established and operated under the provisions of this chapter relating to the establishment of such plants and the production, bonded warehousing, and withdrawal from bond of distilled spirits in the United States, or as to products of the Virgin Islands, distilled spirits produced, warehoused, and withdrawn under Virgin Islands regulations.

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27

CFR part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR part 4.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

Liquors. Industrial spirits, distilled spirits, liqueurs, cordials and similar compounds, wines, and beer or any alcoholic preparation fit for beverage use.

Permit. A formal written authorization of the Secretary of the Treasury of Puerto Rico.

Person. An individual, a trust, an estate, a partnership, an association, a company, or a corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

Rectifier. Any person required to hold a rectifier's basic permit under 27 U.S.C. 203(b)(1).

Region. A Bureau of Alcohol, Tobacco and Firearms Region.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Revenue Agent. Any duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico.

Secretary. The Secretary of the Treasury of Puerto Rico.

Secretary or his delegate. The Secretary or any officer or employee of the Department of the Treasury of Puerto Rico duly authorized by the Secretary to perform the function mentioned or described in this part.

Taxpaid. As used in this part with respect to liquors or articles of Puerto Rican manufacture, includes liquors or articles on which the tax was computed but with respect to which payment was deferred under the provisions of subpart E of this part.

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

United States. The States and the District of Columbia.

U.S.C. The United States Code.

United States Bureau of Alcohol, Tobacco and Firearms office. The Bureau of Alcohol, Tobacco and Firearms office in Puerto Rico operating under the direction of the Regional Director (Compliance), North Atlantic Region, New York, NY 10048.

Virgin Islands regulations. Regulations issued or adopted by the Governor of the Virgin Islands, or his duly authorized agents, with the concurrence of the Secretary of the Treasury of the United States, or his delegate, under the provisions of 26 U.S.C. 5314, as amended, and § 250.201a.

Wine. Still wine, vermouth, or other aperitif wine, imitation, substandard, or artificial wine, compounds designated as wine, flavored, rectified, or sweetened wine, champagne or sparkling wine, and artificially carbonated wine, containing not over 24 percent of alcohol by volume. Wines containing more than 24 percent of alcohol by volume are classed and taxed as distilled spirits.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205) Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13551, Mar. 31, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 250.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C [Reserved]

Subpart Ca—Rum Imported Into the United States From Areas Other Than Puerto Rico and the Virgin Islands

§ 250.30 Excise taxes.

Distilled spirits excise taxes, less the estimated amounts necessary for payment of refunds and drawbacks, collected on all rum imported into the United States (including rum from possessions other than Puerto Rico and the Virgin Islands), will be deposited

- Title 27 -- Alcohol, Tobacco Products and Firearms
  - CHAPTER I -- BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY
    - Part 250 -- Liquors and articles from Puerto Rico and the Virgin Islands

---

Section

Requested Section was not found. Please verify the CFR citation you entered.

List of available CFR Titles on GPO Access

National Archives and Records Administration

code of federal regulations

Select and search or browse available CFR Titles or volumes:

- All volumes for the selected Title(s) will be searched by default.
- Individual volumes can be searched by clicking the corresponding checkbox. To prevent duplicate search results, deselect the Title checkbox that the volume is in.

Maximum Records Returned: 40 Default is 40. Maximum is 200.

Search Terms:

SUBMIT CLEAR

Search Title	*Search Volume*	*Chapter*	*Browse Parts*	*Regulatory Entity*
☑ **Title 27 Alcohol, Tobacco and Firearms** **Revised April 1, 2002**	☐ 1	I	1-199	Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury
	☐ 2		200-end	

Title 27--Alcohol, Tobacco Products and Firearms

(This index contains parts 200 to End)

CHAPTER I--BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Federal Register/Volume 66, No. 143/ Wednesday July 25,2001

A. Bureau of Alcohol, Tobacco, and Firearms, 27 CFR part 4, 5, 7, 17, 19, 20, 22, 24, 25, 26, 70, 250, and 251 (Exhibit A).

1. Exhibit A, 1 of 7, first column at Summary, "The purpose of this recodificaton is to reissue the regulations in part 250 of title 27 of the CFR (27 CFR 250) as 27 CFR part 26.

   a. Under background: As part of continuing efforts to reorganize the part numbering system of title 27 CFR is removing part 250, in its entirety, and is recodifying the regulations as 27 CFR part 26.

   b. Second column, sub points B 26.11 or the old 250.11.

   c. Exhibit A, 3 of 7 first column at 27 CFR 250 then follow to 4 of 7, third column at PART 250 [Redesignated as part 26] Par. 26. Redesignate 27 CFR part 250 as 27 CFR part 26.

   d. Now look at where their authority is based. Do any of those sections sound familiar?

   e. Now drop down to 26.11 [Amended] and read that section.

B. Now that we have uncovered all this good stuff pertaining to 27 Part 26.11 which used to be found in 27 part 250.11 which has finally been posted by the U.S. Government Printing Office, via GPO Access, shown on page 64.

C. Lets look at Title 27, Chapter I, part 26 sub parts B—Definitions Sec. 26.11 meaning of terms. Go to page 66 (page 3 of 4). About half way down, we find the definition of a Revenue Agent.

D. We have put these clean copies of these four pages for those of you who might need to use this information.

E. We wanted to put that last section and this section together to show you how fluid and alert you have to be to respond timely to any changes that can arise.

Dated: Approved: July 17, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–18417 Filed 7–24–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 17, 19, 20, 22, 24, 25, 26, 70, 250, and 251

[T.D. ATF–459]

RIN 1512–AC40

Liquors and Articles From Puerto Rico and the Virgin Islands; Recodification of Regulations (2001R–56P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final Rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is recodifying the regulations pertaining to liquors and articles from Puerto Rico and the Virgin Islands. The purpose of this recodification is to reissue the regulations in part 250 of title 27 of the Code of Federal Regulations (27 CFR part 250) as 27 CFR part 26. This change improves the organization of title 27.

DATES: This rule is effective on July 25, 2001.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226, (202–927–9347) or e-mail at LMGesser@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

As a part of continuing efforts to reorganize the part numbering system of title 27 CFR, ATF is removing part 250, in its entirety, and is recodifying the regulations as 27 CFR part 26. This change improves the organization of title 27 CFR.

In addition to the recodification, ATF is making two technical amendments to title 27 CFR, chapter I. Specifically, we are designating Subchapter B as Tobacco and in part 251 we are revising the reference to part 240 to read part 24.

DERIVATION TABLE FOR PART 26

The requirements of sec.	Are derived from sec.
Subpart A	
26.1	250.1
26.2	250.2
26.3	250.3
Subpart B	
26.11	250.11
Subpart C—[Reserved] Subpart Ca	
26.30	250.30
26.31	250.31
Subpart Cb	
26.35	250.35
26.36	250.36
26.36a	250.36a
26.36b	250.36b
26.36c	250.36c
26.37	250.37
26.38	250.38
26.39	250.39
26.40	250.40
26.41	250.41
26.43	250.43
26.44	250.44
26.45	250.45
26.46	250.46
26.47	250.47
Subpart D	
26.50	250.50
26.50a	250.50a
26.51	250.51
26.52	250.52
26.53	250.53
26.54	250.54
26.55	250.55
Subpart E	
26.61	250.61
26.62	250.62
26.62a	250.62a
26.62b	250.62b
26.63	250.63
26.64	250.64
26.65	250.65
26.66	250.66
26.67	250.67
26.68	250.68
26.68a	250.68a
26.69	250.69
26.70	250.70
26.70a	250.70a
26.71	250.71
26.72	250.72
26.73	250.73
26.74	250.74
26.75	250.75
26.76	250.76
26.77	250.77
26.78	250.78
26.79	250.79
26.79a	250.79a
26.80	250.80
26.81	250.81
26.82	250.82

DERIVATION TABLE FOR PART 26—Continued

The requirements of sec.	Are derived from sec.
26.86	250.86
26.87	250.87
26.92	250.92
26.93	250.93
26.94	250.94
26.95	250.95
26.96	250.96
26.96a	250.96a
26.96b	250.96b
26.97	250.97
26.101	250.101
26.102	250.102
26.103	250.103
26.104	250.104
26.105	250.105
26.105a	250.105a
26.106	250.106
26.107	250.107
26.108	250.108
26.109	250.109
26.110	250.110
26.111	250.111
26.112	250.112
26.112a	250.112a
26.113	250.113
26.114	250.114
26.115	250.115
26.116	250.116
26.117	250.117
26.118	250.118
26.119	250.119
Subpart F	
26.125	250.125
26.126	250.126
26.128	250.128
Subpart G	
26.135	250.135
26.136	250.136
Subpart H	
26.163	250.163
26.164	250.164
26.164a	250.164a
26.165	250.165
Subpart I	
26.170	250.170
26.171	250.171
26.172	250.172
26.173	250.173
26.174	250.174
Subpart Ia	
26.191	250.191
26.192	250.192
26.193	250.193
26.194	250.194
Subpart Ib	
26.196	250.196
26.197	250.197
26.198	250.198
26.199	250.199

Exhibit A 1 of 7

DERIVATION TABLE FOR PART 26—Continued

The requirements of sec.	Are derived from sec.
26.199a	250.199a
26.199b	250.199b
26.199c	250.199c
26.199d	250.199d
26.199e	250.199e
26.199f	250.199f
Subpart J	
26.200	250.200
26.201	250.201
26.201a	250.201a
26.201b	250.201b
26.201c	250.201c
26.202	250.202
26.203	250.203
26.203a	250.203a
26.204	250.204
26.204a	250.204a
26.205	250.205
26.206	250.206
26.207	250.207
26.209	250.209
26.210	250.210
26.211	250.211
Subpart K	
26.220	250.220
26.221	250.221
26.222	250.222
26.223	250.223
26.224	250.224
26.225	250.225
Subpart L	
26.230	250.230
26.231	250.231
Subpart M	
26.260	250.260
26.261	250.261
26.262	250.262
26.262a	250.262a
26.263	250.263
26.264	250.264
26.265	250.265
26.266	250.266
26.267	250.267
Subpart N	
26.272	250.272
26.273	250.273
26.273a	250.273a
26.273b	250.273b
26.275	250.275
26.276	250.276
26.277	250.277
Subpart O	
26.291	250.291
26.292	250.292
26.293	250.293
26.294	250.294
26.295	250.295
26.296	250.296

DERIVATION TABLE FOR PART 26—Continued

The requirements of sec.	Are derived from sec.
26.297	250.297
Subpart Oa	
26.300	250.300
26.301	250.301
26.302	250.302
26.303	250.303
26.304	250.304
26.305	250.305
Subpart Ob	
26.306	250.306
26.307	250.307
26.308	250.308
26.309	250.309
26.310	250.310
Subpart P	
26.311	250.311
26.312	250.312
26.314	250.314
26.315	250.315
26.316	250.316
26.317	250.317
26.318	250.318
26.319	250.319
Subpart Q	
26.331	250.331

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly, because of the nature of this final rule, good cause is found that it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Virgin Islands.

27 CFR Part 19

Caribbean Basin initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Exhibit H 2 of 7

27 CFR Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 250

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 251

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Authority and Issuance

ATF is amending title 27 of the Code of Federal Regulations, chapter I, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Par. 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Under the heading "Cross References," remove the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and add, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

§ 5.2 [Amended]

Par. 4. Amend § 5.2 by removing the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and adding, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.4 [Amended]

Par. 6. Amend § 7.4 by removing the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and adding, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Par. 7. The authority citation for 27 CFR part 17 continues to read as follows:

Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 17.5 [Amended]

Par. 8. Amend § 17.5 by removing the reference to "part 250" and adding, in its place, a reference to "part 26."

PART 19—DISTILLED SPIRITS PLANTS

Par. 9. The authority citation for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c 1131; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

Par. 10. Amend § 19.3 by removing the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and adding, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

§ 19.485 [Amended]

Par. 11. Amend § 19.485 as follows:

a. In paragraph (a)(1), remove the reference to "27 CFR 250.40" and add, in its place, a reference to "27 CFR 26.40"; and

b. In paragraph (a)(2), remove the reference to "27 CFR 250.206" and add, in its place, a reference to "27 CFR 26.206."

§ 19.524 [Amended]

Par. 12. Amend paragraphs (a)(1), (b)(1) and (b)(3) of § 19.524 by removing the reference to "parts 250 and 251" and adding, in its place, a reference to "parts 26 and 251."

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Par. 13. The authority citation for 27 CFR part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5552, 5555, 5607, 6065, 7805.

§ 20.3 [Amended]

Par. 14. Amend § 20.3 by removing the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and adding, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Par. 15. The authority citation for 27 CFR part 22 continues to read as follows:

Exhibit A 3 of 7

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

§ 22.3 [Amended]

Par. 16. Amend § 22.3 by removing the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and adding, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

PART 24—WINE

Par. 17. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.4 [Amended]

Par. 18. Amend § 24.4 by removing the reference to "27 CFR Part 250-Liquors and Articles from Puerto Rico and the Virgin Islands" and adding, in part number order, a reference to "27 CFR Part 26-Liquors and Articles from Puerto Rico and the Virgin Islands."

§ 24.272 [Amended]

Par. 19. Amend paragraphs (a)(1), (b)(1) and (b)(3) of § 24.272 by removing the reference to "parts 250 and 251" and adding, in its place, a reference to "parts 26 and 251."

PART 25—BEER

Par. 20. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.165 [Amended]

Par. 21. Amend paragraph (a)(1), (b)(1) and (b)(3) of § 25.165 by removing the reference to "Parts 250 and 251" and adding, in its place, a reference to "parts 26 and 251."

Par. 21a. Add the following heading to Subchapter B:

Subchapter B—Tobacco

* * * * *

PART 70—PROCEDURE AND ADMINISTRATION

Par. 22. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§§ 70.411 and 70.461 [Amended]

Par. 23. Remove the reference to "part 250" and add, in its place, a reference to "part 26" in the following places:

a. Section 70.411(c)(26); and

b. Section 70.461.

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 24. The authority citation for 27 CFR part 251 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

Par. 25. Under the heading "Cross Reference," remove the reference to "part 250" and add, in its place, a reference to "part 26."

§ 251.1 [Amended]

Par. 26. Revise the "Note" in § 251.1 to read as follows:

§ 251.1 Imported distilled spirits, wines, and beer.

* * * * *

Note: Distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands are governed by the provisions of part 26 of this chapter.

* * * * *

§ 251.48a [Amended]

Par. 27. Amend paragraph (a) of § 251.48a as follows:

a. Remove the reference to "parts 19 and 250" and add, in its place, a reference to "parts 19 and 26";

b. Remove the reference to "parts 240 and 250" and add, in its place, a reference to "parts 24 and 26"; and

c. Remove the reference to "parts 25 and 250" and add, in its place, a reference to "parts 25 and 26."

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 28. The authority citation for 27 CFR part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

PART 250—[REDESIGNATED AS PART 26]

Par. 29. Redesignate 27 CFR part 250 as 27 CFR part 26.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 30. The authority citation for the newly redesignated part 26 of title 27 CFR, subchapter A, continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.3 [Amended]

Par. 30a. Amend § 26.3 as follows:

a. Remove the reference to "part 250," each place it appears, and add, in its place, a reference to "part 26"; and

b. Remove the reference to "ATF Order 1130.23," each place it appears, and add, in its place, a reference to "ATF Order 1130.29."

§ 26.11 [Amended]

Par. 31. Amend § 26.11 as follows:

a. In the definition of "Appropriate ATF Officer," remove the reference to "ATF Order 1130.23, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 250," and add, in its place, a reference to "ATF Order 1130.29, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 26"; and

b. In the definition of "Virgin Islands regulations," remove the reference to "§ 250.201a" and add, in its place, a reference to "§ 26.201a."

§ 26.30 [Amended]

Par. 32. Amend § 26.30 by removing the reference to "§ 250.31" and adding, in its place, a reference to "§ 26.31."

§§ 26.35, 26.47 and 26.107 [Amended]

Par. 33. Remove the reference to "§ 250.36," each place it appears, and

Exhibit A4 of 7

add, in its place, a reference to "§ 26.36," in the following places:
a. Section 26.35(a);
b. Section 26.47; and
c. Section 26.107.

§ 26.45 [Amended]

Par. 34. Amend § 26.45 by removing the reference to "§ 250.44" and adding, in its place, a reference to "§ 26.44."

§ 26.50 [Amended]

Par. 35. Amend § 26.50 as follows:
a. In paragraph (a), remove the reference to "§ 250.36" and add, in its place, a reference to "§ 26.36"; and
b. In paragraphs (a) and (b), remove the reference to "§ 250.54" and add, in its place, a reference to "§ 26.54."

§ 26.51 [Amended]

Par. 36. Amend paragraph (c) of § 26.51 by removing the reference to "§ 250.54" and adding, in its place, a reference to "§ 26.54."

§ 26.55 [Amended]

Par. 37. Amend § 26.55 by removing the reference to "§ 250.52" and adding, in its place, a reference to "§ 26.52."

§ 26.68a [Amended]

Par. 38. Amend § 26.68a as follows:
a. Remove the reference to "§§ 250.66(a), 250.67, or § 250.68" and add, in its place, a reference to "§§ 26.66(a), 26.67, or 26.68"; and
b. Remove the reference to "§ 250.66(b)" and add, in its place, a reference to "§ 26.66(b)."

§§ 26.70, 26.71 and 26.73 [Amended]

Par. 39. Remove the reference to "§ 250.72" and add, in its place, a reference to "§ 26.72," in the following places:
a. Section 26.70;
b. Section 26.71(a); and c. Section 26.73.

§ 26.72 [Amended]

Par. 40. Amend § 26.72 by removing the reference to "§ 250.73" and adding, in its place, a reference to "§ 26.73."

§ 26.74 [Amended]

Par. 41. Amend § 26.74 by removing the reference to "§ 250.63" and adding, in its place, a reference to "§ 26.63."

§ 26.77 [Amended]

Par. 42. Amend paragraph (c) of § 26.77 by removing the reference to "§ 250.79a" and adding, in its place, a reference to "§ 26.79a."

§§ 26.79, 26.80, 26.81, 26.199a and 26.199b [Amended]

Par. 43. Remove the reference to "§ 250.164a" and add, in its place, a reference to "§ 26.164a," in the following places:
a. Section 26.79(a);
b. Section 26.80(a);
c. Section 26.81(a);
d. Section 26.199a(a); and
e. Section 26.199b.

§ 26.82 [Amended]

Par. 44. Amend § 26.82 by removing the reference to "§§ 250.114 through 250.116" and adding, in its place, a reference to "§§ 26.114 through 26.116."

§ 26.87 [Amended]

Par. 45. Amend § 26.87 as follows:
a. Remove the reference to "§ 250.86" and add, in its place, a reference to "§ 26.86";
b. Remove the reference to "§ 250.81" and add, in its place, a reference to "§ 26.81";
c. Remove the reference to "§ 250.80" and add, in its place, a reference to "§ 26.80";
d. Remove the reference to "§ 250.78" and add, in its place, a reference to "§ 26.78"; an
e. Remove the reference to "§§ 250.114 through 250.116" and add, in its place, a reference to "§§ 26.114 through 26.116."

§§ 26.95 and 26.104 [Amended]

Par. 46. Remove the reference to "§ 250.80(b)" and add, in its place, a reference to "§ 26.80(b)," in the following places:
a. Section 26.95(b); and
b. Section 26.104(b).

§ 26.96b [Amended]

Par. 47. Amend § 26.96b as follows:
a. Remove the reference to "§ 250.95 or § 250.96" and add, in its place, a reference to "§ 26.95 or § 26.96"; and
b. Remove the reference to "§§ 250.114 through 250.116" and add, in its place, a reference to "§§ 26.114 through 26.116."

§ 26.105a [Amended]

Par. 48. Amend § 26.105a as follows:
a. Remove the reference to "§ 250.104 or § 250.105" and add, in its place, a reference to "§ 26.104 or § 26.105"; and
b. Remove the reference to "§§ 250.114 through 250.116" and add, in its place, a reference to "§§ 26.114 through 26.116."

§ 26.108 [Amended]

Par. 49. Amend § 26.108 as follows:
a. In paragraph (a), remove the reference to "§ 250.78" and add, in its place, a reference to "§ 26.78";
b. In paragraph (b), remove the reference to "§§ 250.93 and/or 250.102" and add, in its place, a reference to "§§ 26.93 and/or 26.102"; and
c. In paragraph (c), remove the reference to "§§ 250.78, 250.93, and/or § 250.102" and add, in its place, a reference to "§§ 26.78, 26.93, and/or § 26.102."

§ 26.109 [Amended]

Par. 50. Amend § 26.109 as follows:
a. In paragraph (a), remove the reference to "§ 250.79" and add, in its place, a reference to "§ 26.79";
b. In paragraph (a), remove the reference to "§§ 250.80, 250.81 and 250.111 through 250.113" and add, in its place, a reference to "§§ 26.80, 26.81, and 26.111 through 26.113";
c. In paragraph (b), remove the reference to "§ 250.94" and add, in its place, a reference to "§ 26.94";
d. In paragraph (b), remove the reference to "§§ 250.95, 250.96, and 250.111 through 250.113" and add, in its place, a reference to "§§ 26.95, 26.96 and 26.111 through 26.113";
e. In paragraph (c), remove the reference to "§ 250.103" and add, in its place, a reference to "§ 26.103"; and
f. In paragraph (c), remove the reference to "§§ 250.104, 250.105, and 250.111 through 250.113" and add, in its place, a reference to "§§ 26.104, 26.105 and 26.111 through 26.113."

§ 26.110 [Amended]

Par. 51. Amend § 26.110 as follows:
a. Remove the reference to "§ 250.164a" and add, in its place, a reference to "§ 26.164a"; and
b. Remove the reference to "§§ 250.114 through 250.116" and add, in its place, a reference to "§§ 26.114 through 26.116."

§ 26.112 [Amended]

Par. 52. Amend § 26.112 as follows:
a. In paragraph (a), remove the reference to "§§ 250.80, 250.95 or 250.104" and add, in its place, a reference to "§§ 26.80, 26.95 or 26.104";
b. In paragraphs (c)(2) and (d)(2), remove the reference to "§ 250.112a" and add, in its place, a reference to "§ 26.112a"; and
c. In paragraph (e), remove the reference to "§ 250.113" and add, in its place, a reference to "§ 26.113."

§ 26.112a [Amended]

Par. 53. Amend § 26.112a as follows:
a. In paragraphs (a)(1), (b)(2), and (b)(3), remove the reference to "§ 250.112" and add, in its place, a reference to "§ 26.112"; and
b. In paragraph (b)(2), remove the reference to "§ 250.113" and add, in its place, a reference to "§ 26.113."

§ 26.113 [Amended]

Par. 54. Amend § 26.113 as follows:

Exhibit A 5 of 7

a. In paragraph (c), remove the reference to "§ 250.81" and add, in its place, a reference to "§ 26.81";

b. In paragraph (d), remove the reference to "§ 250.96" and add, in its place, a reference to "§ 26.96";

c. In paragraph (e), remove the reference to "§ 250.105" and add, in its place, a reference to "§ 26.105"; and

d. In paragraph (f), remove the reference to "§ 250.112(c)" and add, in its place, a reference to "§ 26.112(c)."

§ 26.114 [Amended]

Par. 55. Amend § 26.114 by removing the reference to "§§ 250.115 and 250.116" and adding, in its place, a reference to "§§ 26.115 and 26.116."

§ 26.115 [Amended]

Par. 56. Amend § 26.115 by removing the reference to "§ 250.116" and adding, in its place, a reference to "§ 26.116."

§ 26.163 [Amended]

Par. 57. Amend § 26.163 by removing the reference to "§ 250.164" and adding, in its place, a reference to "§ 26.164."

§ 26.165 [Amended]

Par. 58. Amend § 26.165 as follows:

a. In paragraph (a)(2), remove the reference to "§ 250.79a" and add, in its place, a reference to "§ 26.79a"; and

b. In paragraph (a)(3), remove the reference to "§ 250.50a" and add, in its place, a reference to "§ 26.50a."

§ 26.173 [Amended]

Par. 59. Amend paragraph (b)(4) of § 26.173 by removing the reference to "§ 250.51" and adding, in its place, a reference to "§ 26.51."

§ 26.193 [Amended]

Par. 60. Amend § 26.193 as follows:

a. In paragraph (a), remove the reference to "§§ 250.107 through 250.110" and add, in its place, a reference to "§§ 26.107 through 26.110"; and

b. In paragraph (b), remove the reference to "§ 250.113" and add, in its place, a reference to "§ 26.113."

§ 26.194 [Amended]

Par. 61. Amend § 26.194 as follows:

a. In paragraph (a), remove the reference to "§ 250.193(b)" and add, in its place, a reference to "§ 26.193(b)"; and

b. In paragraph (b), remove the reference to "§ 250.113" and add, in its place, a reference to "§ 26.113."

§ 26.196 [Amended]

Par. 62. Amend § 26.196 by removing the reference to "§ 250.86" and adding, in its place, a reference to "§ 26.86."

§ 26.200 [Amended]

Par. 63. Amend paragraph (a) of § 26.200 by removing the reference to "§ 250.201," each place it appears, and adding, in its place, a reference to "§ 26.201."

§§ 26.204, 26.260, 26.263, 26.264 and 26.265 [Amended]

Par. 64. Remove the reference to "§ 250.205" and add, in its place, a reference to "§ 26.205," in the following places:

a. Section 26.204;

b. Section 26.260;

c. Section 26.263;

d. Section 26.264; and

e. Section 26.265.

§ 26.205 [Amended]

Par. 65. Amend § 26.205 as follows:

a. In the introductory text of paragraph (a)(8), remove the reference to "§ 250.262a" and add, in its place, a reference to "§ 26.262a";

b. In paragraph (a)(8)(iv), remove the reference to "§ 250.204a" and add, in its place, a reference to "§ 26.204a"; and

c. In paragraph (b), remove the reference to "§§ 250.260 and 250.302" and add, in its place, a reference to "§§ 26.260 and 26.302."

§ 26.211 [Amended]

Par. 66. Amend § 26.211 by removing the reference to "§ 250.210" and adding, in its place, a reference to "§ 26.210."

§§ 26.220 and 26.221 [Amended]

Par. 67. Remove the reference to "§ 250.224" and add, in its place, a reference to "§ 26.224," in the following places:

a. Section 26.220(a) and (b); and b. Section 26.221(c).

§ 26.225 [Amended]

Par. 68. Amend § 26.225 by removing the reference to "§ 250.222" and adding, in its place, a reference to "§ 26.222."

§ 26.261 [Amended]

Par. 69. Amend § 26.261 as follows:

a. Remove the reference to "§ 250.205" and add, in its place, a reference to "§ 26.205"; and

b. Remove the reference to "§§ 250.262 through 250.265" and add, in its place, a reference to "§§ 26.262 through 26.265."

§ 26.262 [Amended]

Par. 70. Amend § 26.262 as follows:

a. In paragraph (a), remove the reference to "§ 250.205" and add, in its place, a reference to "§ 26.205"; and

b. In paragraph (c), remove the reference to "§ 250.262a" and add, in its place, a reference to "§ 26.262a."

§ 26.272 [Amended]

Par. 71. Amend § 26.272 by removing the reference to "§ 250.273" and adding, in its place, a reference to "§ 26.273."

§ 26.273a [Amended]

Par. 72. Amend the introductory text of § 26.273a by removing the reference to "250.301" and adding, in its place, a reference to "26.301."

§ 26.291 [Amended]

Par. 73. Amend § 26.291 as follows:

a. In paragraph (a), remove the reference to "§ 250.292 through 250.294" and add, in its place, a reference to "§§ 26.292 through 26.294";

b. In paragraph (b)(1), remove the reference to "§§ 250.292 through 250.294" and add, in its place, a reference to "§§ 26.292 through 26.294";

c. In paragraphs (b)(2) and (c), remove the reference to "§§ 250.295 through 250.296" and add, in its place, a reference to "§§ 26.295 through 26.296"; and

d. In paragraph (c), remove the reference to "§ 250.221" and add, in its place, a reference to "§ 26.221."

§ 26.301 [Amended]

Par. 74. Amend § 26.301 by removing the reference to "§ 250.273a" and adding, in its place, a reference to "§ 26.273a."

§ 26.302 [Amended]

Par. 75. Amend § 26.302 as follows:

a. In paragraph (a), remove the reference to "§ 250.204" and add, in its place, a reference to "§ 26.204";

b. In paragraphs (a) and (b), remove the reference to "§ 250.205" and add, in its place, a reference to "§ 26.205"; and

c. In paragraph (b), remove the reference to "§ 250.301" and add, in its place, a reference to "§ 26.301."

§ 26.303 [Amended]

Par. 76. Amend § 26.303 by removing the reference to "§ 250.302" and adding, in its place, a reference to "§ 26.302."

§ 26.309 [Amended]

Par. 77. Amend § 26.309 as follows:

a. In paragraph (b)(4) remove the reference to "§ 250.221" and add, in its place, a reference to "§ 26.221"; and

b. In paragraph (c)(2)(viii) remove the reference to "§ 250.266" and add, in its place, a reference to "§ 26.266."

§ 26.318 [Amended]

Par. 78. Amend § 26.318 by removing the reference to "§ 250.316" and adding, in its place, a reference to "§ 26.316."

Exhibit A 6 of 7

Signed: March 13, 2001.
Bradley A. Buckles,
Director.
Approved: June 11, 2001.
Timothy E. Skud,
Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).
[FR Doc. 01–18178 Filed 7–24–01; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 535

Amendments to the Iranian Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim rule with request for comments; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Iranian Assets Control Regulations, 31 CFR part 535 (the "IACR"), to conform certain provisions related to custodians of property in which Iran has an interest to rulings of the Iran-U.S. Claims Tribunal.

DATES: Effective date: July 25, 2001.

Comments: Written comments must be received no later than September 24, 2001.

ADDRESSES: Comments should be sent to David W. Mills, Chief, Policy Planning and Program Management Division, rm. 2176 Main Treasury Annex, 1500 Pennsylvania Ave. N.W., Washington, DC 20220 or via OFAC's website (http://www.treas.gov/ofac).

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief of Compliance Programs, tel.: 202/622–2490, Steven I. Pinter, Acting Chief of Licensing, tel.: 202/622–2480, or Barbara C. Hammerle, Acting Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the Federal Register. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Iranian Assets Control Regulations, 31 CFR part 535 (the "IACR"), to conform certain provisions related to custodians of property in which Iran has an interest to rulings of the Iran-U.S. Claims Tribunal (the "Tribunal"). In its May 1992 partial award in Case A/15, Awd. No. 529–A15–FT, 28 Iran-U.S. Cl. Tr. Rep. 112 (May 6, 1992), the Tribunal found that certain provisions of the IACR were not in strict compliance with commitments made by the U.S. in the Algiers Accords. See, Awd. 529, at ¶ 51, p. 131; See also, Id., at ¶ 53, p. 131.

These amendments are intended to state clearly that obligations or liens on property do not disqualify this property from IACR requirements dictating that this property be returned if that property is otherwise subject to the requirements of the IACR.

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close September 24, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and materials and will not consider them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available, not sooner than October 23, 2001 and may be obtained from OFAC's website (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave. N.W., Washington, DC 20220, Attn: Merete Evans.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget ("OMB") under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 535

Administrative practice and procedure, Banks, Banking, Currency, Foreign claims, Foreign investments in the United States, Iran, Penalties, Reporting and recordkeeping requirements, and Securities.

For reasons set forth in the preamble, 31 CFR part 535 is amended as follows:

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority section continues to read as follows:

Authority: 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12282, 46 FR 7925, 3 CFR, 1981

Exhibit A 7 of 7

[Code of Federal Regulations]
[Title 27, Volume 1]
[Revised as of April 1, 2002]
From the U.S. Government Printing Office via GPO Access
[**CITE: 27CFR26.11**]

[Page 659-662]

TITLE 27--ALCOHOL, TOBACCO PRODUCTS AND FIREARMS

CHAPTER I--BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

PART 26--LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS--Table of Cor

Subpart B--Definitions

Sec. 26.**11** Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular and vice versa, and words importing the masculine gender shall include the feminine. The terms ``includes'' and ``including'' do not exclude things not enumerated which are in the same general class.

Appropriate ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.29, Delegation Order--Delegation of the Director's Authorities in 27 CFR Part 26, Liquors and Articles from Puerto Rico and the Virgin Islands.

[[Page 660]]

Article. Any preparation unfit for beverage use, made with or containing:

(1) Wine or beer;

(2) Distilled spirits or industrial spirits; or

(3) Denatured spirits when such preparation is not manufactured under the provisions of this chapter.

Bank. Any commercial bank.

Banking day. Any day during which a bank is open to the public for carrying on substantially all its banking functions.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed, or produced from malt, wholly or in part, or from any substitute therefor.

Bottler. Any person required to hold a basic permit as a bottler under 27 U.S.C. 203(b)(1).

Bulk container. Any container having a capacity of more than 1 gallon.

Bulk distilled spirits. The term ``bulk distilled spirits'' means distilled spirits in a container having a capacity in excess of 1 gallon.

Bureau of Alcoholic Beverage Taxes. Bureau of Alcoholic Beverage Taxes of the Commonwealth of Puerto Rico.

Business day. Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and all legal holidays in the Commonwealth of Puerto Rico.)

Commercial bank. A bank, whether or not a member of the Federal

Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The ``FRCS'' or ``Fedwire'' is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank of New York.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Denatured spirits. Industrial spirits denatured in accordance with approved formulas in distilled spirits plants established and operated under the provisions of this chapter relating to the establishment and operation of plants qualified to denature spirits in the United States or, in respect of a product of the Virgin Islands, shall also mean spirits denatured in accordance with approved formulas in plants established under the provisions of the Virgin Islands regulations and shall include, unless otherwise limited, both completely and specially denatured spirits.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of the service center. A director of an internal revenue service center.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but shall not include industrial spirits as defined in this part except when used in reference to such spirits which would be subject to tax if brought into the United States.

District director. A district director of internal revenue.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 7652 is paid or determined.

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

[[Page 661]]

Eligible article. Any medicine, medicinal preparation, food product, flavor, flavoring extract or perfume which contains distilled spirits, is unfit for beverage purposes, and has been or will be brought into the United States from Puerto Rico or the Virgin Islands under the provisions of 26 U.S.C. 7652(g).

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document, or where no form

of declaration is prescribed, with the declaration: ``I declare under the penalties of perjury that this -------- (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.''

Fiscal year. The period which begins October 1 and ends on the following September 30.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Importer. Any person who imports distilled spirits, wines, or beer into the United States.

Industrial spirits. As to products of Puerto Rico, distilled spirits produced and warehoused at and withdrawn from distilled spirits plants established and operated under the provisions of this chapter relating to the establishment of such plants and the production, bonded warehousing, and withdrawal from bond of distilled spirits in the United States, or as to products of the Virgin Islands, distilled spirits produced, warehoused, and withdrawn under Virgin Islands regulations.

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27 CFR part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR part 4.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the appropriate ATF officer to adequately protect the revenue.

Liquors. Industrial spirits, distilled spirits, liqueurs, cordials and similar compounds, wines, and beer or any alcoholic preparation fit for beverage use.

Permit. A formal written authorization of the Secretary of the Treasury of Puerto Rico.

Person. An individual, a trust, an estate, a partnership, an association, a company, or a corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

Rectifier. Any person required to hold a rectifier's basic permit under 27 U.S.C. 203(b)(1).

Revenue Agent. Any duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico.

Secretary. The Secretary of the Treasury of Puerto Rico.

Secretary or his delegate. The Secretary or any officer or employee of the Department of the Treasury of Puerto Rico duly authorized by the Secretary to perform the function mentioned or described in this part.

Taxpaid. As used in this part with respect to liquors or articles of Puerto Rican manufacture, includes liquors or articles on which the tax was computed but with respect to which payment was

[[Page 662]]

deferred under the provisions of subpart E of this part.

Treasury Account. The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

United States. The States and the District of Columbia.

U.S.C. The United States Code.

Virgin Islands regulations. Regulations issued or adopted by the Governor of the Virgin Islands, or his duly authorized agents, with the concurrence of the Secretary of the Treasury of the United States, or his delegate, under the provisions of 26 U.S.C. 5314, as amended, and Sec. 26.201a.

Wine. Still wine, vermouth, or other aperitif wine, imitation, substandard, or artificial wine, compounds designated as wine, flavored,

rectified, or sweetened wine, champagne or sparkling wine, and artificially carbonated wine, containing not over 24 percent of alcohol by volume. Wines containing more than 24 percent of alcohol by volume are classed and taxed as distilled spirits.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205) Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13551, Mar. 31, 1978. Redesignated and amended by T.D. ATF-459, 66 FR 38550, July 25, 2001]

Editorial Note: For Federal Register citations affecting Sec. 26.**11**, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Subpart C [Reserved]

Internal Revenue Restructuring and Reform Act of 1998

A. Much of what is contained in this act is the result of Ohio Congressman James Traficant's efforts. (pages 70-72)

1. This, among other things is the reason they went to such great lengths to SHUT him up.

2. As it has now been revealed that the FBI and IRS blackmailed several of those who testified against him.

3. Their system, in order to protect itself, made sure that they had 12 people on his jury, who were purposely kept ignorant of the facts, the law, and exculpatory evidence. Their elaborate computer system somehow chose only candidates for the jury from outside the proper District. How ingenious! Let's all say it together "Break the Rules and Win!"

   a. Even then the Jury took several days to bring in a verdict

4. Now several of the jurors that were on his jury said that if they would have known that certain witnesses out right lied they would have voted different.

   a. Well what do you think was going on?

5. For all we know the government may have very well stacked the jury in the first place.

   a. FBI agents have admitted to being placed on juries to make sure the government gets a convection.

   b. FBI and IRS Agents have been caught falsifying evidence.

6. So why would we not suspect the same sort of abuse by the system as happened in Congressman James Traficant's case?

B. The Treasury Employee Union has been very relentless in trying to get the act struck out of the Public laws.

1. We know they have attempted to eliminate it through amendments to at least two different bills.

   a. However the law is still in full force and effect.But for how much longer? Who knows?

C. We included the following 5 pages for your benefit so you can get a good understanding of what is involved concerning violations by IRS agents.

D. After you read this Act you will know why they extremely dislike being held to the requirements of this Act by educated Americans.

E. Find the 10 deadly sins and read them several times.

F. This Act makes a very good Exhibit for your cause. Use this law to your benefit or they might just think you don't want the IRS to respect your rights.

G. After reading this section and you discover that they have violated one or more of these ten deadly sins then you must be sure that you have it absolute documented in the record. (forwards, backwards, up, and down).

1. Make sure you have substanted facts and not just mere cute sounding allegations.

We have had the 1997 information on this site for some time now,

and thought new updates were appropriate

INTERNAL REVENUE RESTRUCTURING

AND REFORM ACT OF 1998

The following is a portion of the Act;

S-1.10: **In July 1998, Congress completed the most extensive revision of the IRS structure in modern history. It was in reaction to the MANY IRS Abuses which came to light at Congressional Hearings.**

Congress created an Oversight Board to severely limit IRS powers in its Examination and Collection Divisions. Specific Due Process Rights were granted for the first time with respect to Collection Procedures.

Congress limited the use by IRS Agents, aggressive examination techniques and granted taxpayers Specific Rights to sue IRS and IRS personnel when IRS or IRS personnel abuse their discretion.

S-2.10: **The Act directs IRS to revise its mission statement to provide greater emphasis on serving the public and meeting the needs of taxpayers.**

S-2.20: **The Act provides the establishment within the Department of Treasury an Oversight Board.**

S-5.10: **The Act renames IRS Taxpayer Advocate as 'National Taxpayer Advocate'. They are appointed by IRS Commissioner and the Oversight Board. They cannot have been an officer or employee of the IRS.**

S-7.10: **The Act makes it unlawful for the President, the Vice-President, employees of the Executive Offices of the President or Vice-President, as well as any individual (other than Atty. General) serving in a Cabinet position to request an IRS Audit, or terminate an IRS Audit.**

S-8.20: The Act requires IRS to terminate IRS employees for violations including;

1) Wilful failure to obtain approval signature of documents authorizing seizure of a taxpayers home, personal belongings, or business assets.

2) Provided false statements under oath with respect to material matter following a taxpayer or taxpayer representative.

3) Falsifying or destroying documents to avoid uncovering mistakes made by employee with respect to taxpayer or a taxpayer representative.

4) Assault or battery on a taxpayer or taxpayer representative, but only if there is a criminal conviction or a final judgment in a civil case.

5) Violation of taxpayer or taxpayer representative's civil rights or the civil rights of a fellow IRS employee.

6) Violations of IRS Code, Regulations, or IRS Policies for the purposes of retaliating against or harassing a taxpayer or taxpayer representative.

7) Wilful misuse of IRC §6103 (confidentiality of returns and return information)for the purpose of concealing data from a Congressional inquiry.

8) Wilful failure to file a federal tax return. (You mean even IRS employees fail to file?)

9) Wilful understatement of a federal tax liability. (You mean IRS employees would understate their liabilities?)

10)Threatening to audit a taxpayer to extract personal gain IRC §1203.

S-10.10: The Act provides the Secretary shall have burden of proof in ANY court proceeding with respect to factual issue if taxpayer introduces credible evidence IRC §3001 §7491.

S-10.20: Taxpayer (1)must comply with IRS Code requirements, (2)must maintain records, (3) must cooperate with reasonable requests by Secretary, and (4)must meet net worth limitations that apply to attorney fees. Taxpayer must prove 2,3, and4 conditions.

S-10.30: IRS has burden of proof in ANY tax proceeding to present credible evidence before it may impose a penalty §7491.

S-12.10 The Act permits up to $100,000.00 in civil damages caused by an IRS officer/employee who, negligently disregards provisions of IRS Code or TR Regulations. Damages are $1,000,000.00 if the disregard was reckless or wilful.

S-17.10: The Act generally makes innocent spouse relief easier to obtain. An individual will be relieved of tax liability for tax, incl. interest, penalties, etc., for a tax year to the extent the liability is attributable to understatement described below:

1) A joint return was filed for the tax year IRC §6015(b)(1)(A)

2) There is an understatement of tax on the return that is attributable to an error by the other spouse IRC §6015(b)(1)(B).

3) A taxpayer establishes that in signing the return, he/she did not know of the understatement IRC §6015(b)(1)(C).

4) Taking into account all facts, it would be inequitable to hold taxpayer liable for a deficiency attributable to understatement IRC §6015(b)(1)(D).

5) A taxpayer elects benefits of this provision on the form IRS prescribes (IRS must issue form for spousal relief) no later than two years after date IRS begins collection activities IRC §6015 (b)(1)(E)

S-17.20: The Act provides separate liability election for taxpayer who at time of election was no longer married to, was legally separated, or living apart for at least 12 months.

Write Protected 1999 WG

Library

Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

1203 - Termination of Employment for Misconduct

Section 1203

A. Provision(s) covered: Section 1203, Termination of Employment for Misconduct

B. Background: This new provision was enacted In response to the widespread perception that IRS employees are not held fully accountable for improper conduct affecting taxpayers. The section provides that IRS employees must be charged with misconduct and terminated if there has been a judicial or final administrative determination that the employee committed any of the following acts or omissions:

1. willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets;

2. providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;

3. with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of --
   A. any right under the Constitution of the United States; or
   B. any civil right established under --
      i. title VI or VII of the Civil Rights Act of 1964;
      ii. title IX of the Education Amendments of 1972;
      iii. the Age Discrimination in Employment Act of 1967;
      iv. the Age Discrimination Act of 1975;
      v. section 501 or 504 of the Rehabilitation Act of 1973; or
      vi. title I of the Americans with Disabilities Act of 1990;

4. falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;

5. assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;

6. violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;

7. willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry,

8. willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect,

9. willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect, and

10. threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

The Commissioner has the sole discretion, which he cannot delegate, to determine whether to take a personnel action other than termination for the described acts or omissions. Such determination may not be appealed in any administrative or judicial proceeding.

C. Change(s): This is a new section which requires mandatory removal of an employee upon a judicial or final administrative determination that the employee has committed an act or omission described above.

D. Impact: Employees will now be subject to removal for commission of certain acts or omissions, absent a determination by the Commissioner that a lesser penalty is appropriate.

E. Necessary Actions

1. Actions/Procedures: Procedures should be established to assure that management and personnel take appropriate steps with respect to cases involving the described acts or omissions. Referral procedures should be established for cases which the Commissioner determines may require his review and imposition of a penalty other than removal.

2. Things we CAN do: See E1.

3. Things we CAN'T do: See E1.

F. Other Special Comments: None

Tuesday, 14-Jul-1998 08:11:00 EDT

AMERICAN SOVEREIGNTY

Rep. Traficant, House of Representatives, July 22, 1998

http://www.federal.com/jul27-98/Traficant

Mr. Speaker, the World Bank makes loans to communists with American dollars. The World Trade Organization regularly rips us off. The United Nations sends American troops into war. That is right. We are not sending the Peace Corps here, folks.

If that is not enough to compromise your Viagra, the United Nations has created a world court with universal authority and jurisdiction. Unbelievable. What is next, a world tax? Beam me up.

I say the Constitution of the United States should not be surrendered to a bunch of international bureaucrats who regularly rule against us, ladies and gentlemen.

Now, I do not know about you, but I did not pledge an oath to the charter of the United Nations. I pledged an oath to the Constitution of the United States and I think the Congress of the United States should put its foot down before we become known as background music in some doctor's office. I yield back any courage we have left.

Published in the July 27, 1998 issue of The Washington Weekly

---

How the new, small-business-friendly tax-reform laws can help you in an IRS audit.

New business owners would disagree that tangling with the IRS can be an emotionally and financially draining experience. Horror stories of overzealous IRS agents closing down small businesses fan the flames of fear, as many small-business owners believe that they simply cannot afford to fight the government--even if the IRS is dead wrong. What can you do when it seems the IRS isn't playing fair?

The passage of the Taxpayer Bill of Rights 2 in July 1996 has added some powerful new weapons to the small-business owner's arsenal with which to fight the IRS. Knowing these rights before the IRS comes knocking may be the only way to prevent them from destroying your otherwise healthy business.

"This new law finally levels the playing field for small-business owners by making sure that, if money or property was wrongfully obtained by the IRS, a business owner can get it back quicker from the government," says Congressman Jon Fox (R-Pa.), a strong advocate of the Taxpayer Bill of Rights 2. "Frankly, I'm working on a new Taxpayer Bill of Rights which would shift the burden of proof to where it belongs, on the IRS."

Even the most sophisticated business owner would generally acknowledge that, when it comes to what the IRS can and cannot do under the law, they are in the dark. For example, many business owners have no idea that, under current law, the IRS can shut down a business and seize its assets with virtually no prior notice to the owner. This may sound drastic, but the IRS has this option at its disposal.

When IRS agents in Colorado Springs, Colorado, started a routine audit of a small chain of children's clothing stores owned by members of Carol Ward's family, the family had no idea of how ruthless the IRS could be. After Ward insulted an IRS agent by questioning her competence and honesty, she found herself and her family embroiled in an IRS nightmare.

On April 19, 1993, about one month after the encounter with the IRS agent, gun-toting federal agents raided each of the three family-owned stores and seized all of Ward's business assets. Worse, the IRS emptied her personal and business bank accounts and even filed a lien on her mother's home. IRS agents posted notices in each of the stores notifying the public that the IRS had assessed that the Wards owed $325,000 in back taxes, penalties and interest. The agents seized everything that the Wards owned by using a little-known provision of the tax code called a "jeopardy assessment." Although this heavy-handed assessment is designed to be reserved for use in assessing taxes owed by international criminals who are clear flight risks, the IRS used this extreme measure against the Wards anyway. (Citing taxpayer-confidentialty laws, the IRS refused to comment on the Ward case.)

Two months after the raid, the IRS recalculated Ward's taxes, based on an audit of her tax returns for the previous six years. The new assessment (including penalties and interest): $3,485. Although it was clear that the IRS had made a horrendous "mistake," the IRS didn't even offer so much as a private apology. Amazingly, they even refused to accept the owed taxes unless Ward agreed not to sue the IRS for their misconduct. When Ward began to search for an attorney to represent her in a suit against the IRS, she encountered a lot of sympathy, but could find no one who was willing to take on the IRS without a commitment to cover legal fees, which she was told could reach $100,000 in a battle with the government. Moreover, under the then-existing law, it would be difficult to recover any attorney's fees, which made the task of finding representation even more daunting.

Finally, with the help of the media, Congressman James A. Traficant Jr. (D-Ohio), Representative Pat Schroeder (D-Colo.), and Colorado Senator Hank Brown, Ward recovered her seized property. She also found an attorney who was outraged enough to risk taking on the case against the government, and her case is now pending in the federal courts.

"It was amazing. My own government had burst into my store, terrorized my family and customers, and destroyed our lives to retaliate for my unkind words about an IRS agent. Now, instead of an apology, they have mounted a campaign to discredit me, and tried to intimidate me into not filing a lawsuit against a rogue IRS agent," says Ward. "The most annoying part is that the American taxpayers are footing the legal bill to defend the IRS' illegal actions against me! What I didn't understand three years ago was that, even though the IRS knew they were wrong, they simply didn't care."

Despite the fact that her suit against the IRS has not yet been settled, Ward felt vindicated in May of 1996, when Congressman Traficant delivered an address on the floor of the House of Representatives, congratulating Ward on her determination, courage and conviction in her noble fight against the IRS. The address was met by a standing ovation on the House floor. Congress went one step further than simply recognizing the Ward case: They authorized a bipartisan task force to study the question of IRS reform, known as The National Commission on Restructuring the Internal Revenue Service.

IRS Operations

A. Significant challenges in financial management and systems modernization, March 6, 1996, GAO/T-AIUD-96-56.

1. This little twelve-page report is absolutely power packed, as you shall see.

2. When you properly put documents like this into your file you are laying the groundwork for what you can introduce pertaining to your own personal case.

   a. These are foundational building documents that you can use as rebuttal evidence that the IRS is not always correct. If you are doing your FOIA requests and entering this type of evidence into your Administrative record you become a much harder target. Remember Due Process Violations.

B. This report is so reveling that we suggest you carefully read the entire report.

1. We have been using this report for a number of years. If you have tutored with us about a "006 RACS" report among other things you are probably familiar with this report.

C. Go to page 1, Financial Management Weaknesses persist: "For the last 3 fiscal years we have been unable to....", DO WHAT?

1. What are the five primary reasons?

   a. Read number two and tell us that you can support such a system and still sleep at night?

   b. We call it blind obedience to the state or total interference.

   c. This is a GAO (Government Accounting Agency) report, not something we dreamed up.

D. Page 2 last section, "Issues with Revenue", this paragraph perhaps is the most important section in this GAO report. "Read it/Read it"

1. When you send in a FOIA request asking for a 23C, Certificate of Assessment" the IRS will many times send you a "006 RACS" report instead, which has an assessment date that is incorrect according to the procedures in their own manuals and handbooks.

2. "RACS did not contain detailed information by type of tax, such as individual income tax or corporate tax.

   a. Now how can they look at you with a straight face when you raise this issue.

   b. Please send me the underlying documents that you are utilizing to create the 006 RACS report which you sent to me.

   c. Is this "006 RACS" report for income taxes or corporate taxes?

   d. What type of tax does this "006 RACS" pertain to? What particular tax does it assess? Note: a FORM 1040 is not a particular tax. Nor is FORM 1040 a type of tax. It is instead, just a FORM.

   e. You will find a sample Racs Report –006 and FOIA requests for these documents (page 95-100) of this VIP DISPATCH.

3. "The Master file cannot summarize the taxpayer information needed to support the amounts identified in RACS."

   a. What method of accounting did you use to figure and post that amount to the 006 RACS report that was sent to me?

4. This GAO report goes on to say "IRS relied on alternative sources, such as Treasury schedules, to obtain the summary total by type of tax needed for its financial statement presentation."

   a. Here the GAO confirms that the IRS figures are totally unreliable so therefore the IRS had to stoop to using Treasury Estimated figures and then take those strictly hearsay figures and post them as though they are authentic.

5. Then in the next paragraph GAO says, "neither IRS nor Treasury records maintained any detailed information that we could test to verify the accuracy of these figures."

   a. If the government's top accounting agency cannot verify IRS figures, how can the IRS, US Attorneys, Judges, Juries, Tax Lawyers, Accountants or most importantly you accept them?

   b. THIS IS AN OUTRAGE!

   c. Now what is even more of an OUTRAGE is that they also cannot document where the money that is collected goes!

E. Page 4, first full paragraph, "Inadequate internal controls, especially the lack of proper documentation of transactions...."

1. As you read through this report you will see the phrase, "lack of proper documentation" over and over.

   a. When they call you in for a audit the IRS holds you to a far, far, higher standard then would dare impose on itself.

   b. We know this from first hand experiences. In the 80's the IRS harassed us for three years in row. As a result of their abuse we decided that they could take their system and shove it. We were not going to participate in their fraudulent idiot game anymore.

   c. According to the GAO in 2001 over 47 million Americans had stopped playing this idiot game also, plus millions more under reporters.

   d. Two years ago, the number two man under Commissioner Rossotti testified to the House Ways and Means Committee that they were missing 76 million personal and business returns.

   e. They also have written totally off the books 12 to 15 million hard core non-filers who are not included in any of those numbers.

   f. Of all the Nations around the world with income tax system, France has had the highest non-compliance rate with 60% of the people not filing. Russia next. But for some reason they did not say where they ranked America, except that they were going to take stern measures to keep the non-compliance rate in America reaching that of France.

F. Page 12, we find the Secretary Of The Treasury was supposed to issue a progress report of the GAO recommendations to the Senate and House Appropriations Committees but failed to do so.

   1. What happens when you fail to report?

      a. That's right, they want to put you in jail and the Judges can get very nasty about it.

      b. We think they call this a "double Standard"

      c. They can murder someone and nothing is said, but you step on an ant they want to put you in jail.

G. How can any Jury in the country convict anyone of a so-called tax crime after reading this report? It's beyond us.

1. Of course most of those convicted of a tax violation are relying upon some IDIOT LEGAL ARGUMENT . Go to any law library that has a Commerce Clearing House set of U.S.Tax Cases (CCH -Black Covers with Gold Lettering) and read the tax cases for yourself. Go to the index and lookup "criminal."

   a. We talk to people every week who actually think and believe that those Idiot legal arguments are legitimate.

   b. Few if any have ever read the Rules of Court, or the Rules of Evidence.

   c. Maybe you can figure out how they expect to win anything.

   d. We have seen several publications that say something to the effect "send us your newest Redemption win" but we have never seen any ad that says "send us your newest redemption loss" have you? But people keep doing it and getting into major trouble. How do you trade your straw man for a straw mat?

   e. If you're going to play someone else's game, you better know the rules of that game.

   f. Would you play chess using the rules for checkers? Same board different rules.

   g. Consider the games of soccer and football. Same field different rules.

   h. The November "VIP DISPATCH" will focus in on the Administrative Equity System in more detail and explain how our valid judicial system was stolen from us and replaced with this current system of Fictional Law, Prima Facie, Presumptions.

H. This report is very powerful when you know how to use it to your advantage.

   1. This tells us that the IRS's house is built on quicksand and if they don't get it shored up real soon it will sink out of sight. But, no matter how much shoring they use, their house is still built on quicksand. Deception makes a bad foundation.

I. What ever you do please try to refrain from showing this GAO testimony to anyone else and don't explain the significance of this report to them or they might get upset with you.

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and Oversight, House of Representatives

For Release on Delivery
Expected at
1:30 p.m.
Wednesday,
March 6, 1996

IRS OPERATIONS

Significant Challenges in Financial Management and Systems Modernization

Statement of Gene L. Dodaro
Assistant Comptroller General
Accounting and Information Management Division

GAO/T-AIMD-96-56

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results of our fiscal year 1994 financial audit of the Internal Revenue Service (IRS)—our most recently completed audit—and our reports evaluating IRS' Tax Systems Modernization (TSM) effort. Last year, we issued two major assessments concerning IRS' guardianship of federal revenues and its ability to function efficiently in an increasingly high technology environment. I am submitting these reports for the record: Financial Audit: Examination of IRS' Fiscal Year 1994 Financial Statements (GAO/AIMD-95-141, August 4, 1995) and Tax Systems Modernization: Management and Technical Weaknesses Must Be Corrected if Modernization Is To Succeed (AIMD-95-156, July 26, 1995).

These reports

(1)highlighted a number of serious technical and managerial problems that IRS must directly address to make greater progress in both of these areas,

(2)discussed actions being taken by IRS to strengthen its operations, and

(3)presented numerous specific GAO recommendations for needed additional improvements.

IRS agreed with all our recommendations and committed itself to taking the corrective measures necessary to improve its financial management and information technology capability and operations. We currently are in the process of auditing IRS' fiscal year 1995 financial statements and evaluating IRS' response to the recommendations we made regarding its TSM program. We discuss each of these areas in the following sections.

Financial Management Weaknesses Persist

For the last 3 fiscal years,[1] we have been unable to express an opinion on IRS' financial statements because of the pervasive nature of its financial management problems. We were unable to express an opinion on IRS' financial statements for fiscal year 1994 for the following five primary reasons.

[1]Financial Audit: Examination of IRS' Fiscal Year 1992 Financial Statements (GAO/AIMD-93-2, June 30, 1993); Financial Audit: Examination of IRS' Fiscal Year 1993 Financial Statements (GAO/AIMD-94-120, June 15, 1994); and Financial Audit: Examination of IRS' Fiscal Year 1994 Financial Statements (GAO/AIMD-95-141, August 4, 1995).

- One, the amount of total revenue of $1.3 trillion reported in the financial statements could not be verified or reconciled to accounting records maintained for individual taxpayers in the aggregate.
- Two, amounts reported for various types of taxes collected, for example, social security, income, and excise taxes, could also not be substantiated.
- Three, we could not determine from our testing of IRS' gross and net accounts receivable estimates of over $69 billion and $35 billion, respectively, which include delinquent taxes, whether those estimates were reliable.
- Four, IRS continued to be unable to reconcile its Fund Balance With Treasury accounts.
- Five, we could not substantiate a significant portion of IRS' $2.1 billion in nonpayroll expenses included in its total operating expenses of $7.2 billion, primarily because of lack of documentation. However, we could verify that IRS properly accounted for and reported its $5.1 billion of payroll expenses.

To help IRS resolve these issues, we have made dozens of recommendations in our financial audit reports dating back to fiscal year 1992. In total, we have made 59 recommendations on issues covering such areas as tax revenue, administrative costs, and accounts receivable. While IRS has begun to take action on many of our recommendations, as of the date of our last report—August 4, 1995—it had fully implemented only 13 of our 59 recommendations.

IRS has made some progress in responding to the problems we identified in our previous audits. However, IRS needs to intensify its efforts in this area. IRS needs to develop a detailed plan with explicit, measurable goals and a set timetable for action, to attain the level of financial reporting and controls needed to effectively manage its massive operations and to reliably measure its performance.

The sections below discuss these issues in greater detail.

Issues With Revenue

IRS' financial statement amounts for revenue, in total and by type of tax, were not derived from its revenue general ledger accounting system (RACS) or its master files of detailed individual taxpayer records. This is because RACS did not contain detailed information by type of tax, such as individual income tax or corporate tax, and the master file cannot summarize the taxpayer information needed to support the amounts identified in RACS. As a result, IRS relied on alternative sources, such as Treasury schedules, to

obtain the summary total by type of tax needed for its financial statement presentation.

IRS asserts that the Treasury amounts were derived from IRS records; however, neither IRS nor Treasury's records maintained any detailed information that we could test to verify the accuracy of these figures. As a result, to substantiate the Treasury figures, we attempted to reconcile IRS' master files—the only detailed records available of tax revenue collected—with the Treasury records. We found that IRS' reported total of $1.3 trillion for revenue collections, which was taken from Treasury schedules, was $10.4 billion more than what was recorded in IRS' master files. Because IRS was unable to satisfactorily explain, and we could not determine the reasons for this difference, the full magnitude of the discrepancy remains uncertain.

In addition to the difference in total revenues collected, we also found large discrepancies between information in IRS' master files and the Treasury data used for the various types of taxes reported in IRS' financial statements. Some of the larger reported amounts for which IRS had insufficient support were $615 billion in individual taxes collected—this amount was $10.8 billion more than what was recorded in IRS' master files; $433 billion in social insurance taxes (FICA) collected—this amount was $5 billion less than what was recorded in IRS' master files; and $148 billion in corporate income taxes—this amount was $6.6 billion more than what was recorded in IRS' master files. Thus, IRS did not know and we could not determine if the reported amounts were correct. These discrepancies also further reduce our confidence in the accuracy of the amount of total revenues collected.

Despite these problems, we were able to verify that IRS' reported total revenue collections of $1.3 trillion agreed with tax collection amounts deposited at the Department of the Treasury. However, we did find $239 million of tax collections recorded in IRS' RACS general ledger that were not included in reported tax collections derived from Treasury data.

In addition to these problems, we could not determine from our testing the reliability of IRS' projected estimate for accounts receivable. As of September 30, 1994, IRS reported an estimate of valid receivables of

$69.2 billion,[2] of which $35 billion[3] was deemed collectible. However, in our random statistical sample of accounts receivable items IRS tested, we disagreed with IRS on the validity of 19 percent[4] of the accounts receivable and the collectibility of 17 percent[5] of them. Accordingly, we cannot verify the reasonableness of the accuracy of the reported accounts receivable.

Inadequate internal controls, especially the lack of proper documentation of transactions, resulted in IRS continuing to report unsupported revenue information. In some cases, IRS did not maintain documentation to support reported balances. In other cases, it did not perform adequate analysis, such as reconciling taxpayer transactions to the general ledger, to ensure that reported information was reliable.

We found several internal control problems that contributed to our inability to express an opinion on IRS' financial statements. To illustrate,

- IRS was unable to provide adequate documentation for 111 items, or 68 percent, in our random sample of 163 transactions from IRS' nonmaster file. The nonmaster file is a database of taxpayer transactions that cannot be processed by the two main master files or are in need of close scrutiny by IRS personnel. These transactions relate to tax years dating as far back as the 1960s. During fiscal year 1994, approximately 438,000 transactions valued at $7.3 billion were processed through the nonmaster file. Because of the age of many of these cases, the documentation is believed to have been destroyed or lost.
- We sampled 4,374 statistically projectable transactions posted to taxpayer accounts. However, IRS was unable to provide adequate documentation, such as a tax return, for 524 transactions, or 12 percent. Because the documentation was lost, physically destroyed, or, by IRS policy, not maintained, some of the transactions supporting reported financial balances could not be substantiated, impairing IRS' ability to research any discrepancies that occur.
- IRS is authorized to offset taxpayer refunds with certain debts due to IRS and other government agencies. Before refunds are generated, IRS policy

[2]The range of IRS' confidence interval, at a 95-percent confidence level, is that the actual amount of valid accounts receivable as of September 30, 1994, was between $66.1 billion and $72.3 billion.

[3]The range of IRS' confidence interval, at a 95-percent confidence level, is that the actual amount of collectible accounts receivable as of September 30, 1994, was between $34 billion and $36 billion.

[4]The range for our confidence interval, at a 95-percent confidence level, is that the actual amount of the validity exceptions as of September 30, 1994, was between 14.5 percent and 24.2 percent.

[5]The range for our confidence interval, at a 95-percent confidence level, is that the actual amount of the collectibility exceptions as of September 30, 1994, was between 13.1 percent and 22.5 percent.

requires that reviews be performed to determine if the taxpayer has any outstanding debts to be satisfied. For expedited refunds, IRS must manually review various master files to identify outstanding debts. However, out of 358 expedited refunds tested, we identified 10 expedited refunds totaling $173 million where there were outstanding tax debts of $10 million, but IRS did not offset the funds. Thus, funds owed could have been collected but were not.

- IRS could not provide documentation to support $6.5 billion in contingent liabilities reported as of September 30, 1994. Contingent liabilities represent taxpayer claims for refunds of assessed taxes which IRS management considers probable to be paid. These balances are generated from stand-alone systems, other than the master file, that are located in two separate IRS divisions. Because these divisions could not provide a listing of transactions for appropriate analysis, IRS did not know, and we could not determine, the reliability of these balances.
- An area that we identified where the lack of controls could increase the likelihood of loss of assets and possible fraud was in the reversal of refunds. Refunds are reversed when a check is undelivered to a taxpayer, an error is identified, or IRS stops the refund for further review. In many cases, these refunds are subsequently reissued. If the refund was not actually stopped by Treasury, the taxpayer may receive two refunds. In fiscal year 1994, IRS stopped 1.2 million refunds totaling $3.2 billion. For 183 of 244, or 75 percent of our sample of refund reversals, IRS was unable to provide support for who canceled the refund, why it was canceled, and whether Treasury stopped the refund check. Service center personnel informed us that they could determine by a code whether the refund was canceled by an internal IRS process or by the taxpayer, but, as a policy, no authorization support was required, nor did procedures exist requiring verification and documentation that the related refund was not paid.

With regard to controls over the processing of returns, we also found weaknesses. During fiscal year 1994, IRS processed almost 1 billion information documents and 200 million returns. In most cases, IRS processed these returns correctly. However, we found instances where IRS' mishandling of taxpayer information caused additional burden on the taxpayer and decreased IRS' productivity. In many cases, the additional taxpayer burden resulted from IRS' implementation of certain enforcement programs it uses to ensure taxpayer compliance, one of which is the matching program. This program's problems in timely processing cause additional burden when taxpayers discover 15 months to almost 3 years after the fact that they have misreported their income and must pay additional taxes plus interest and penalties.

Issues With Administrative Operations

IRS has made progress in accounting for its appropriated funds, but there were factors in this area that prevented us from being able to render an opinion. Specifically, IRS was unable to fully reconcile its Fund Balance with Treasury accounts, nor could it substantiate a significant portion of its $2.1 billion in nonpayroll expenses—included in its $7.2 billion of operating expenses—primarily because of lack of documentation.

With regard to its Fund Balance With Treasury, we found that, at the end of fiscal year 1994, unreconciled cash differences netted to $76 million. After we brought this difference to the CFO's attention, an additional $89 million in adjustments were made. These adjustments were attributed to accounting errors dating back as far as 1987 on which no significant action had been taken until our inquiry. IRS was researching the remaining $13 million in net differences to determine the reasons for them. These net differences, which span an 8-year period, although a large portion date from 1994, consisted of $661 million of increases and $674 million of decreases. IRS did not know and we could not determine the financial statement impact or what other problems may become evident if these accounts were properly reconciled.

To deal with its long-standing problems in reconciling its Fund Balance with Treasury accounts, during fiscal year 1994, IRS made over $1.5 billion in unsupported adjustments (it wrote off these amounts) that increased cash by $784 million and decreased cash by $754 million, netting to $30 million. In addition, $44 million of unidentified cash transactions were cleared from cash suspense accounts[6] and included in current year expense accounts because IRS could not determine the cause of the cash differences. These differences suggest that IRS did not have proper controls over cash disbursements as well as cash receipts.

In addition to its reconciliation problems, we found numerous unsubstantiated amounts. These unsubstantiated amounts occurred because IRS did not have support for when and if certain goods or services were received and, in other instances, IRS had no support at all for the reported expense amount. These unsubstantiated amounts represented about 18 percent of IRS' $2.1 billion in total nonpayroll expenses and about 5 percent of IRS' $7.2 billion in total operating expenses.

Most of IRS' $2.1 billion in nonpayroll related expenses are derived from interagency agreements with other federal agencies to provide goods and

[6]Suspense accounts include those transactions awaiting posting to the appropriate account or those transactions awaiting resolution of unresolved questions.

services in support of IRS' operations. For example, IRS purchases printing services from the Government Printing Office; phone services, rental space, and motor vehicles from the General Services Administration; and photocopying and records storage from the National Archives and Records Administration.

Not having proper support for if and when goods and services are received made IRS vulnerable to receiving inappropriate interagency charges and other misstatements of its reported operating expenses, without detection. Not knowing if and/or when these items were purchased seriously undermines any effort to provide reliable, consistent cost or performance information on IRS' operations. As a result of these unsubstantiated amounts, IRS has no idea and we could not determine, when and, in some instances, if the goods or services included in its reported operating expenses were correct or received.

Some Improvements Made but Overall Computer Systems Security Remained Weak

In our prior year reports, we stated that IRS' computer security environment was inadequate. Our fiscal year 1994 audit found that IRS had made some progress in addressing and initiating actions to resolve prior years' computer security issues; however, some of the fundamental security weaknesses we previously identified continued to exist in fiscal year 1994.

These weaknesses were primarily IRS' employees' capacity to make unauthorized transactions and activities without detection. IRS has taken some actions to restrict account access, review and monitor user profiles, provide an automated tool to analyze computer usage, and install security resources. However, we found that IRS still lacked sufficient safeguards to prevent or detect unauthorized browsing of taxpayer information and to prevent staff from changing certain computer programs to make unauthorized transactions without detection.

The deficiencies in financial management and internal controls that I have discussed throughout this testimony demonstrate the long-standing, pervasive nature of the weaknesses in IRS' systems and operations—weaknesses which contributed to our inability to express a more positive opinion on IRS' financial statements. The erroneous amounts discussed would not likely have been identified if IRS' financial statements had not been subject to audit. Further, the errors and unsubstantiated amounts highlighted throughout this testimony suggest that information

IRS provides during the year is vulnerable to errors and uncertainties as to its completeness and that reported amounts may not be representative of IRS' actual operations.

IRS Has Taken Steps to Improve Its Operations

IRS has made some progress in responding to the problems we have identified in previous reports. It has acknowledged these problems, and the Commissioner has committed to resolving them. These actions represent a good start in IRS' efforts to more fully account for its operating expenses. For example, IRS has

- successfully implemented a financial management system for its appropriated funds to account for its day-to-day operations, which should help IRS to correct some of its past transaction processing problems that diminished the accuracy and reliability of its cost information, and
- successfully transferred its payroll processing to the Department of Agriculture's National Finance Center and, as a result, properly accounted for and reported its $5.1 billion of payroll expenses for fiscal year 1994.

IRS is working on improving the process of reconciling and monitoring its funds. In this regard, it has created a unit whose sole responsibility is to resolve all cash reconciliation issues and retained a contractor to help with this process. In the area of receipt and acceptance, IRS stated that it is more fully integrating its budgetary and management control systems. Also, IRS has developed a methodology to differentiate between financial receivables and compliance assessments and has modified current systems to provide financial management information. Finally, IRS is in the process of identifying methods to ensure the accuracy of balances reported in its custodial receipt accounts. We are currently reviewing these actions.

Management and Technical Weaknesses Must Be Corrected If Modernization Is to Succeed

Over the past decade, GAO has issued several reports and testified before congressional committees on IRS' costs and difficulties in modernizing its information systems. As a critical information systems project that is vulnerable to schedule delays, cost over-runs, and potential failure to meet mission goals, in February 1995, tax systems modernization (TSM) was added to our list of high-risk areas.[7]

[7] High-Risk Series: An Overview (GAO/HR-95-1, February 1995).

In July 1995,[8] we reported that one of IRS' most pressing problems is efficiently and effectively processing the over 200 million tax returns it receives annually; handling about 1 billion information documents, such as W2s and 1099s; and, when needed, retrieving tax returns from the over 1.2 billion tax returns in storage. IRS' labor-intensive tax return processing, which uses concepts instituted in the late 1950s, intensifies the need to meet this enormous information processing demand by reengineering processes and using modern technology effectively.

Since 1986, IRS has invested over $2.5 billion in TSM. It plans to spend an additional $695 million in fiscal year 1996 for this effort, and through 2001, it is expected to spend up to $8 billion on TSM. By any measure, this is a world-class information systems development effort, much larger than most other organizations will ever undertake. TSM is key to IRS' vision of a virtually paper-free work environment where taxpayer account updates are rapid, and taxpayer information is readily available to IRS employees to respond to taxpayer inquiries.

IRS recognizes the criticality to future efficient and effective operations of attaining its vision of modernized tax processing, and has worked for almost a decade, with substantial investment, to reach this goal. In doing so, IRS has progressed in many actions that were initiated to improve management of information systems; enhance its software development capability; and better define, perform, and manage TSM's technical activities.

However, our July report noted that the government's investment and IRS' efforts to modernize tax processing were at serious risk due to pervasive management and technical weaknesses that were impeding modernization efforts. In this regard, IRS did not have a comprehensive business strategy to cost-effectively reduce paper submissions, and it had not yet fully developed and put in place the requisite management, software development, and technical infrastructures necessary to successfully implement an ambitious world-class modernization effort like TSM. Many management and technical issues were unresolved, and promptly addressing them was crucial to mitigate risks and better position IRS to achieve a successful information systems modernization.

First, IRS' business strategy did not maximize electronic filings because it primarily targeted taxpayers who use a third party to prepare and/or

[8]Tax Systems Modernization: Management and Technical Weaknesses Must Be Corrected if Modernization Is To Succeed (GAO/AIMD-95-156, July 26, 1995).

transmit simple returns, were willing to pay a fee to file their returns electronically, and were expecting refunds. Focusing on this limited taxpaying population overlooked most taxpayers, including those who prepared their own tax returns using personal computers, had more complicated returns, owed tax balances, and/or were not willing to pay a fee to a third party to file a return electronically. Without having a strategy that also targeted these taxpayers, we reported that IRS would not meet its electronic filing goals or realize its paperless tax processing vision. In addition, if, in the future, taxpayers file more paper returns than IRS expects, added stress will be placed on IRS' paper-based systems.

Next, IRS did not have the full range of management and technical foundations in place to realize TSM objectives. In analyzing IRS' strategic information management practices, we drew heavily from our research on the best practices of private and public sector organizations that have been successful in improving their performance through strategic information management and technology. These fundamental best practices are discussed in our report, Executive Guide: Improving Mission Performance Through Strategic Information Management and Technology (GAO/AIMD-94-115, May 1994), and our Strategic Information Management (SIM) Self-Assessment Toolkit (GAO/Version 1.0, October 28, 1994, exposure draft). To evaluate IRS' software development capability, we validated IRS' August 1993 assessment of its software development maturity based on the Capability Maturity Model (CMM) developed in 1984 by the Software Engineering Institute at Carnegie Mellon University. CMM establishes standards in key software development processing areas and provides a framework to evaluate a software organization's capability to consistently and predictably produce high-quality products.

To its credit, IRS had (1) developed several types of plans to carry out its current and future operations, (2) drafted criteria to review TSM projects, (3) assessed its software development capability and initiated projects to improve its ability to effectively develop software, and (4) started to develop an integrated systems architecture[9] and made progress in defining its security requirements and identifying current systems data weaknesses. However, despite activities such as these, pervasive weaknesses remained to be addressed:

[9]A system architecture is an evolving description of an approach to achieving a desired mission. It describes (1) all functional activities to be performed to achieve the desired mission, (2) the system elements needed to perform the functions, (3) the designation of performance levels of those system elements, and (4) the technologic interfaces and location of functions.

- IRS' strategic information management practices were not fully in place to guide systems modernization. For example, (1) strategic planning was neither complete nor consistent, (2) information systems were not managed as investments, (3) cost and benefit analyses were inadequate, and (4) reengineering efforts were not tied to systems development projects.
- IRS' software development capability was immature and weak in key process areas. For instance, (1) a disciplined process to manage system requirements was not applied to TSM systems, (2) a software tool for planning and tracking development projects was inconsistently used, (3) software quality assurance functions were not well-defined or consistently implemented, (4) systems and acceptance testing were neither well-defined nor required, and (5) software configuration management[10] was incomplete.
- IRS' systems architecture (including its security architecture and data architecture), integration planning, and system testing and test planning were incomplete. For example, (1) effective systems configuration management practices were not established, (2) integration plans were not developed and systems testing was uncoordinated, and (3) standard software interfaces were not defined.

Finally, IRS had not established an effective organizational structure to consistently manage and control system modernization organizationwide. The accountability and responsibility for IRS' systems development was spread among IRS' Modernization Executive, Chief Information Officer, and research and development division. To help address this concern, in May 1995, the Modernization Executive was named Associate Commissioner. The Associate Commissioner was assigned responsibility to manage and control modernization efforts previously conducted by the Modernization Executive and the Chief Information Officer, but not those of the research and development division. However, the research and development division still did not report to the Associate Commissioner.

We made over a dozen specific recommendations to the IRS Commissioner in our report to enable IRS to overcome its management and technical weaknesses by December 1995. Our recommendations were intended to improve IRS' ability to successfully develop and implement TSM efforts in fiscal year 1996. The House Conference Report on IRS' fiscal year 1996 appropriation notes that legislative language "fences" $100 million in TSM funding and requires that the Secretary of the Treasury report to the

[10]Configuration management involves selecting project baseline items (for example, specifications), systematically controlling these items and changes to them, and recording their status and changes.

Senate and House Appropriations Committees on the progress IRS has made in responding to our recommendations with a schedule for successfully mitigating deficiencies we reported.[11] As of March 4, 1996, the Secretary of the Treasury had not reported to the Committees on TSM. We are assessing IRS' actions and will provide a status report to the Committees by March 14, 1996.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you or Members of the Subcommittee might have.

[11]House of Representatives Report 104-291, October 25, 1995.

006 RACS Report

A. First of all, you must be in the correct status to ask for the 23C Certificate of Assessment, before you do these FOIA's connected with the "006 RACS Report"; Then instead of sending you a 23C they will try to pawn off a "Racs Report - 006" on you. They will typically respond with their form letter telling you why they did this. Read that letter very carefully. It has some valuable information for your record.

B. DO NOT USE THE SAMPLE "Racs Report - 006" shown on page 95 in a FOIA request! USE YOUR OWN "Racs Report - 006". Many of you may have received this type of form already.

C. Send each request in by itself with a regular stamp. Make sure you put a different date on each separate FOIA request and send them to your local disclosure officer. Do not send them all on the same day.

D. We suggest you go back and read the enclosed GAO report where it talks about the RACS report (page 84).

E. Don't let the IRS super glue that "Racs Report -006" to you as though it is authentic, or that it actually represents the truth, a valid assessment, or anything meaningful at all regarding you. Again, don't be misled by,or join in a fiction.

AUSTIN

Certificate Number 13319981123004 Assessment Type Regular Assessment Date 11231998

Tax Class Summary

Tax Class	Items	Amount
WITHHOLDING	12567	743,249,808.63
INDIVIDUAL	83262	3,449,591,458.79
CORPORATION	2207	403,441,728.40
EXCISE	620	506,752.68
ESTATE & GIFT	199	26,998,136.85
CTA	0	38.76
FUTA	515	663,939.34

Principal Taxpayers And Amounts Related to Jeopardy Assessments	Number	Amount
	0	0.00

Certification

I certify that the taxes, penalty, and interest of the above classifications, hereby assessed, are specified in supporting records, subject to such corrections as subsequent inquiries and determinations in respect thereto may indicate to be proper.

Signature (For Service Center Director of Internal Revenue Service)

Paula Bedford
Assessment Officer

Date 11-23-98

VERIFIED KB

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(local district address)
(local district address)

FROM: Name
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonably segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. BACKGROUND: See Exhibit A, 006 RACS report sent to me, dated _____, for years _____.

5. Please send me the source document which determines if the 006 RACS report, dated _____, for years _____, which was sent to me, is a corporate tax, individual income tax, wage tax, or a social security tax.

6. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

DATED:

Respectfully,

Name, Requester

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(local district address)
(local district address)

FROM: Name
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonably segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. BACKGROUND: See Exhibit A, 006 RACS report sent to me, dated _____, for years _____.

5. Please send me the documents that determined the exact type of tax that the 006 RACS, dated _____, for years _____ , which was sent to me on __(date)_____, figures are based upon.

6. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

DATED:

Respectfully,

_____
Name, Requester

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(local district address)
(local district address)

FROM: Name
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonably segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. BACKGROUND: See Exhibit A, 006 RACS report sent to me, dated _____, for years _____.

5. Please send me the accounting methods that were used to determine the figures that were posted to the 006 RACS report which was sent to me on __(date)____, for years _____.

6. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

DATED:

Respectfully,

_____
Name, Requester

FREEDOM OF INFORMATION ACT REQUEST

TO:
Disclosure Officer
Internal Revenue Service
(local district address)
(local district address)

FROM: Name
addr1
addr2

Account # (SS# or EIN#)

Dear Disclosure Officer:

1. This is a request under the Freedom of Information Act, 5 USC 552, or regulations thereunder. This is my firm promise to pay fees and costs for locating and duplicating the records requested below, ultimately determined in accordance with 26 CFR 601.702 (f).

2. If some of this request is exempt from release, please furnish me with those portions reasonably segregable. I am waiving personal inspection of the requested records.

3. This request pertains to the years:

4. BACKGROUND: See Exhibit A, 006 RACS report sent to me, dated _____, for years _____.

5. Please send me the underlying documents that the IRS used to create the 006 RACS report which was sent me on __(date)____, for years _____.

6. Please certify all documents with the Form 2866, certificate of official record. If there are no specific documents pertaining to this request, certify your response with Form 3050, certificate of lack of records.

DATED:

Respectfully,

Name, Requester