

# ***GOVERNMENT BURDEN OF PROOF***

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# 1 Introduction

This memorandum of law shall prescribe the most important provisions of law constraining the collection of Internal Revenue taxes by the Internal Revenue Service and the burden of proof imposed upon the government in proceeding lawfully during the collection process. It will summarize these provisions in the Conclusions section later. It is intended to be attached to correspondence you send to the IRS in order to remind them of the burden of proof and provisions of law that they must satisfy before they can expect any cooperation from you.

Life is argument.

Either someone is trying to persuade you, or you are trying to persuade someone else.

We live in a world where all kinds of people make claims and demands on us. And, it is most disconcerting when these claims & demands are made by public officials. Because public officials are in positions of authority, we error when we think they have authority over us, and that we have an immediate duty to comply with their demand.

These demands come in the form of tickets, traffic stops, court hearings, and taxation demands.

But, a free man is under the law of the LORD God and not the fickle, narrow statutes of the State.

We need to know how to stand up to authority figures in order to extract ourselves from the greedy clutches.

You can successfully extract yourself from legal entanglement with law enforcement of any kind, by asserting the following principles **regarding proof of claim**.

**Know that we have a limited government.**

*"The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."*  
[James Madison, Federalist 45, 1788]

*"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*  
[Tenth Amendment, 1791]

**Know that you have an unalienable right to be left alone.**

*"Justice, as a moral habit, is that tendency of the will and mode of conduct which refrains from disturbing the lives and interest of others, and interest of others, and, as far as possible, hinders such interference on the part of others . . ."*  
[What is "Justice"?, Form #05.050; <https://sedm.org/Forms/05-MemLaw/WhatIsJustice.pdf>]

**Know that the government presumes that you have obligations to the State and therefore makes demands upon you in the form of licenses, franchises, tickets, fines, and taxation.**

**Know that you have the right to challenge the presumption of obligation.**

There are **only two ways** that obligations can be created to the State:

(1) First, by a violation of the common law – an act on your part that injures the life or property of another – an act that forces the government to provide justice through the courts and to right the wrong created, usually by fines and fees (the whole body of criminal law); and Second,

(2) if you violate a duty which was created by a contract with the State (the whole body of civil law).

No injured party, no crime!



1 No contract, no claim of a civil violation can stand.

2 **In criminal law**, the State correctly asserts that you have a duty to your neighbor to avoid acts of *malfeasance*<sup>1</sup> or *mala in*  
3 *se*<sup>2</sup>. You are presumed innocent until proven guilty; that is, the moving party, usually the State prosecutor, must offer facts  
4 to prove guilt “beyond reasonable doubt” in order overcome “the presumption of innocence.”

5 **In civil law**, the plaintiff must produce the contract, show the obligation created by contract, and provide enough evidence  
6 to a judge (or jury) to convince him that his rights were violated due to your nonfeasance<sup>3</sup> or misfeasance<sup>4</sup>.

7 **The way the government wins in court:** The only way the government can win in court is:

8 (1) to prove you injured another,

9 (2) or to prove you had contract duties that obligated you to some kind of performance to the State or the aggrieved  
10 party.

11 **The way you win in court:** If the government is the Plaintiff, you must:

12 1. Force them to produce:

13 1.1. an injured party (a living breathing human being), or

14 1.2. the contract and show the judge that you agreed to contractual obligations.

15 2. Demand to meet your accuser (i.e. the injured party), **AND**

16 3. Challenge the validity of an obligation by contract or operation of law on the basis of lack of full disclosure and/or  
17 information on the face of the alleged instrument:

18 *"The people insist on remaining informed so that they may retain control over the instruments they have created."*  
19 *[California Government Code Section 54950]*

20 **AND**

21 *"A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all obligations arising from*  
22 *it, so far as the facts are known, **or ought to be known, to the person accepting**" -*  
23 *[California Civil Code, Section 1589]*

24 You don't have to prove your innocence, you need only show the court

25 (1) there is no injured party (no injured party, no crime); or,

26 (2) because there is no contract in existence between you and the State, you are under no duty to perform.

27 But, because the government operates on presumption, you must expose the presumption.

28 **The way you lose in court** is if the common law accuser, or civil law plaintiff :

29 1. proves harm, loss, or injury, or

30 2. proves a breach of contractual duties that obligated you to specific performance to either:

31 2.1. the private aggrieved party, or

32 2.2. to the State while engaged in the performance of duties as a public official/officer/employee/agent/franchisee or  
33 contractor.

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<sup>1</sup> **Malfeasance:** The commission of an act that is unequivocally illegal or completely wrongful.

<sup>2</sup> **Malum in se:** acts that are completely wrong in and of themselves because they injure the rights of others. Acts *mala en se* are violations of God's law (moral law) and are criminal in nature. Things *mala en se* are quite different than acts that are *mala prohibita* which are prohibitions created by the legislature or a civil body like “don't walk on the grass.”

<sup>3</sup> **Nonfeasance:** The intentional failure to perform a required duty or obligation.

<sup>4</sup> **Misfeasance:** A term used in [Tort Law](http://www.seddm.org) (a body of rights applied by the courts) to describe an act that is legal but performed improperly.

America is divided into two camps, the liberal camp and the conservative camp. The liberal camp follows an evolution model believing that society must descend into change and chaos in order to create a new, utopian ideal.

*"When I began to write my book The conservative Mind, I discovered that the abstraction "conservatism" amounts to a general term descriptive of the beliefs and actions of certain eminent men and women whom we call "conservative" because they have endeavored to protect and nurture the Permanent Things in human existence. So it is with justice: in large part, we learn the meaning of justice by acquaintance with just persons."*  
[The Meaning of Justice, Heritage Foundation; SOURCE: <https://www.heritage.org/poverty-and-inequality/report/the-meaning-justice>]

The permanent things include proven principles, that produce law and order. Virtue, according to Aristophanes, "cannot be taught in schools or by tutors; rather, virtue inheres in old families". This document will focus on those virtues and how to protect them in the main setting that matters: In relation to the government both administratively and in court.

## **2 Legal Requirements Upon Burden of Proof**

In any administrative proceeding such as tax collection, the moving party has the burden of proving his position using court-admissible evidence. This requirement is described in the Administrative Procedures Act, [5 U.S.C. §556](#)(d) as follows:

[TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 556](#)  
[§ 556. Hearings: presiding employees; powers and duties; burden of proof; evidence; record as basis of decision](#)

*(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557 (d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.*

[SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode05/usc\\_sec\\_05\\_00000556----000-.html](http://www4.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000556----000-.html)]

The Internal Revenue Code describes this same burden of proof below.

[TITLE 26 > Subtitle F > CHAPTER 76 > Subchapter E > § 7491](#)  
[§ 7491. Burden of proof](#)

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations

Paragraph (1) shall apply with respect to an issue only if -

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section [7430\(c\)\(4\)\(A\)\(ii\)](#). Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section [645\(b\)\(1\)](#)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section [645\(b\)\(2\)](#)).

(3) Coordination

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

[SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00007491----000-.html](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007491----000-.html)]

Note that Section 7491 establishes the burden of proof ONLY in the case of “taxpayers” and NOT to all persons or even to “nontaxpayers”. Most “nontaxpayers” are nonresidents, and statutory law cannot impose any legal requirement upon “nonresident persons”.

*“Judge Story, in his treatise on the Conflicts of Laws, lays down, as the basis upon which all reasonings on the law of comity must necessarily rest, the following maxims: First ‘that every nation possesses an exclusive sovereignty and jurisdiction within its own territory’; secondly, ‘that no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects or others.’ The learned judge then adds: ‘From these two maxims or propositions there follows a third, and that is that whatever force and obligation the laws of one country have in another depend solely upon the laws and municipal regulation of the latter; that is to say, upon its own proper jurisdiction and polity, and upon its own express or tacit consent.’” Story on Conflict of Laws §23.”*  
[Baltimore & Ohio Railroad Co. v. Chambers, 73 Ohio.St. 16, 76 N.E. 91, 11 L.R.A., N.S., 1012 (1905)]

You will also note that the federal government enjoys no legislative jurisdiction within any state of the Union, and that the Internal Revenue Code qualifies as “legislation” within the meaning of the following U.S. Supreme Court ruling:

*“It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, 247 U.S. 251, 275, 38 S.Ct. 529, 3 A.L.R. 649, Ann.Cas.1918E 724, possesses no inherent power in respect of the internal affairs of the states; and emphatically not with regard to legislation.”*  
[Carter v. Carter Coal Co., 298 U.S. 238, 56 S.Ct. 855 (1936)]

The process of proving liability must conform to the following sequence.

1. If the party claims or acquiesces to being called a “taxpayer”, then any provision of the I.R.C. may be applied against him or her. See:  

[Your Rights as a NONTaxpayer, Form #08.008](http://sedm.org/LibertyU/NontaxpayerBOR.pdf)  
<http://sedm.org/LibertyU/NontaxpayerBOR.pdf>
2. If the target of the government action denies under penalty of perjury that he is a “taxpayer” and instead claims to be a “nontaxpayer”, then no provision of any part of the Internal Revenue Code may be applied against him until it is proven administratively with court admissible evidence by the government that he is a “taxpayer” subject to the Internal Revenue Code as described in 26 U.S.C. §§7701(a)(14) and 1313. The only exception to this rule is “public officers” working for the government.
3. Silence in responding to evidence presented of illegal activities to a public official or a failure by the public official to deny gives rise to a permissible and “adverse inference” against the public servant who has been presented with evidence of his own violations of law. That adverse inference is a form of evidence. Government employees are “public officers” and trustees of the people. As such, they owe a fiduciary duty to the public at large.

*“As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer.”*<sup>5</sup>  
Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government, and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by law upon trustees relative to the making of personal financial gain

<sup>5</sup> State ex rel. Nagle v Sullivan, 98 Mont. 425, 40 P.2d. 995, 99 A.L.R. 321; Jersey City v Hague, 18 N.J. 584, 115 A.2d. 8.

1 from a discharge of their trusts.<sup>6</sup> That is, a public officer occupies a fiduciary relationship to the political  
2 entity on whose behalf he or she serves.<sup>7</sup> and owes a fiduciary duty to the public.<sup>8</sup> It has been said that the  
3 fiduciary responsibilities of a public officer cannot be less than those of a private individual.<sup>9</sup> Furthermore,  
4 it has been stated that any enterprise undertaken by the public official which tends to weaken public confidence  
5 and undermine the sense of security for individual rights is against public policy.<sup>10</sup>  
6 [63C American Jurisprudence 2d, Public Officers and Employees, §247 (1999)]

7 The fiduciary duty of “public officers” is completely incompatible with and inconsistent with silence in responding to  
8 claims by a member of the public that specific employees or agencies are violating the law. See section 7:

Silence as a Weapon and a Defense in Legal Discovery, Form #05.021  
<http://sedm.org/Forms/FormIndex.htm>

- 9 4. The benefit of the doubt is always in favor of the person against whom the tax is to be laid or collected.

10 “Keeping in mind the well-settled rule that **the citizen is exempt from taxation unless the same is imposed by**  
11 **clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be**  
12 **resolved in favor of those upon whom the tax is sought to be laid.”**  
13 [Spreckels Sugar Refining Co. v. McClain, 192 U.S. 297 (1904)]

14 “In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of  
15 clear expression to the contrary, to operate prospectively; that, **if doubt exists as to the construction of a taxing**  
16 **statute, the doubt should be resolved in favor of the taxpayer...”**  
17 [Hassett v. Welch., 303 US 303, pp. 314 - 315, 82 L.Ed. 858. (1938)]

- 18 5. Any presentment by either party that is not specifically denied is admitted and defaulted to, pursuant to Federal Rule of  
19 Civil Procedure 8(b)(6). See:  
20 <http://www.law.cornell.edu/rules/frcp/Rule8.htm>  
21 6. All presumptions which might prejudice constitutionally protected rights are impermissible and unconstitutional and  
22 may not lawfully be made, nor admitted as evidence in any trial before any court:

23 (1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be defeated  
24 where its application would impair a party's constitutionally-protected liberty or property interests. In such  
25 cases, conclusive presumptions have been held to violate a party's due process and equal protection  
26 rights. [Vlandis v. Kline (1973) 412 U.S. 441, 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur (1974)  
27 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit  
28 violates process]  
29 [Federal Civil Trials and Evidence, Rutter Group, paragraph 8:4993, p. 8K-34]

- 30 7. If law is the source of evidence to be admitted, then pursuant to 1 U.S.C. §204, it is admissible as evidence if enacted  
31 into positive law. If the statute is not enacted into positive law, such as the entire Internal Revenue Code, then it becomes  
32 “prima facie evidence”, which is “presumed to be law, exclusively applicable to the District of Columbia”. See 28 U.S.C.  
33 §1366. Since presumptions that prejudice constitutionally protected rights are unconstitutional, then each provision or  
34 individual statute cited as authority by the moving party domiciled in a state of the Union and protected by the  
35 Constitution must individually be demonstrated to be positive law using quotes from the Statutes At Large. Failure by  
36 the moving party or the Court to follow this provision constitutes a violation of due process of law and the use essentially  
37 of “presumption” as a substitute for lawful evidence.

<sup>6</sup> Georgia Dep't of Human Resources v Sistrunk, 249 Ga. 543, 291 S.E.2d. 524. A public official is held in public trust. Madlener v Finley (1st Dist) 161 Ill.App.3d. 796, 113 Ill.Dec. 712, 515 N.E.2d. 697, app gr 117 Ill.Dec. 226, 520 N.E.2d. 387 and revd on other grounds 128 Ill.2d. 147, 131 Ill.Dec. 145, 538 N.E.2d. 520.

<sup>7</sup> Chicago Park Dist. v Kenroy, Inc., 78 Ill.2d. 555, 37 Ill.Dec. 291, 402 N.E.2d. 181, appeal after remand (1st Dist) 107 Ill.App.3d. 222, 63 Ill.Dec. 134, 437 N.E.2d. 783.

<sup>8</sup> United States v Holzer (CA7 Ill) 816 F.2d. 304 and vacated, remanded on other grounds 484 U.S. 807, 98 L.Ed.2d. 18, 108 S.Ct. 53, on remand (CA7 Ill) 840 F.2d. 1343, cert den 486 U.S. 1035, 100 L.Ed.2d. 608, 108 S.Ct. 2022 and (criticized on other grounds by United States v Osser (CA3 Pa) 864 F.2d. 1056) and (superseded by statute on other grounds as stated in United States v Little (CA5 Miss) 889 F.2d. 1367) and (among conflicting authorities on other grounds noted in United States v Boylan (CA1 Mass) 898 F.2d. 230, 29 Fed Rules Evid Serv 1223).

<sup>9</sup> Chicago ex rel. Cohen v Keane, 64 Ill.2d. 559, 2 Ill.Dec. 285, 357 N.E.2d. 452, later proceeding (1st Dist) 105 Ill.App.3d. 298, 61 Ill.Dec. 172, 434 N.E.2d. 325.

<sup>10</sup> Indiana State Ethics Comm'n v Nelson (Ind App) 656 N.E.2d. 1172, reh gr (Ind App) 659 N.E.2d. 260, reh den (Jan 24, 1996) and transfer den (May 28, 1996).

1 "A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption  
2 is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden  
3 of proof. Calif.Evid.Code, §600."  
4 [Black's Law Dictionary, Sixth Edition, p. 1185]

### 5 **3 The Right to be Let Alone**

#### 6 **3.1 Definition of "Let Alone"**

7 **LET:** verb, let, let-ting.

- 8 1. to allow or permit: let go, let be, to let him escape.
- 9 2. to allow to pass, go, or come: to let us through.
- 10 3. to grant the occupancy or use of (land, buildings, rooms, space, etc., or movable property) for rent or hire  
11 (sometimes followed by out).

12 "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness... They  
13 sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred,  
14 as against the Government, **the right to be let alone** - the most comprehensive of rights and the right most valued  
15 by civilized men."  
16 [Olmstead v. United States, [277 U.S. 438, 478](#) (1928); Washington v. Harper, [494 U.S. 210](#) (1990)]

17 In our complex society it is most disconcerting when some public servants attempt to compel your compliance with their  
18 enforcement authority by ignoring their oath to act in accordance with the constitution to protect the individual rights against  
19 interference by government actors.

20 Nowadays the "education" system conditions us to believe that public servants or officials hold some automatic or intrinsic  
21 authority over us, and that we have an obligation to comply with any traffic stop, ticket, jury summons, court hearing, tax  
22 demand, etc. Understanding the hierarchy of authority in our society is paramount to placing ourselves in the proper status  
23 within the societal aggregate.

24 **Know the powers delegated to any government you wish to partake in or with.**

25 "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which  
26 are to remain in the State governments are numerous and indefinite."  
27 [[James Madison](#), Federalist 45, 1788]

28 "Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that  
29 he who purports to act for the government stays within the bounds of his authority, even though the agent  
30 himself may be unaware of the limitations upon his authority."  
31 [Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947). [Emphasis added]]

32 *The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others*  
33 *retained by the people. [Public servants are trained or allowed to presume that you are accepting their authority*  
34 *if you do not specifically state your reservation of rights in each and every communication with them.]*  
35 [*United States Constitution, Article IX of The Bill of Rights*]

36 "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are  
37 reserved to the states respectively, or to the people."  
38 [*United States Constitution, Article X of The Bill of Rights*]

#### 39 **3.2 California Constitution [Article I](#)**

40 Article I is labeled the "**Declaration of Rights**" and contains 32 sections. The first section **declares**:

41 "All people are by nature free and independent and have inalienable rights. Among these are enjoying and  
42 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety,  
43 happiness, and privacy."

44 **Nowhere** in the entire California Constitution is there any right delegated to legislators to enact any statute against the  
45 inalienable rights of people as guaranteed in Article I.

1 It is your right to challenge the presumption of obligation in the form of licenses, tickets, franchises, fines, taxation,  
2 etc.

3 Section 22.2 of the California Civil Code (“CCC”) shows that the common law shall be the rule of decision in all the courts  
4 of this State. CCC sections 1427 and 1428 establish that obligations are legal duties arising either from contract of the  
5 parties, or the operation of law.

6  
7 CCC section 1708 states that the obligations imposed by operation of law are only to abstain from injuring the person or  
8 property of another, or infringing upon any of his or her rights. See for yourself below:

9 **Copied on October 11, 2017, from the following link:**

10 [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=22.2.&lawCode=CIV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22.2.&lawCode=CIV)

11  
12 *California Civil Code - CIV*  
13 *DEFINITIONS AND SOURCES OF LAW*  
14 *(Heading added by Stats. 1951, Ch. 655, in conjunction with Sections 22, 22.1, and 22.2 )*

15 *22.2. The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the*  
16 *United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State. (Added*  
17 *by Stats. 1951, Ch. 655.)*

18  
19 *California Civil Code - CIV*  
20 *DIVISION 3. OBLIGATIONS [1427 - 3272.9]*  
21 *( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )*  
22 *PART 1. OBLIGATIONS IN GENERAL [1427 - 1543] ( Part 1 enacted 1872. )* TITLE 1.  
23 *DEFINITION OF OBLIGATIONS [1427 - [1428.]] ( Title 1 enacted 1872.)*

24 *1427. An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.*

25 *(Enacted 1872.)*

26  
27 *California Civil Code – CIV*  
28 *DIVISION 3. OBLIGATIONS [1427 - 3272.9]*  
29 *( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )*  
30 *PART 1. OBLIGATIONS IN GENERAL [1427 - 1543] ( Part 1 enacted 1872. )*  
31 *TITLE 1. DEFINITION OF OBLIGATIONS [1427 - [1428.]] (Title 1 enacted 1872.)*  
32 *[1428.] Section Fourteen Hundred and Twenty-eight. An obligation arises either from:*

33 *One — The contract of the parties; or,*

34 *Two — The operation of law. An obligation arising from operation of law may be enforced in the manner*  
35 *provided by law, or by civil action or proceeding.*

36 *(Amended by Code Amendments 1873-74, Ch. 612.)*

37  
38 *California Civil Code – CIV*  
39 *DIVISION 3. OBLIGATIONS [1427 - 3272.9]*  
40 *( Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14. )*  
41 *PART 3. OBLIGATIONS IMPOSED BY LAW [1708 - 1725]*  
42 *( Part 3 enacted 1872. )*

43 *1708. Every person is bound, without contract, to abstain from injuring the person or property of another, or*  
44 *infringing upon any of his or her rights.*



THUS, there are only two ways to incur an obligation:

- (1) Bound by contract: a) - private (which may be set under common law, or civil law); or  
b) - public (encompassing the whole body of civil law).
- (2) Bound by operation of law (without contract) upon injury of person or property of another, or infringing upon any of his or her rights.

By notifying a public servant that you retain your rights, you engage their fiduciary duty to act in accordance to the constitutional protections against government interference with your life.

Since no legislator is granted the right to enact statutes against your inalienable rights, there can be NO statute conferring authority upon any public servant to compel performance upon or from you, as such would be a trespass against your inalienable rights.

Such trespass is actionable in either

- a) a common law court of record which guarantees a trial by jury for any matter where damages may exceed \$20 or
- b) administrative courts governed by civil law.

In either case, the injured party must present a verified<sup>11</sup> claim.

**Know the rules of valid claims.** No smoking gun = no proof; No harm or foul = no valid claim; No harm, loss or injury = no valid claim. No contract = no breach of any contract = no valid claim. If there is no verifiable claim of harm, loss or injury, there can be no common law or civil crime, nor civil violation.

**Know the elements of valid contract.**

**Contract:** An agreement between *two* or more *parties* to perform or to refrain from some act now or in the *future*. A legally enforceable agreement.

### **3.3 Requisites for Contract Formation (Elements)**

1. **Agreement:** One party must offer to enter into an agreement, and the other party must accept the terms of the offer
2. **Consideration:** Something of value received or promised, to convince a party to agree to the deal;
3. **Contractual Capacity/ competent parties:** Both parties must be competent to enter into the agreement;
4. **Legality:** The contract's purpose must be to accomplish some goal that is legal and not against public policy;
5. **Genuineness of Assent (Arguably part of agreement):** The apparent consent of both parties must be genuine; and
6. **Form:** The agreement must be in whatever form (e.g., written, under seal, etc.) the law requires.

### **3.4 Unilateral and Bilateral Contracts**

1. **Every contract involves at least two parties** -- the offeror/ promisor, who makes the *offer/promise* to perform, and the *offeree/promisee*, to *whom the offer/promise is made*. [4303]
2. **Unilateral Contract:** A unilateral contract arises when an offer can be accepted only by the offeree's performance (e.g., X offers Y \$15 to mow X's yard). [4302.08]
3. **Bilateral Contract:** A bilateral contract arises when a promise is given in exchange for a promise in return (e.g., X promises to deliver a car to Y, and Y promises to pay X an agreed price). [4302.09]
4. **Express Contract:** A contract in which the terms of the agreement are fully and explicitly stated orally or in writing. [4302.01]
5. **Implied-in-Fact Contract:** A contract formed in whole or in part by the conduct (as opposed to the words) of the parties.

<sup>11</sup> Verification. Confirmation of correctness, truth, or authenticity, by affidavit, oath, or deposition. [Sheeley v. Justice of Santa Clara, 215 Cal.App.2d. 47, 48. (Black's Law 5th) [Emphasis added]]

In order to establish an implied-in-fact contract, [4302.02]

5.1. the plaintiff **must have furnished some service or property** to the defendant,

5.2. the plaintiff must have **reasonably expected to be paid and the defendant knew or should have known that a reasonable person in the plaintiff's shoes would have expected to be paid for the service or property rendered by the plaintiff**, and

5.3. the defendant must have **had the opportunity to reject the services or property and failed to do so**.

6. **Quasi or Implied-in-Law Contract:** A fictional contract imposed on parties by a court in the interests of fairness and justice, typically to prevent the unjust enrichment of one party at the expense of the other.[4302.03]

### 3.5 Formal and Informal Contracts<sup>12</sup>

1. **Formal Contract:** A contract that requires a special form or method of formation (creation) in order to be enforceable.

2. **Contract Under Seal:** A formalized writing with a special seal attached.

3. **Recognizance:** An acknowledgment in court by a person that he or she will perform some specified obligation or pay a certain sum if he or she fails to perform (e.g., personal recognizance bond).

4. **Negotiable Instrument:** A check, note, draft, or certificate of deposit -- each of which requires certain formalities (to be discussed later).

5. **Letter of Credit:** An agreement to pay that is contingent upon the receipt of documents (e.g., invoices and bills of lading) evidencing receipt of and title to goods shipped.

6. **Informal Contract:** A contract that does not require a specified form or method of formation in order to be valid.

7. **The vast majority of contracts are informal (without a seal).**

### 3.6 Execution and Validity of Contracts<sup>13</sup>

1. **Executed Contract [4302.11]:** A contract that has been completely performed by both (or all) parties. By contrast,

2. **An executory contract [4302.10]** is a contract that has not yet been fully performed by one or more parties.

3. **Valid Contract [4302.13]:** A contract satisfying all of the requisites discussed earlier -- agreement, consideration, capacity, legal purpose, assent, and form. By contrast,

4. A **void** contract [4302.14] is a contract having no legal force or binding effect (e.g., a contract entered into for an illegal purpose);

5. A **voidable** contract [4302.15] is an otherwise valid contract that may be legally avoided, cancelled, or annulled at the option of one of the parties (e.g., a contract entered into under duress or under false pretenses); and,

6. An **unenforceable** contract is an otherwise valid contract rendered unenforceable by some statute or law (e.g., an oral contract that, due to the passage of time, must be in writing to be enforceable).

### 3.7 Contract Interpretation<sup>14</sup>

1. The key to contract interpretation is to give **effect to the intent** of the parties as expressed in their agreement.

2. **Intent** is generally to be ascertained objectively -- by looking at:

2.1. the words used by the parties in the agreement,

2.2. the actions of the parties pursuant to the agreement, and

2.3. the circumstances surrounding the agreement as they would be interpreted by a reasonable person -- rather than the parties' *subjective* intentions (usually expressed after the fact).

3. **The Plain Meaning Rule:** When a contract is clear and unequivocal, a court will enforce it according to its **plain** terms, set forth on the face of the instrument, and there is no need for the court either to consider extrinsic evidence or to interpret the language of the contract.

<sup>12</sup> Contracts: Basic Principles 430x, Talor S. Klett, CPA, J.D.; SOURCE: <http://www.shsu.edu/klett/CONTRACTS%20BASIC%20PRINCIPLES%20ch%2010%20new.htm>

<sup>13</sup> Contracts: Basic Principles 430x, Talor S. Klett, CPA, J.D.; SOURCE: <http://www.shsu.edu/klett/CONTRACTS%20BASIC%20PRINCIPLES%20ch%2010%20new.htm>

<sup>14</sup> Contracts: Basic Principles 430x, Talor S. Klett, CPA, J.D.; SOURCE: <http://www.shsu.edu/klett/CONTRACTS%20BASIC%20PRINCIPLES%20ch%2010%20new.htm>



### 3.8 Rules of Interpretation<sup>15</sup>

Know these, they show up all the time...

#### Rules of Interpretation:

When a contract contains ambiguous or unclear terms, a court will resort to one or more of the following rules in order to determine and give effect to the parties' intent.

1. Insofar as possible, the contract's terms will be given a reasonable, lawful, and effective meaning.
2. The contract will be interpreted as a whole and its various provisions will be "harmonized" to yield consistent expression of intent.
3. Negotiated terms will be given greater consideration than standard-form, or "boiler-plate," terms.
4. A non-technical term will be given its ordinary, commonly-accepted meaning, and a technical term will be given its technical meaning, unless the parties clearly intended something else.
5. Specific terms will prevail over general terms.
6. Handwritten terms prevail over typewritten terms, which, in turn, prevail over printed terms.
7. When the language used in a contract has more than one meaning, any ambiguity is construed against the drafting party.
8. An ambiguous contract should be interpreted in light of pertinent usages of trade in the locale and/or industry, the course of prior dealing between the parties, and the parties' course of prior performance of the contract.
9. Express terms are given preference over course of prior performance, which is given preference over course of dealing, which is given preference over usage of trade.
10. Words are given preference over numbers or symbols.

### 3.9 The Right to be Let Alone

The right to be let alone is a fundamental, un-enumerated right retained by the people.

*"The makers of the Constitution conferred the most comprehensive of rights and the right most valued by all civilized men—the right to be let alone"*  
[Justice Louis D. Brandeis (1856-1941)]

*"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"*  
[4<sup>th</sup> Amendment]

*"He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property"*  
[Hale v. Henkel, 201 U.S. 43 (1906)]

The people have secured to themselves via the binding chains of the constitutions the right to be let alone from "swarms of officers" that are prone "to harass our people, and eat out their substance" by citing them with all kinds of code violations and then fining them to produce an income for the State (See the Declaration of Independence).

*"Today, following the tragic events of September 11, 2001, the American people face another troublesome threat—swarms of security agents harassing us at airports, borders, buildings, and highways . . . . Airport security has now become federalized. And we have become, in the words of Sheldon Richman, "tethered citizens"*  
[Mark Skousen, FEE]

Interference in our private lives, bank accounts, travel plans, and biological property is the insidious act of tyrants.

*"Of all tyrannies, a tyranny exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes*

<sup>15</sup> Contracts: Basic Principles 430x, Talor S. Klett, CPA, J.D.; SOURCE: <http://www.shsu.edu/klett/CONTRACTS%20BASIC%20PRINCIPLES%20ch%2010%20new.htm>

1 sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us  
2 without end, for they do so with the approval of their own conscience."  
3 [C. S. Lewis]

4 The State infringes on your right to be let alone by enforcing the presumption of obligations.

### 5 **3.10 Obligations**

6 Government workers presume you are a subject of the Almighty STATE and that you have a duty to respect them as your  
7 superior and obey their codes. But, you are not a slave of the STATE. Slavery was outlawed by the 13<sup>th</sup> Amendment. You  
8 have an unalienable, God-given right, even a duty, to your life, liberty and pursuit of happiness.

9 "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient  
10 causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are  
11 sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train  
12 of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute  
13 Despotism, it is **their right, it is their duty, to throw off** such Government (presumption), and to provide new  
14 Guards for their future security"  
15 [Declaration of Independence]

16 "In England, obligation law commonly refers to the study of the laws of **contract, torts and restitution**, the  
17 principal (but not sole) sources of civil liability"  
18 [Obligations law: Law of obligations, Oxford Libguides, UK; SOURCE: [https://libguides.bodleian.ox.ac.uk/law-](https://libguides.bodleian.ox.ac.uk/law-oblig)  
19 [oblig](https://libguides.bodleian.ox.ac.uk/law-oblig)]

20 "The definition of obligation in law refers to the responsibility to follow through on actions agreed upon in a  
21 contract, promise, law, oath, or vow."  
22 [Definition of Obligation in Law: Everything You Need to Know, upcounsel; SOURCE:  
23 <https://www.upcounsel.com/definition-of-obligation-in-law>]

24 "Obligation of contracts refers to the legal duty of contracting parties to fulfill the promises specified in their  
25 contracts . . . If one of the parties fails to fulfill his or her obligations as specified in the contract, it is considered  
26 a **breach of contract**."  
27 [Obligation of Contracts: Everything You Need to Know, upcounsel; SOURCE:  
28 <https://www.upcounsel.com/obligation-of-contracts>]

29 "Currently obligation is used in reference to anything that an individual is required to do because of a promise,  
30 vow, oath, contract, or law. It refers to a legal or moral duty that an individual can be forced to perform or  
31 penalized for neglecting to perform."  
32 [Obligation, The Free Dictionary by Farlex; SOURCE: [https://legal-](https://legal-dictionary.thefreedictionary.com/obligation)  
33 [dictionary.thefreedictionary.com/obligation](https://legal-dictionary.thefreedictionary.com/obligation)]

34 "a promise, acknowledgment, or agreement (as a contract) that binds one to a specific performance (as  
35 payment)"  
36 [Obligation, FindLaw Legal Dictionary; SOURCE: <https://dictionary.findlaw.com/definition/obligation.html>]

37 "Legal: Liability or duty to do something or refrain from doing something under the terms of a contract, such as  
38 the obligation of a borrower (the obligor) to pay back the lender (the obligee) under the terms of the loan  
39 agreement. Obligations usually involve a penalty for non-fulfillment"  
40 [Obligation, The Business Dictionary; SOURCE: <http://www.businessdictionary.com/definition/obligation.html>]

41 "Obligation of contracts is the legal duty of the contractors to fulfill the promise stated in the contract. The  
42 reasonable capacity of a man to do, or to refrain from doing something is considered before questioning the  
43 obligation of contracts"  
44 [Obligations of Contracts Law and Legal Definition, USLegal; SOURCE:  
45 <https://definitions.uslegal.com/o/obligation-of-contracts/>]

46 Obligations are created by contract with your consent. There is no such thing as a contract without your consent. Therefore,  
47 demand the officers show you a signed contract. No signature, no contract.

48 **Public servants are trained and allowed to attempt a third way to create administrative obligations based on a**  
49 **presumption that you have an administrative obligation to obey all State rules, regulations, and codes.**

Your notice of reservation of rights challenges the presumption and shifts the burden on them to prove there is a contract in place obligating you to some kind of performance. It is your obligation to know the risks associated with government interactions<sup>16</sup> and challenge any and all **presumptions of obligation**.

### **3.11 Civil Statutes and Rules are Only for the Government**

**There is no question that the criminal laws apply regardless of our consent, but we error if we presume to think that government can tell us what to do CIVILLY.**

*"Under basic rules of construction, statutory laws enacted by legislative bodies cannot impair rights given under a constitution. 194 B.R. at 925. "*  
*[In re Young, 235 B.R. 666 (Bankr.M.D.Fla., 1999)]*

*"A private person cannot make constitutions or laws, nor can he with authority construe them, nor can he administer or execute them."*  
*[United States v. Harris, 106 U.S. 629, 1 S.Ct. 601, 27 L.Ed. 290 (1883)]*

If you as a private human can't "execute" laws, then you ALSO can't enforce them against ANYONE else. Some people might be tempted to say that we all construe them against the private human daily, but in fact we can't do that WITHOUT being a public officer WITHIN the government.

***"The reason why States are "bodies politic and corporate" is simple: just as a corporation is an entity that can act only through its agents, "[t]he State is a political corporate body, can act only through agents, and can command only by laws." Poindexter v. Greenhow, supra, 114 U.S., at 288, 5 S.Ct. at 912-913. See also Black's Law Dictionary 159 (5th ed. 1979) ("[B]ody politic or corporate": "A social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good"). As a "body politic and corporate," a State falls squarely within the Dictionary Act's definition of a "person."***  
*[Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S.Ct. 2304 (U.S.Mich.,1989)]*

Those who are not part of the government and not the subject of their civil statutes are called "private". As private parties, we are "non-resident" and "foreign" but NOT "aliens" in relation to the state. That relation is described in:

1. Separation Between Public and Private Course, Form #12.025  
<https://sedm.org/Forms/FormIndex.htm>
2. Non-Resident Non-Person Position, Form #05.020  
<https://sedm.org/Forms/FormIndex.htm>

If we do enforce the law as a private person, we are criminally impersonating a public officer in violation of 18 U.S.C. §912. Another U.S. Supreme Court cite also confirms why this must be:

*"All the powers of the government [including ALL of its civil enforcement powers against the public] must be carried into operation by individual agency, either through the medium of public officers, or contracts made with [private] individuals."*  
*[Osborn v. Bank of U.S., 22 U.S. 738 (1824)]*

***"...we are of the opinion that there is a clear distinction in this particular between an [PRIVATE] individual and a [PUBLIC] corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the state. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.***

<sup>16</sup> *"Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority."*  
*[Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947). [Emphasis added]]*

1 "Upon the other hand, the [PUBLIC] corporation is a creature of the state. It is presumed to be incorporated  
2 for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the  
3 laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not  
4 authorized by its charter. Its rights to [201 U.S. 43, 75] act as a corporation are only preserved to it so long  
5 as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and  
6 find out whether it has exceeded its powers. It would be a strange anomaly to hold that a state, having chartered  
7 a corporation to make use of certain franchises, could not, in the exercise of its sovereignty, inquire how these  
8 franchises had been employed, and whether they had been abused, and demand the production of the corporate  
9 books and papers for that purpose. The defense amounts to this: That an officer of a corporation which is charged  
10 with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its  
11 books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating  
12 questions unless protected by an immunity statute, it does not follow that a corporation, vested with special  
13 privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges. "  
14 [Hale v. Henkel, 201 U.S. 43 (1906)]

15 You MUST therefore be an agent of the government and therefore a PUBLIC officer in order to "make constitutions or laws  
16 or administer, execute, or ENFORCE EITHER". Here is more proof:

17 "A defendant sued as a wrong-doer, who seeks to substitute the state in his place, or to justify by the authority of  
18 the state, or to defend on the ground that the state has adopted his act and exonerated him, cannot rest on the  
19 bare assertion of his defense. He is bound to establish it. The state is a political corporate body, can act only  
20 through agents, and can command only by laws. It is necessary, therefore, for such a defendant, in order to  
21 complete his defense, to produce a law of the state which constitutes his commission as its agent, and a warrant  
22 for his act."  
23 [Poindexter v. Greenhow, 114 U.S. 270 (1885)]

24 These limitations also carry over to the state, county, and city level pursuant to **The Clearfield Doctrine**. Governments  
25 descend to the level of a mere private corporation, and take on the characteristics of a mere private citizen . . . where private  
26 corporate commercial paper [Federal Reserve Notes] and securities [checks] is concerned . . . For purposes of suit, such  
27 corporations and individuals are regarded as entities entirely separate from government.

28 "See also Clearfield Trust Co. v. United States, 318 U.S. 363, 369 (1943) ("The United States does business on  
29 business terms") (quoting United States v. National Exchange Bank of Baltimore, 270 U.S. 527, 534 (1926));  
30 Perry v. United States, supra at 352 (1935) ("When the United States, with constitutional authority, makes  
31 contracts, it has rights and incurs responsibilities similar to those of individuals who are parties to such  
32 instruments. There is no difference . . . except that the United States cannot be sued without its consent")  
33 (citation omitted); United States v. Bostwick, 94 U.S. 53, 66 (1877) ("The United States, when they contract with  
34 their citizens, are controlled by the same laws that govern the citizen in that behalf"); Cooke v. United States,  
35 91 U.S. 389, 398 (1875) (explaining that when the United States "comes down from its position of sovereignty,  
36 and enters the domain of commerce, it submits itself to the same laws that govern individuals there").

37 See Jones, 1 Cl.Ct. at 85 ("Wherever the public and private acts of the government seem to commingle, a citizen  
38 or corporate body must by supposition be substituted in its place, and then the question be determined whether  
39 the action will lie against the supposed defendant"); O'Neill v. United States, 231 Ct.Cl. 823, 826 (1982)  
40 (sovereign acts doctrine applies where, "[w]here [the] contracts exclusively between private parties, the party hurt  
41 by such governing action could not claim compensation from the other party for the governing action"). The  
42 dissent ignores these statements (including the statement from Jones, from which case Horowitz drew its  
43 reasoning literally verbatim), when it says, post at 931, that the sovereign acts cases do not emphasize the need  
44 to treat the government-as-contractor the same as a private party.  
45 [United States v. Winstar Corp., 518 U.S. 839 (1996)]

46 As such, when government enters the commercial marketplace to offer goods and services, they must deal equitably with  
47 everyone else in the marketplaces and become bound by the same rules and laws that govern private humans and other entities.  
48 This that **if they intend to compel an individual to some specific performance** based upon its corporate statutes or  
49 corporation rules, then the government, like any private corporation, must be the holder-in-due-course of a valid contract  
50 **or** other commercial valid agreement between it and the one upon whom demands for specific performance are made.

51 Therefore, all laws created by these government corporations are **private corporate regulations** called public law, statutes,  
52 codes and ordinances to conceal their true nature. Yes, judges and lawyers know this . . . but will hide it in their argument if  
53 silence promotes their cause of action.

54 Since these government bodies are not SOVEREIGN, they cannot promulgate or enforce CRIMINAL LAWS; **they**  
55 **can only create and enforce CIVIL LAWS, which are duty bound to comply with by the LAW of CONTRACTS.**  
56 The Law of Contracts requires signed written agreements and complete transparency! Did you ever agree to be  
57 arrested and tried under any of their corporate statutes? For that matter, did you ever agree to contract with  
58 them by agreeing to be sued for violating their corporate regulations?

[Governments Have Descended to the Level of Mere Private Corporations, The Anti-corruption Society;  
SOURCE: <https://anticorruptionsociety.files.wordpress.com/2014/05/clearfield-doctrine.pdf>]

Enforcement of these corporate statutes by local, state and federal law enforcement officers are unlawful actions being committed against the SOVEREIGN people and these officers can be held personally liable for their actions. Bond v. U.S., 529 U.S. 334 (2000)

For extensive court admissible proof of why statutes only pertain to government agents and officers, see:

1. Why Statutory Civil Law is Law for Government and Not Private Persons, Form #05.037  
<https://sedm.org/Forms/FormIndex.htm>
2. Proof That There is a "Straw Man", Form #05.042  
<https://sedm.org/Forms/FormIndex.htm>

### 3.12 Presumption

Government officials operate on the “**presumption of regularity**.” That is, the government, in the eyes of its officers, is assumed to be acting lawfully and fulfilling its obligations in the absence of evidence to the contrary . . . but this is a deceptive and “**delusive presumption**.” As humans, the people in governments are prone to err. You have the right to refuse the risks of interacting with them by challenging any command, any statement, and any assertion made by public servants. In fact it is your first obligation or duty to YOU to question their authority.<sup>17</sup>

Read the following definitions of “presumption” keeping in mind the question whether any legislator can enact a law **to take away a right** or create an **obligation** by presumption:

*“I : presumptuous attitude or conduct : audacity*

*2 a : an attitude or belief dictated by probability : assumption*

*b : the ground, reason, or evidence lending probability to a belief*

*3 : a legal inference as to the existence or truth of a fact not certainly known that is drawn from the known or proved existence of some other fact.”*

[Presumption, Merriam-Webster; SOURCE: <https://www.merriam-webster.com/dictionary/presumption>]

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*presumption*

*[pri-zuhmp-shuhn]*

*noun*

*1. the act of presuming.*

*2. assumption of something as true.*

*3. belief on reasonable grounds or probable evidence.*

*4. something that is presumed; an assumption.*

*5. a ground or reason for presuming or believing.*

*6. Law. an inference required or permitted by law as to the existence of one fact from proof of the existence of other facts.*

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<sup>17</sup> “Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of the limitations upon his authority.” [Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947). [Emphasis added]]



7. an assumption, often not fully established, that is taken for granted in some piece of reasoning.

8. unwarrantable, unbecoming, or impertinent boldness.

#### Origin of **presumption**

1175–1225; Middle English: *effrontery, supposition* < Latin *praesūptiōn-* (stem of *praesūptiō*) *anticipation, supposition*, Late Latin: *presumptuousness, equivalent to praesūpt(us)* (past participle of *praesumere* to undertake beforehand; see [presume](#)) + *-iōn-* [-ion](#)  
[Presumption, Dictionary.com; SOURCE: <https://www.dictionary.com/browse/presumption>]

Ask yourself whether legislators can take away any rights by enacting a “law” to obligate anyone to disprove someone else’s “**belief**” based on “**probable evidence**”. If you find no rhyme, reason, or authority for such “delegated” powers, you can reasonably conclude that legislative authority may ONLY operate upon government authorities and employees -- in counter distinction to the Operation of Law that operates in Common Law for the people in general.

“mass noun: The acceptance of something as true although it is not known for certain. ‘the presumption of innocence.’ Law : An attitude adopted in law or as a matter of policy towards an action or proposal in the absence of acceptable reasons to the contrary. Behavior perceived as arrogant, disrespectful, and transgressing the limits of what is permitted or appropriate.”  
[Presumption, Oxford Dictionary; SOURCE: <https://en.oxforddictionaries.com/definition/presumption>]

Now... how is that not sophistry for attorneys’ tool chests?

“A conclusion made as to the existence or nonexistence of a fact that must be drawn from other evidence that is admitted and proven to be true. A [Rule of Law](#). If certain facts are established, a judge or jury must assume another fact that the law recognizes as a logical conclusion from the proof that has been introduced. A presumption differs from an inference, which is a conclusion that a judge or jury may draw from the proof of certain facts if such facts would lead a reasonable person of average intelligence to reach the same conclusion.”  
[Presumption, The Free Dictionary by Farlex; SOURCE: <https://legal-dictionary.thefreedictionary.com/presumption>]

A **conclusive presumption** is an **administrative** means by which the **proof of certain facts** is allowed as **facts assumed beyond dispute**. The fallacy is inherent acceptance of presumptions which cannot be rebutted or contradicted by evidence to the contrary for the mere reason that the accused may be placed in the unpardonable position of having to prove a negative. One example revealing that the burden of proof may not be shifted to the accused person of a “presumed liability for a tax” because even

“...the taxpayer can not be left in the unpardonable position of having to prove a negative”  
[Elkins v. United States, 364 U.S. 206, 218, 80 S.Ct. 1437, 1444, 4 L.Ed.2d. 1669 (1960) ; Flores v. U.S., 551 F.2d. 1169, 1175 (9th Cir. 1977); Portillo v Comm’r, 932 F.2d. 938, Affirming, reversing and remanding 58 TCM 1386, Dec 46, 373 (M), TC Memo, 1990-68 [91-2 USTC P50, 304]; Weimerschirch [79-1 USTC P9359], 596 F.2d. at 361]

Another example is a child younger than seven is presumed to be incapable of committing a felony. There are very few conclusive presumptions because they are considered to be a substantive rule of law, as opposed to a rule of evidence.

“A rebuttable presumption is one that can be disproved by evidence to the contrary. The Federal Rules of Evidence and most state rules are concerned only with rebuttable presumptions, not conclusive presumptions”  
[Presumption, The Free Dictionary by Farlex; SOURCE: <https://legal-dictionary.thefreedictionary.com/presumption>]

## 4 **Burden of Proof**

First, you must discern the difference between a **criminal** case and a **civil** case.

**In a criminal case**, the government / plaintiff must produce **a quality of evidence** to overcome the “presumption of innocence” by producing verifiable facts that prove the defendant’s guilt.

“The prosecution must prove...” – In a **criminal case**, the **prosecution has the burden of proof**. Suppose both the defense and the prosecution go into the courtroom and say nothing – nothing at all. Who wins? The answer

is clear: The defense. Since it is up to the prosecution to prove that the defendant committed the crime alleged, if the prosecution does not provide any proof (in the form of evidence), the case must be dismissed.

“...beyond a reasonable doubt.” – Not only must the prosecution provide “beyond a reasonable doubt” the corpus delict (i.e. the weapon/instrument), but also the defendant’s motive and intent to commit the alleged crime. If the prosecution presents some evidence, but not enough to clearly prove that the defendant committed the crime, the jury should find the defendant not guilty.

In a civil case, like traffic violations or IRS allegations, the plaintiff or officer must produce a quantity of evidence to prove verifiable harm, loss or injury. The defendant has the right to challenge the validity of plaintiff’s allegations for “no claim upon which relief can be granted.”

“A duty placed upon a civil or criminal defendant to prove or disprove a disputed fact”  
[Burden of Proof, The Free Dictionary by Farlex; SOURCE: <https://legal-dictionary.thefreedictionary.com/burden+of+proof>]

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Administrative Procedures Act, 5 U.S.C. Part I, Chapter 5, II, § 556(d)

Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.

Under 28 U.S.C. §1343, the use of codes to violate any inalienable/unalienable rights is now exposed.

## 4.1 Who Has the Burden of Proof?

“Generally, describes the standard that a party seeking to prove a fact in court must satisfy to have that fact legally established. There are different standards in different circumstances. For example, in criminal cases, the burden of proving the defendant’s guilt is on the prosecution, and they must establish that fact beyond a reasonable doubt.

In civil cases, the plaintiff has the burden of proving his case by a preponderance of the evidence. A “preponderance of the evidence” and “beyond a reasonable doubt” are different standards, requiring different amounts of proof”  
[Burden of Proof, Cornell Legal Information Institute (LII); SOURCE: [https://www.law.cornell.edu/wex/burden\\_of\\_proof](https://www.law.cornell.edu/wex/burden_of_proof)]

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Burden of proof

[. . .]

The burden of proof lies with the person who signed a verifiable claim. A mere belief that an obligation exists is nobody’s burden to disprove.

The inability, or disinclination, to disprove a claim does not render that claim valid, nor give it any credence whatsoever. However it is important to note that we can never be certain of anything, and so we must assign value to any claim based on the available evidence, and to dismiss something on the basis that it hasn’t been proven beyond all doubt is also fallacious reasoning.

Example: Bertrand declares that a teapot is, at this very moment, in orbit around the Sun between the Earth and Mars, and that because no one can prove him wrong, his claim is therefore a valid one”  
[Thou Shalt Not Commit Logical Fallacies, Your Logical Fallacy Is; SOURCE: <https://yourlogicalfallacyis.com/pdf/FallaciesPoster24x36.pdf>]

## 4.2 Burden of Proof in a Criminal Case

In a criminal case, the prosecutor must prove guilt beyond a reasonable doubt.

1. The jury begins with a presumption of innocence. In the mind of the jury, the accused is innocent until proven guilty. They begin as doubters.
2. The claimant prosecutor FAILS to prove his case if he offers

- 2.1. no evidence,
- 2.2. a scintilla of evidence,
- 2.3. reasonable suspicion of guilt,
- 2.4. probable cause why the accused committed the crime,
- 2.5. an abundance of evidence to tilt the scale that the accused is guilty — “a preponderance of evidence.”
- 2.6. clear and convincing evidence<sup>18</sup> the accused is guilty. Even if the prosecutor fulfills a “burden of production” of clear and convincing evidence coupled with **the art of persuasion** fulfilling the “burden of persuasion” the jury must declare the accused NOT GUILTY!

The government prosecutor must present the **kind of facts** that overcome the “presumption of innocence” in the mind of a reasonable person – those **quality of facts**<sup>19</sup> that convince him with moral certainty the accused is indeed guilty of the crime in which he has been accused.

*“For the law holds, that it is better that ten guilty persons escape, than that one innocent suffer”*  
[Sir William Blackstone, in his *Commentaries on the Laws of England*, 9th ed., book 4, chapter 27, p. 358 (1783, reprinted 1978)]

*“That it is better 100 guilty Persons should escape than that one innocent Person should suffer”*  
[Benjamin Franklin, letter to Benjamin Vaughan, March 14, 1785.—*The Writings of Benjamin Franklin*, ed. Albert H. Smyth, vol. 9, p. 293 (1906)]

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In 1920, Justice Walker of New Jersey, in *State v Linker*, wrote:

“Reasonable doubt is not mere possible doubt.”

“It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.”

In 1997, the Supreme Court of Canada, in *R v Lifchus*, suggested this explanation:

“The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the Crown has on the evidence put before you satisfied you beyond a reasonable doubt that the accused is guilty.

“What does the expression beyond a reasonable doubt mean? The term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning.

“A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

“Even if you believe the accused is probably guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the Crown has failed to satisfy you of the guilt of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the Crown is not required to do so. Such a standard of proof is impossibly high.

“In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilt beyond a reasonable doubt.”  
[Reasonable Doubt Definition, Dyhaime’s Law Dictionary; SOURCE:  
<http://www.duhaime.org/LegalDictionary/R/ReasonableDoubt.aspx>]

The criminal justice system seeks to present a case to jury where the facts in the case lead to a guilty verdict beyond reasonable doubt. **No court requires evidence that removes ALL DOUBT!**

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<sup>18</sup> According to the Supreme Court in *Colorado v. New Mexico*, 467 U.S. 310 (1984), “clear and convincing” means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable.

<sup>19</sup> Fact: a truth (an actual event) known by actual experience or observation; something known to be true as opposed to hints, presumption, imagination, myth, a lie, and make-believe.



Thus, the job of the defendant is to challenge all evidence presented to show they do not rise to the level of evidence that can remove the reasonable doubt or, if necessary, provide evidence, beyond reasonable doubt, that he is not guilty.

### **4.3 Burden of Proof in a Civil Case**

The burden of proof in a civil case is not as high as in a criminal case because the stakes are not as high; that is, in a civil case the issue is money and not life and liberty.

In a civil case where fees are involved, the judge or jury must make a decision based on the PREPONDERANCE OF EVIDENCE.

### **4.4 Preponderance of Evidence**

*"A requirement that more than 50% of the evidence points to something. This is the burden of proof in a civil trial"*

[Preponderance of Evidence, Cornell Legal Information Institute (LII); SOURCE:  
[https://www.law.cornell.edu/wex/preponderance\\_of\\_the\\_evidence](https://www.law.cornell.edu/wex/preponderance_of_the_evidence)]

1. The prosecution loses if it has no evidence.
2. The prosecution loses if it cannot prove it has been injured.
3. The prosecution loses if it cannot prove you have a contract with the State and that you have obligations and duties to the State via a contract. Therefore, you always demand to see evidence of a contract. No contract, no case.

The government / Claimant loses if you demand proof of claim with strict proof of claim.

The government / Claimant loses if you demand "validation" and "verification" of claim under penalties of perjury. Bankers, credit card companies, IRS agents, and government officers will NEVER MAKE A WRITTEN STATEMENT UNDER OATH.

In short, the government loses if you demand proof of claim with strict proof of claim.

### **4.5 What "Evidence" Is**

**Substantive, credible evidence:** In this world, there is no such thing as absolute certainty about anything. Claimants are not required to produce evidence that removes "all doubt," only enough to support their claim and to convince a reasonable person that their claim is true and that deniability is unreasonable.

### **4.6 Things that are Not Evidence**

It is very important for you to realize what is NOT evidence. The following things are NOT court admissible evidence and no court would rely on them in basing any decision:

1. Anything that any government says to you about an obligation that they can't prove was lawfully created as described in this document. Such statements are mere inadmissible presumptions.
2. Anything an attorney says in cases against the government. A government attorney cannot act as BOTH an attorney and a fact witness at the same time.
3. Anything the judge says about the "facts" relating to the case. Judges cannot act as fact witnesses.
4. Any publication the government or its agencies publishes.
5. Anything said or released to the press by the government.
6. Anything on any government web site. This includes the IRS website. See Internal Revenue Manual (I.R.M.), Section 4.10.7.2.8.
7. Anything an IRS agent or state revenue collector tells you about your tax responsibilities. 26 U.S.C. §6065 requires every piece of paper prepared under the authority of the Internal Revenue Code to be signed under penalty of perjury. IRS agents NEVER comply with this. Not even in their assessments.
8. Anything that anyone "believes" or has an "opinion" about. Federal Rule of Evidence 610.

9. Anything a policeman says to you or even promises to you.
10. Any title of the U.S. Code that is NOT enacted into “positive law”. See 1 U.S.C. §204 legislative notes. These titles are “prima facie evidence”, which means that they are inadmissible PRESUMPTIONS that cannot conclusively impair any constitutional right.
11. Anything submitted to any court that is NOT signed under penalty of perjury. This would include “declarations” signed by officers of the government but not verified under penalty of perjury. See:

Waiver of Immunity-Police, Litigation Tool #01.008

<https://sedm.org/Litigation/LitIndex.htm>

The above are confirmed by the following documents:

1. Legal Deception, Propaganda, and Fraud, Form #05.014  
<https://sedm.org/Forms/FormIndex.htm>
2. Reasonable Belief About Income Tax Liability, Form #05.007  
<https://sedm.org/Forms/FormIndex.htm>

#### 4.7 Kinds of Evidence in a Criminal Trial

A lot of the confusion about evidence in criminal cases stems from a lack of clear understanding of what constitutes “evidence.” To many people, evidence means physical evidence – a literal smoking gun or drugs in the possession of someone caught red-handed. But, in reality, the definition of “evidence” is much broader.

What are some examples of things that can be used as evidence in a criminal trial? Common forms of evidence include:

1. **Physical evidence** – As suggested above, physical evidence includes any item linking a person to a crime. Along with weapons and drugs, other forms of physical evidence could include an assault victim’s injuries, drug paraphernalia, or a computer in an internet crime investigation.
2. **Chemical evidence** – If you are being prosecuted for [driving under the influence \(DUI\)](#), the results of your breath, urine, or blood test may be admissible as evidence at trial.
3. **Witness testimony** – If someone saw you commit a crime, his or her testimony would be considered evidence against you.
4. **Confessions** – Any self-incriminating statements that you make to the police may be admissible as evidence, as well.
5. **Circumstantial evidence** – Were you at the scene of the crime when the crime occurred? If so, the prosecution may be able to use this as circumstantial evidence that you were involved.
6. **Electronic evidence** – In [computer crime](#), [domestic violence](#) and certain other types of **cases**, text messages, emails, computer files, and other types of electronic records may be admissible as evidence, as well.

#### 4.8 Probable Cause

*“In the criminal law context, there are a few additional standards that apply in specific circumstances. Another well-known standard is the probable cause standard. This standard focuses on balancing effective law enforcement practices against the [Fourth Amendment](#) guarantee against unreasonable invasions into citizens’ privacy. In [Illinois v. Gates](#), 462 U.S. 213 (1983), the Supreme Court outlined the totality of the circumstances test that applies to determining whether a police officer had probable cause to conduct a search and seizure, and for magistrate judges to use when issuing warrants. The standard requires police officers and judges*

*“to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband evidence of a crime will be found in a particular place.”*

[ . . . ]

*A reasonable suspicion occurs when a police officer*

*“observe[s] unusual conduct which lead him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing with may be armed and dangerous . . . .”*  
[\[Terry v. Ohio, 392 U.S. 1 \(1968\)\]](#)

*[Evidentiary Standards and Burdens of Proof; Justia; SOURCE: <https://www.justia.com/trials-litigation/evidentiary-standards-burdens-proof/>]*

## 4.9 No One is Required to Prove a Negative

No man can prove they did not do something! No one!

No one can prove he wasn't driving 80 mph down the highway . . . or that he does not owe a tax

*"...the taxpayer can not be left in the unpardonable position of having to prove a negative"  
[Elkins v. United States, 364 U.S. 206, 218, 80 S.Ct. 1437, 1444, 4 L.Ed.2d. 1669 (1960); Flores v. U.S., 551 F.2d. 1169, 1175 (9th Cir. 1977); Portillo v Comm'r, 932 F.2d. 938, Affirming, reversing and remanding 58 T.CM 1386, Dec 46, 373 (M), TC Memo, 1990-68 [91-2 USTC P50, 304]; Weimerschirch [79-1 USTC P9359], 596 F.2d. at 361]*

. . . or that he does not owe a credit card company.

He must require those making a claim prove their claim with strict proof of claim.

## 4.10 Two Duties of Free Men: Principles of Empowerment

Innocent men involved in a legal fight must feel the power!

**Power One: Your first duty is to question authority** . . . if you do not CHALLENGE AUTHORITY the de facto doctrine kicks in; that is, your first duty is to honorably accept an agent's presumption, UPON PROOF OF CLAIM. This is called "conditional acceptance."

The United States Supreme Court has ruled that it is YOUR duty, YOUR responsibility, and YOUR obligation, to determine the valid authority of anyone representing themselves to be an officer of the government. Below is one way to do it:

*"As per Ryder v. United States, 115 S.Ct. 2031, 132 L.Ed.2d. 136, 515 U.S. 177, I am required to initiate a direct challenge to the authority of anyone representing himself, or herself, to be a government officer or agent prior to the finality of any proceeding in order to avoid implications of de facto officer doctrine. When challenged, those posing as government officers and agents are required to affirmatively prove whatever authority they claim".*

Additional authorities on the subject:

*"Public officers are merely the agents of the public, whose powers and authority are defined and limited by law. Any act without the scope of the authority so defined does not bind the principal, and all persons dealing with such agents are charged with knowledge of the extent of their authority,"  
[Continental Casualty Co. v. United States, 113 F.2d. 284, 286 (5th Cir. 1940)]*

*"When the right to do a thing depends upon legislative authority, and the Legislature has failed to authorize it, or has forbidden it, no amount of acquiescence, or consent, or approval of the doing of it by a ministerial officer, can create a right to do the thing which is unauthorized or forbidden,"  
[Department of Ins. of Indiana v. Church Members Relief Ass'n., 217 Ind. 58, 26 N.E.2d. 51 (1940)]*

**Power Two: Your second duty is to challenge the agent to PROVE HIS CLAIM** under oath, under penalties of perjury. Government officers or debt collectors or credit card companies will NEVER, NEVER do this.

*Administrative Procedures Act, 5 U.S.C. Part I, Chapter 5, II, § 556(d)*

*Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.*

Under 28 U.S.C. §1343, the use of codes to violate my rights is now exposed.

*Example: You are hereby ordered . . .*

- To provide me with proof of claim that I am the "Taxpayer" to whom this letter is addressed: made under penalty of perjury [§6065] before a state notary testifying that I am a "Taxpayer" will be acceptable*
- To provide me with verification of proof of claim that . . .*
- To provide me with the contract that obligates me to some kind of performance that I am required . . .*

Since government officers never take an oath that they are telling the truth in civil matters, you win because they are estopped by acquiescence. The common law doctrine of estoppel by acquiescence is applied when one party gives legal notice to a second party of a fact or claim, and the second party fails to challenge or refute that claim within a reasonable time.

And, failure of a government official to provide proof of claim in a timely manner can result in a claim being barred by laches. Laches is an equitable defense or doctrine asserted in litigation. It is defined as an “unreasonable delay pursuing a right or claim by one party in a way that prejudices the opposite party”.

## **5 Enforcement of Claim**

### **5.1 Fair Debt Collection Practices Act Mandates Creditor to Timely Produce Verified Evidence of Proof of Debt**

When a government representative sends any kind of collection notice to a private American, they are asserting the existence of a debt and must meet all the requirements of law placed upon private third party debt collectors. The U.S. Supreme Court prescribed that all tax liabilities are “debts” when it said:

*“Even if the judgment is deemed to be colored by the nature of the obligation whose validity it establishes, and we are free to re-examine it, and, if we find it to be based on an obligation penal in character, to refuse to enforce it outside the state where rendered, see Wisconsin v. Pelican Insurance Co., 127 U.S. 265, 292, et seq. 8 S.Ct. 1370, compare Fauntleroy v. Lum, 210 U.S. 230, 28 S.Ct. 641, **still the obligation to pay taxes is not penal. It is a statutory liability, quasi contractual in nature, enforceable, if there is no exclusive statutory remedy, in the civil courts by the common-law action of debt or indebitatus assumpsit.** United States v. Chamberlin, 219 U.S. 250, 31 S.Ct. 155; Price v. United States, 269 U.S. 492, 46 S.Ct. 180; Dollar Savings Bank v. United States, 19 Wall. 227; and see Stockwell v. United States, 13 Wall. 531, 542; Meredith v. United States, 13 Pet. 486, 493. This was the rule established in the English courts before the Declaration of Independence. Attorney General v. Weeks, Bunbury's Exch. Rep. 223; Attorney General v. Jewers and Batty, Bunbury's Exch. Rep. 225; Attorney General v. Hatton, Bunbury's Exch. Rep. [296 U.S. 268, 272] 262; Attorney General v. —, 2 Ans.Rep. 558; see Comyn's Digest (Title 'Dett,' A, 9); 1 Chitty on Pleading, 123; cf. Attorney General v. Sewell, 4 M.&W. 77. “ [Milwaukee v. White, 296 U.S. 268 (1935)]*

The legal dictionary defines “indebitatus assumpsit” as follows:

*“Indebitatus assumpsit. Lat. Being indebted, he promised or undertook. That form of the action of assumpsit in which the declaration alleges a debt or obligation to be due from the defendant, and then avers that, in consideration thereof, he promised to pay or discharge the same.” [Black's Law Dictionary, Sixth Edition, p. 768]*

Notice the phrase “in consideration thereof”, which implies that the party who voluntarily accepted some government benefit agreed to pay for that benefit. This is a result of the common law, which says that a person accepts a benefit agrees to all obligations arising from the acceptance of that benefit. This common law requirement is codified in California civil law as follows:

*California Civil Code  
Section 1589*

*1589. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.*

However, the U.S. Supreme Court has acknowledged that the Social Security system does not contractually obligate the government to provide the benefit that is the subject of the agreement or contract. See Fleming v. Nestor, 363 U.S. 603 (1960); Railroad Retirement Board v. Fritz, 449 U.S. 166 (1980). If the benefits are not contractual, then equal protection of the law requires that the payment for the benefits is not contractual either. See Fourteenth Amendment, Section 1 and 42 U.S.C. §1981.

In recognition of taxes as “debts”, the following provisions of law require that the IRS obey the Fair Debt Collection Practices Act (FDCPA) in respect to the tax collection process.

1. The [Fair Debt Collection Practices Act, 15 U.S.C. Chapter 41, Subchapter V](http://www4.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_41_20_V.html), available at: [http://www4.law.cornell.edu/uscode/html/uscode15/usc\\_sup\\_01\\_15\\_10\\_41\\_20\\_V.html](http://www4.law.cornell.edu/uscode/html/uscode15/usc_sup_01_15_10_41_20_V.html)
2. IRS Restructuring and Reform Act of 1998, 112 Stat. 687, Section 3466. See: <http://famguardian.org/Publications/IRSRRRA98/IRSRRRA98.htm>
3. [26 U.S.C. §6304](#) describes the implications of the Fair Debt Collection Practices Act upon the conduct of IRS Employees.

The provision of the FDCPA which regulates production of verified proof of liability is found in [15 U.S.C. §1692g](#), which states in pertinent part:

[TITLE 15 > CHAPTER 41 > SUBCHAPTER V > § 1692g](#)  
[§ 1692g. Validation of debts](#)

*(a) Notice of debt; contents*

*Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—*

*(1) the amount of the debt;*

*(2) the name of the creditor to whom the debt is owed;*

*(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;*

*(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and*

*(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.*

*(b) Disputed debts*

*If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.*

*(c) Admission of liability*

*The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.*

[SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode15/usc\\_sec\\_15\\_00001692---g000-.html](http://www4.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00001692---g000-.html)]

[15 U.S.C. §1692g](#)(b) above requires that the creditor must, within 30 days of a written request, supply verified evidence of the debt. In the case of Internal Revenue taxes or state income taxes, the only admissible evidence is a verified assessment signed under penalty of perjury by an assessment officer as required by [26 U.S.C. §6065](#) and [26 C.F.R. §301.6203-1](#). For a form useful in requesting such verified evidence, see the following:

[Demand for Verified Evidence of Lawful Federal Assessment, Form #07.304](http://sedm.org/Forms/FormIndex.htm)  
<http://sedm.org/Forms/FormIndex.htm>

## 5.2 Admissible Evidence of Claim

The [Federal Rules of Evidence](#) prescribe the rules to be applied towards evidence which the moving party presents to prove their claim. Most forms of evidence that might be presented are usually excludible under the [Hearsay Rule, Federal Rule of Evidence 802](#). All evidence which is admitted into evidence in establishing a liability or one's status as a "taxpayer" must satisfy the following criteria:

1. Evidence must be authenticated with either a perjury statement or a testimonial oath.
2. Evidence must come from someone who has personal knowledge of the facts in question.
3. Evidence must be consistent and compatible with all of the Federal Rules of Evidence.
4. Evidence must be produced completely consistent with the entire content of the IRS Internal Revenue Manual. The IRS Restructuring and Reform Act of 1998, 112 Stat. 685, Section 1102 and [26 U.S.C. §7811\(a\)\(3\)](#) both require that the Internal Revenue Manual *must* be followed in all cases, and that the Taxpayer Advocate must construe every situation to the benefit of the "taxpayer" where it has *not* been followed.
5. Evidence must come from an unbiased witness who has no financial interest in the outcome of the proceeding. This means that if it relates to a tax matter, it should come from a third party whose pay and benefits do not derive either directly or indirectly from the tax in question. Due process of law mandates an impartial decision maker and impartial witnesses.
6. Any document not signed under penalty of perjury or with testimony under oath, is excludible under the [Hearsay Rule, Federal Rule of Evidence 802](#).
7. Evidence may not constitute a presumption. Presumptions are *not* admissible as evidence.

*"A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. Calif.Evid.Code, §600."*  
[Black's Law Dictionary, Sixth Edition, p. 1185]

8. Evidence may not constitute a religious belief or opinion, because these are excluded pursuant to [Federal Rule of Evidence 610](#).
9. If the fact being established is whether the party "willfully violated a known legal requirement", also called "willfulness", then the only basis for reasonable belief about one's tax liability is: 1. The rulings of the Supreme Court and not lower courts; 2. The Statutes at Large after January 2, 1939; 3. The Constitution of the United States; 4. Only those provisions within the Internal Revenue Code which are proved individually to be "positive law" and not "prima facie" or "presumed" law applicable exclusively to the District of Columbia. See the following for proof of this:

Reasonable Belief About Income Tax Liability, Form #05.007

<http://sedm.org/Forms/FormIndex.htm>

10. Statutes without implementing regulations may be cited directly as evidence of a duty or obligation *only* in the case of persons specifically exempted from the requirement for implementing regulations appearing in [44 U.S.C. §1505\(a\)](#) and [5 U.S.C. §553\(a\)](#). A person domiciled in a state of the Union who is not a *member* of these specifically exempted groups may conclude that he has a legal liability under a statute *only* in the case where an implementing regulation published in the Federal Register identifies him specifically as the proper audience for that statute. The specifically exempted groups identified above include:
  - 10.1. Members of the military. [5 U.S.C. §553\(a\)\(1\)](#).
  - 10.2. Foreign affairs function of the United States. [5 U.S.C. §553\(a\)\(1\)](#).
  - 10.3. A matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. [5 U.S.C. §553\(a\)\(1\)](#).
  - 10.4. Federal agencies. [44 U.S.C. §1505\(a\)\(1\)](#).
  - 10.5. Persons in their capacity as officers, agents, or employees of federal agencies. [44 U.S.C. §1505\(a\)\(1\)](#).

Pursuant to [44 U.S.C. §1505\(a\)](#) and [5 U.S.C. §553\(a\)](#), no law may be enforced or prescribe a penalty against a person domiciled in a state of the Union who is not involved in one of the above activities. This provision preempts any enforcement of the Internal Revenue Code against anyone in states of the Union not a member of the above exempted groups, which is nearly everyone. This is confirmed by 26 C.F.R. §601.702(a)(2)(ii) and [5 U.S.C. §552\(a\)](#).

[TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 552](#)  
[§ 552. Public information; agency rules, opinions, orders, records, and proceedings](#)

(a)(1)



Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

For further details on the above requirement for “reasonable notice”, see:

Requirement for Reasonable Notice, Form #05.022

<http://sedm.org/Forms/FormIndex.htm>

11. Must be considered in light of contradictory evidence submitted which rebuts it. For instance, if the IRS is receipt of an information return documenting “trade or business” earnings in conformance with [26 U.S.C. §6041](#) and the party who is the subject of the return rebuts this evidence with a corrected information return signed under penalty of perjury, then the original unverified information returns are no longer admissible because superseded by evidence of greater weight. The original information returns are not signed under penalty of perjury and the correction is. Therefore, the information returns have been duly rebutted and may not be considered in determining liability. See the following for information on the proper use, submission, and processing of information returns:

<http://sedm.org/LibertyU/WithngAndRptng.pdf>

In regards to the admissibility of evidence, [26 U.S.C. §6065](#) establishes that all documents created under the authority of the Internal Revenue Code must be signed under penalty of perjury, which should make them admissible as evidence. Unfortunately, federal courts have deprived Americans in states of the Union of equal protection of the laws by applying this provision to them while excluding the Internal Revenue Service from this provision of law.

[TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART IV > § 6065](#)  
[§ 6065. Verification of returns](#)

Except as otherwise provided by the Secretary, **any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.**

Notice the above provision does NOT expressly exclude declarations, statements, or documents prepared by IRS employees from its requirements. Equal protection of the laws mandated by Section 1 of the Fourteenth Amendment furthermore requires that the same provisions shall be applied to everyone:

[TITLE 42 > CHAPTER 21 > SUBCHAPTER I > Sec. 1981.](#)  
[Sec. 1981. - Equal rights under the law](#)

(a) *Statement of equal rights*

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, **shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.**

### 5.3 Severe Penalties for False Claims

The False Claims Act, [31 U.S.C. §3729](#), authorizes any person aware of a false claim presented to or by any private American or any federal employee to sue for damages in the name of the United States of America. To wit:

[TITLE 31 > SUBTITLE III > CHAPTER 37 > SUBCHAPTER III > § 3729](#)  
[§ 3729. False claims](#)

(a) *Liability for Certain Acts.— Any person who—*

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

[SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00007421----000-.html](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007421----000-.html)]

An IRS employee who makes a false tax collection claim against anyone is personally liable under the above provisions of law for up to THREE TIMES and not less than TWO TIMES the amount of the false claim. The above provision of law also authorizes any third party to bring the suit in the name of the “United States of America” as a “qui tam” action.

*Qui tam action.* Lat. “Qui tam” is abbreviation of Latin phrase “qui tam pro domino regequam pro si ipso in hac parte sequitur” meaning “Who sues on behalf of the King as well as for himself.” It is an action brought by an informer, under statute which establishes a penalty for the commission or omission of a certain act, and provides that the same shall be recoverable in a civil action, part of the penalty to go to any person who will bring such action and the remainder to the state or some other institution. It is called a “qui tam action” because the plaintiff states that he sues as well for the state as for himself. *U.S. v. Florida-Vanderbilt Development Corp.*, D.C.Flt., 326 F.Supp. 289, 290. See also False Claims Act; Whistle-blower Acts. [Black’s Law Dictionary, Sixth Edition, p. 1251]

In addition to penalties under the False Claims Act, IRS employees and supervisor can also be prosecuted pursuant to:

1. [26 U.S.C. §7433](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007433----000-.html) in the case of “taxpayers” only. See: [http://www4.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00007433----000-.html](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007433----000-.html)
2. IRS Restructuring and Reform Act of 1998, 112 Stat. 720, Section 1203 in the case of a “taxpayer”. See: <http://famguardian.org/Publications/IRSRR98/IRSRR98.htm>

The above provisions of law do not provide a statutory remedy for “nontaxpayers”, and therefore those persons will need to sue under equity rather than law as “nontaxpayers”. In addition, statutory remedies for extortion, denial of rights, etc. appear in Titles 18 and 42 of United States Code.



## 6 Rebutted False Arguments About This Document

### 6.1 Burden of Proof is on you, not the government, to prove you are a “nontaxpayer” and “not liable”<sup>20</sup>

False Argument: Those wishing to challenge illegal tax enforcement actions against “nontaxpayers” have the burden of proving that they are “nontaxpayers” and “not liable”. The government doesn’t have to prove anything.

Corrected Alternative Argument: The innocent until proven guilty maxim of American Jurisprudence requires that you are innocent until proven guilty. The legal equivalent of “innocent” is that of a “nontaxpayer” who is NOT subject rather than statutorily “exempt”. The government therefore has the burden of proving in court that you CONSENTED to BECOME a statutory “taxpayer” and had the legal capacity to consent before it may TREAT you as a statutory “taxpayer”. Otherwise, INJUSTICE, identity theft, involuntary servitude, and THEFT results from illegal enforcements against those who are not subject.

Further information:

1. Government Identity Theft, Form #05.046-the criminal consequences of forcing YOU to have the burden of proof that you are NOT a “customer” of government  
<http://sedm.org/Forms/FormIndex.htm>
2. Government Burden of Proof, Form #05.025.  
<http://sedm.org/Forms/FormIndex.htm>

Government’s FIRST duty is to protect your right to be LEFT ALONE. That right BEGINS with being LEFT ALONE and not becoming the target of enforcement actions if you are not a “customer” of government franchise or civil statutory protection.

*“The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men.”*

*[Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); see also Washington v. Harper, 494 U.S. 210 (1990)]*

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PAULSEN, *ETHICS* (Thilly's translation), chap. 9.

*“Justice, as a moral habit, is that tendency of the will and mode of conduct which refrains from disturbing the lives and interests of others, and, as far as possible, hinders such interference on the part of others. This virtue springs from the individual's respect for his fellows as ends in themselves and as his co equals. The different spheres of interests may be roughly classified as follows: body and life; the family, or the extended individual life; property, or the totality of the instruments of action; honor, or the ideal existence; and finally freedom, or the possibility of fashioning one's life as an end in itself. The law defends these different spheres, thus giving rise to a corresponding number of spheres of rights, each being protected by a prohibition. . . . To violate the rights, to interfere with the interests of others, is injustice. All injustice is ultimately directed against the life of the neighbor; it is an open avowal that the latter is not an end in itself, having the same value as the individual's own life. The general formula of the duty of justice may therefore be stated as follows: Do no wrong yourself, and permit no wrong to be done, so far as lies in your power; or, expressed positively: Respect and protect the right.”*  
*[Readings on the History and System of the Common Law, Second Edition, Roscoe Pound, 1925, p. 2]*

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*“Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit.”*  
*[James Madison, The Federalist No. 51 (1788)]*

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*“Do not strive with [or try to regulate or control or enslave] a man without cause, if he has done you no harm.”*

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<sup>20</sup> Source: *Flawed Tax Arguments to Avoid*, Form #08.004, Section 8.19; <http://sedm.org/Forms/FormIndex.htm>.

In other words, you have a right to be treated as a “non-customer” of government civil statutory franchise protection or enforcement unless and until the GOVERNMENT proves you consented to become a customer and that you had the lawful authority and capacity to consent and therefore alienate a right in relation to them. This is consistent with the Declaration of Independence, which says that your rights are INCAPABLE of being alienated and that all JUST powers of government derive from the CONSENT of the governed. Anything not traceable DIRECTLY to EXPRESS consent is therefore inherently UNJUST, AND that consent cannot alienate any constitutional right in places where the constitution applies:

*“We hold these truths to be self-evident, that **all men are created equal, that they are endowed by their Creator with certain unalienable Rights**, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,*  
- “  
*[Declaration of Independence]*

*“Unalienable. Inalienable; incapable of being aliened, that is, sold and transferred.”  
[Black’s Law Dictionary, Fourth Edition, p. 1693]*

Imagine for a moment any private business that:

1. Only had one product. In the case of government, that would be “protection”.
2. Could charge whatever it wants for its services. There are no constitutional limits on the tax rate.
3. When you come into their store to sign up for the service, forces you to buy EVERYTHING they sell before you can leave the store. When you sign up for a driver license, they:
  - 3.1. Acquire the right to PRESUME that you are a “resident” for ALL civil purposes.
  - 3.2. Presume that you are subject to ALL civil statutory franchises they offer.
  - 3.3. Force you to sign up for Social Security in order to obtain an SSN to put on the application. And if you don’t have one, they require you to get a note from the SSA saying that you are NOT eligible.
  - 3.4. Force you to become a “taxpayer” and a public officer. Social Security Numbers can only be used by public officers on official business. If you use one, you are PRESUMED to be a public officer and the subject of the Public Salary Tax Act that started the modern income tax in 1939.
4. Had a state sanctioned monopoly on the delivery of that product, in violation of the Sherman Anti-Trust Act.
5. Made it a CRIME to IMPERSONATE a customer but refused to prosecute the crime. All “taxpayers” are public officers, and it’s a crime to impersonate a public officer. 18 U.S.C. §912. That crime is committed BILLIONS of times a year by most Americans.
6. Was allowed to PRESUME that everyone is a customer, whether they consented or not. That customer in this case is called a “citizen” or a “resident”. All presumptions that violate your constitutional rights are a violation of the due process clause of the Fifth Amendment. See:
  - 6.1. *Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction*, Form #05.017  
<http://sedm.org/Forms/FormIndex.htm>
  - 6.2. *Your Exclusive Right to Declare and Establish Your Civil Status*, Form #13.008  
<http://sedm.org/Forms/FormIndex.htm>
7. Was allowed to impose ANY DUTY they want in connection with BEING a “customer”, in SPITE of the fact that both public and private involuntary servitude and slavery is a CRIME forbidden by the Thirteenth Amendment.
8. Required you to prove that you are NOT a “customer” BEFORE they have an obligation to leave you alone. In practice it is next to IMPOSSIBLE to prove a negative, which automatically places you at a severe disadvantage.
9. Was allowed to make all “customers” into its own “employees” and officers, often without their knowledge. This is done by playing word games in the customer contract or compact. See:

*Why Statutory Civil Law is Law for Government and Not Private Persons*, Form #05.037  
<http://sedm.org/Forms/FormIndex.htm>
10. Required you to satisfy the entire employment agreement called the “civil code”, which is a franchise privilege, BEFORE you could abandon the contractual obligations of being a “customer” and therefore “employee” or “officer”. This is called “exhausting administrative remedies before pursuing a civil statutory judicial remedy”.

The government’s corrupt enforcement practices don’t pass the “smell test”. Any private business that operated upon the above premises would be quickly prosecuted for the following offenses:

1. Identity theft. See Form #05.046.
2. Grand theft.

3. Involuntary servitude in violation of the Thirteenth Amendment.
4. Violation of the Fair Debt Collection Practices Act (FDCPA).
5. Criminal stalking. They would be ordered with a restraining order to stay away.

Why doesn't the GOVERNMENT prosecute itself for the above offenses in the context of the way it does tax and civil enforcement? If Titles of Nobility are forbidden and we are ALL equal according to the Constitution and the Supreme Court, then what gives any government the right to do the above without YOU being able to do it to them?

In all civil or legal actions, the moving party always has the burden of proof. This is reflected in the Administrative procedures Act:

[TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 556](#)  
[§ 556. Hearings: presiding employees; powers and duties; burden of proof; evidence; record as basis of decision](#)

(d) Except as otherwise provided by statute, ***the proponent of a rule or order has the burden of proof***. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557 (d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.  
[SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode05/usc\\_sec\\_05\\_00000556----000-.html](http://www4.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000556----000-.html)]

In any and all tax or civil enforcement action instituted against you by the government, the GOVERNMENT is the moving party asserting you have an obligation and usually, that you failed to fulfill that civil obligation. That obligation, in turn, derives usually from a civil franchise of some kind that attaches to a civil prerequisite status such as "citizen", "resident", "taxpayer", "spouse", etc. If you never consented to the specific civil status that is the target of the civil enforcement, then in effect you are the victim of INJUSTICE. The purpose of the courts is to PREVENT injustice, not to protect the government mafia from the consequences of the INJUSTICE it imposes upon others. That's why judges are called "justices".

Below is what some courts have said about the impossibility of proving a negative, meaning proving that you are NOT a "taxpayer", "citizen", "resident", etc. They mention "taxpayers", but the requirement obviously also pertains to those who are NOT "taxpayers" and who therefore are the target of illegal enforcement.

*"The taxpayers were entitled to know the basis of law and fact on which the Commissioner sought to sustain the deficiencies."*  
[*Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 498 (1937)]

*"... Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability."*  
[*Bothke v. Terry*, 713 F.2d. 1405, 1414 (1983)]

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*"In Janis, supra, the Supreme Court decided that the exclusionary rule did not prevent the Internal Revenue Service (IRS) from using illegally-seized evidence as the basis from which to extrapolate a taxpayer's unreported income from wagering activities. Prior to addressing the exclusionary question, the Court stated that if the illegally-seized evidence could not be used, then the result would be:*

*"a 'naked' assessment without Any foundation whatsoever . . . . The determination of tax due then may be one 'without rational foundation and excessive,' and not properly subject to the usual rule with respect to the burden of proof in tax cases." (citations and footnotes omitted)*

*428 U.S. at 441, 96 S.Ct. at 3026. The Court noted that there was apparently some conflict between the Federal Courts of Appeals as to the burden of proof in tax cases, and then went on to make these observations:*

*"However that may be, the debate does not extend to the situation where the assessment is shown to be naked and without Any foundation."*

1 **"Certainly, proof that an assessment is utterly without foundation is proof that it is arbitrary and erroneous."**

2 428 U.S. at 442, 96 S.Ct. at 3026. While the quoted language may not have been dispositive of the issue decided  
3 in Janis, supra, it certainly is a strong indication that **the Commissioner must offer some foundational support**  
4 **for the deficiency determination before the presumption of correctness attaches** to it. After all, as the Court  
5 observed in *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d. 1669 (1960), ". . . as a practical  
6 matter it is never easy to prove a negative . . . ." 364 U.S. at 218, 80 S.Ct. at 1444. See also *Flores v. United*  
7 *States*, 551 F.2d. 1169, 1175 (9th Cir. 1977).

8 A Tax Court decision finding unreported income from gambling activities was reversed in Gerardo, supra,  
9 because of the lack of any evidence to support the Commissioner's presumption of correctness.<sup>21</sup> The court  
10 reasoned as follows:

11 ". . . in order to give effect to the presumption on which the Commissioner relies, some evidence must appear  
12 which would support an inference of the taxpayer's involvement in gambling activity during the period covered  
13 by the assessment. Without that evidentiary foundation, minimal though if (sic) may be, an assessment may not  
14 be supported even where the taxpayer is silent. (citations omitted)

15 "While we realize the difficulties which the Commissioner encounters in assessing deficiencies in circumstances  
16 such as are presented here, we nevertheless must insist that the Commissioner provide some predicate evidence  
17 connecting the taxpayer to the charged activity if effect is to be given his presumption of correctness. Here, the  
18 record is barren of that underlying evidence . . . ."

19 552 F.2d. at 554-555. Even though Weimerskirch did not testify in the present case, following the teachings of  
20 Gerardo, supra, **the Commissioner still cannot rely on the presumption in the absence of a minimal evidentiary**  
21 **foundation.**

22 In another case involving failure to report income from wagering activities, the Fifth Circuit was faced with a  
23 factual situation analogous to that presented here. Carson, supra. The court rejected the government's attempt to  
24 rely solely upon the presumption of correctness<sup>5</sup> and said:

25 **"Such a position, which would support the most arbitrary of assessments so long as the taxpayer found himself**  
26 **unable to prove a negative, frequently difficult in quite innocent circumstances, does not become the**  
27 **government's agents, and we readily reject it."**

28 560 F.2d. at 698. **Even the most innocent of persons would have difficulty in disproving such a serious charge**  
29 **as selling heroin, when the party making the charge was not required to present Any evidence.**<sup>22</sup>

30 [Weimerskirch v. C. I. R., 596 F.2d. 358 (C.A.9, 1979)]

31  
32 "By holding that the **Internal Revenue Service has the burden of persuasion on this issue**, we are determining  
33 that in the absence of proof, the plaintiff will prevail. See 9 Wigmore on Evidence § 2485 (3d ed. 1940). Were this  
34 not the case, the taxes of a California resident could be collected from a totally unrelated person in New York,  
35 and the New Yorker would be forced to prove a negative fact about which he has absolutely no information, i. e.,  
36 that the Californian has no interest in his property. 7 Principles"  
37 [Flores v. U.S., 551 F.2d. 1169 (C.A.9 (Cal.), 1977)]

38 "as a practical matter it is never easy to prove a negative".  
39 [Elkins v. United States, 364 U.S. 206, 218, 80 S.Ct. 1437 1444, 4 L.Ed.2d. 1669 (1960)]

40 American criminal jurisprudence is based upon the "innocent until proven guilty beyond a reasonable doubt" maxim. While  
41 this maxim applies to criminal and not civil situations, income tax offenses are prosecuted as crimes, and therefore, it applies  
42 in that case as well.

<sup>21</sup> The Commissioner's deficiency determination covering a later period of gambling activities was upheld. However, there was sufficient substantive evidence to support the Commissioner's determination for the subsequent period. Gerardo, supra, 552 F.2d. at 553.

<sup>22</sup> The court described the effect of the requirement that the Commissioner must provide some substantive evidence to support the deficiency determination as follows:

"Neither tax collection in general nor wagering activities in particular, however, have ever been thought wholly to excuse the government from providing some factual foundation for its assessments. The tax collector's presumption of correctness has a herculean muscularity of Goliathlike reach, but we strike an Achilles' heel when we find no muscles, no tendons, no ligaments of fact."  
Carson, supra, 560 F.2d. at 696.

In the context of taxation, being “innocent” means that you are NOT a “customer” of the public office and “trade or business” franchise called a “taxpayer”. In other words, that you are a “nontaxpayer”. Therefore, you must be presumed to be a “nontaxpayer” and therefore not a “customer” of government unless and until the GOVERNMENT proves through an independent neutral third party with evidence that:

1. You CONSENTED to become a customer.
2. You were domiciled and physically present in a place where you could lawfully ALIENATE private rights, which means federal territory not within any state of the Union.
3. The consent was provided in WRITING.
4. No duress was involved.
5. You did NOT notice them previously that you surrendered your civil status as a “customer” of the “trade or business” franchise agreement called a statutory “taxpayer”. They can’t use the “dog ate my homework” excuse.

THIS is the burden imposed upon the Internal Revenue Service BEFORE it may engage in any kind of enforcement action. Any other approach represents INJUSTICE on a massive scale. You don’t have to prove that you are NOT a “customer” or “taxpayer”, they have to prove that you ARE.

The courts and the IRS try to side-step these requirements with the following illegal tactics:

1. The Full Payment Rule. This requires “taxpayers” to pay the full amount due BEFORE litigating. It does not pertain to those who are NOT “taxpayers”, which is most Americans. See *Laing v. U.S.*, 423 U.S. 161, 96 S.Ct. 473 (1976).
2. Structuring “tax court” in such a way that you cannot enter it without being a Plaintiff rather than a defendant. This shifts the burden of proof to YOU to prove that you ARE NOT a “customer”.

We bypass all the above methods of essentially hunting and trapping men like animals and prey by the following techniques:

1. Insisting that we are equal.
2. Kidnaping THEM into being OUR “customers” whenever they communicate with us. If they can practice institutionalized identity theft and we are all equal, then it must be OK for US to do it to them as a defense against their same tactics.

Government Identity Theft, Form #05.046

<http://sedm.org/Forms/FormIndex.htm>

3. Using the following as the “customer” agreement in all interactions with them:

Injury Defense Franchise and Agreement, Form #06.027

<http://sedm.org/Forms/FormIndex.htm>

4. Ensuring that THEY have to live by their own rules. We have OUR OWN “Full Payment Rule” whereby THEY have to pay TWICE what they assessed against us before they can argue that they are NOT OUR customer.
5. Noticing them with the Resignation of compelled Social Security Trustee, Form #06.002, which quits you from the Social Security system and makes it impossible to act as a public officer or be eligible for government benefits.
6. The Legal Notice of Change in Domicile/Citizenship Records and Divorce from the United States, Form #10.001, which causes them to agree that we are “customer” even BEFORE they begin any enforcement action.
7. Reminding them that they ALREADY AGREED that everything on this site is truthful and legal evidence of their crimes. They tried to go after us, made themselves subject to our member agreement by going through the store checkout process, and thereby are required by our Member Agreement, Form #01.001 to agree that EVERYTHING on this website is truthful and accurate and that they consent and stipulate to admit it ALL into evidence in the context of ANY and EVERY member.
8. Telling them that the following criminal complaint applies if they DO NOT leave you alone or force you to criminally impersonate a public officer called a “taxpayer”:

Affidavit of Duress: Illegal Tax Enforcement by De Facto Officers, Form #02.005

<http://sedm.org/Forms/FormIndex.htm>

9. Reminding them that they have NO ENFORCEMENT AUTHORITY outside of federal territory and including a criminal complaint when or if they try to enforce.

Federal Enforcement Authority Within States of the Union, Form #05.023

<http://sedm.org/Forms/FormIndex.htm>



## 7 Conclusions

The IRS plays a vicious game of presumption of liability in the tax collection process. Most people are unaware of how this game is played and therefore are taken advantage of. Below are the rules of this game:

1. The IRS receives a information return, such as IRS Forms W-4, W-2, 1042-S, 1098, 1099 and K-1. These information returns are submitted without any verification of contained therein, such as a perjury statement or testimonial oath. Consequently, this information return is hearsay evidence not admissible under the Federal Rules of Evidence.
2. The information returns received by the IRS create the following prima facie presumptions:
  - 2.1. That the target of the information return is engaged in an excise taxable activity within the District of Columbia called a “trade or business”. See:

*The Trade or Business Scam*, Form #05.001  
<http://sedm.org/Forms/FormIndex.htm>
  - 2.2. That the target of the information return is engaged in commerce with the federal government and consents to become a “resident alien” of the District of Columbia subject to exclusive federal legislative jurisdiction. This results in a surrender of sovereign immunity pursuant to 28 U.S.C. §1605(a)(2) on the part of the American National. See:  
<http://famguardian.org/Subjects/Taxes/Articles/TradeOrBusinessScam.htm>
  - 2.3. That the target of the information return is a “taxpayer” subject to every provision of the Internal Revenue Code Subtitle A.
  - 2.4. That the existence of a Social Security Number on the information Return creates an obligation to participate in federal income taxation, pursuant to Social Security Act of 1935, Title 8, Section 801. See:  
<http://www.ssa.gov/history/35acviii.html>
3. After the presumption has been established that you are a “taxpayer”, the burden of proof shifts to you to prove that you aren’t. Because it is legally impossible to prove a negative, this puts you in an untenable and unwinnable situation and all your arguments become frivolous and irrelevant.

The only way to prevail in the above process is to:

1. Vociferously insist that all government presumptions which might prejudice your rights as a party domiciled in a state of the Union and protected by the Constitution are illegal and impermissible according to the U.S. Supreme Court.
2. Fill your administrative record with exculpatory evidence admissible under the Federal Rules of Evidence which clearly establishes your correct status as a “nontaxpayer”, a national but not a citizen, a nonresident alien, and a person not engaged in any excise taxable federal privilege. This person is identified in the regulations at 26 C.F.R. §1.871-1(b)(i) and is indicated as having no federal tax liability in 26 C.F.R. §1.872-2.
3. Rebut all information returns promptly and consistently, such as IRS forms W-4, W-2, 1042-S, 1098, 1099, and K-1. Claim that they are invalid, hearsay evidence, submitted under duress, and are therefore erroneous and unreliable. See:

*Income Tax Withholding and Reporting Course*, Form 12.0041  
<http://sedm.org/Forms/FormIndex.htm>
4. Ask the IRS periodically for a copy of all information returns they have received to make sure that you didn’t miss any.
5. Vociferously insist that burden of proof remains on the government to prove liability at all times and that you are presumed to be a nontaxpayer until proven to be a taxpayer.
6. Vociferously deny any attempt by the IRS to identify you as a “taxpayer” subject to the Internal Revenue Code, and demand that they satisfy their burden of proof with admissible evidence.
7. Deny any attempt to identify you as a statutory “U.S. citizen” pursuant to 8 U.S.C. §1401. This status also causes a surrender of sovereign immunity pursuant to [28 U.S.C. §1603\(b\)\(3\)](#). See:

*Why you are a “national”, “state national”, and Constitutional but not Statutory Citizen*, Form #05.006  
<http://sedm.org/Forms/FormIndex.htm>
8. Ensure that you do *not* accept any federal privilege, benefit, or presumed benefit which might cause a surrender of your sovereign immunity pursuant to [28 U.S.C. §1605\(a\)\(2\)](#) or create a presumption that you are subject to federal law.
9. Never on any federal or state form, identify yourself as any of the following:
  - 9.1. Domiciled in the “United States”. See:

*Why domicile and becoming a “taxpayer” require your consent*, Form #05.002  
<http://sedm.org/Forms/FormIndex.htm>
  - 9.2. A “resident”, which is a “resident alien” or U.S. citizen abroad pursuant to [26 U.S.C. §7701\(b\)\(1\)\(A\)](#).

9.3. A statutory “U.S. citizen” pursuant to [8 U.S.C. §1401](#). Instead, identify yourself as a citizen of your state and DO NOT mention the United States.

9.4. A “taxpayer” subject to the I.R.C. pursuant to [26 U.S.C. §7701\(a\)\(14\)](#) and 1313.

10. Resign all participation in any federal benefit program. See:

*Resignation of Compelled Social Security Trustee*, Form #06.002  
<http://sedm.org/Forms/FormIndex.htm>

11. Discontinue use of all federal identifying numbers stored in IRS records and databases which might create an association with an excise taxable federal privilege or a presumption that you are a “taxpayer” engaged in a “trade or business”.

American jurisprudence has always presumed that the accused is innocent until proven guilty beyond a reasonable doubt with evidence. The Internal Revenue Code does not change that requirement or any of the following legal requirements for meeting the burden of proof:

1. That persons who are to be held responsible to obey a statute must receive “reasonable notice” by publication in the Federal Register of all enforcement statutes and the regulations that implement them. Most IRS enforcement actions are undertaken without the authority of any implementing regulations, and even those implementing regulations exist, they have not been duly published in the Federal Register as required by 5 U.S.C. §552(a).
2. That presumptions may not be used as evidence or a substitute for evidence. All presumptions which prejudice constitutionally protected rights violate due process of law, including the presumption that a person is a “taxpayer”. Any administrative result based entirely or mostly upon presumption as a substitute for evidence is a violation of due process and produces an unconstitutional and void result.
3. That all evidence of liability must be verified under penalty of perjury or by testimonial oath as required by [26 U.S.C. §6065](#). Evidence not so verified is excludible under the Hearsay Rule, Federal Rule of Evidence 802.
4. That religious beliefs and opinions are not admissible as evidence of liability pursuant to [Federal Rule of Evidence 610](#).
5. That an un rebutted affidavit stands as truth and a nihil dicit judgment against the party who received it. See [Federal Rule of Civil Procedure 8\(b\)\(6\)](#).
6. That public officers and federal employees are “trustees of the public trust” and fiduciaries of the public and that fiduciary duty is incompatible with silence when they are confronted with evidence of their own wrongdoing. Therefore, silence in such a circumstance constitutes admissible evidence of wrongdoing and an equitable estoppel against the public officer.
7. That the only basis for reasonable belief about one’s liability for taxes is documented in the memorandum of law below:

*Reasonable Belief About Income Tax Liability*, Form #05.007  
<http://sedm.org/Forms/FormIndex.htm>

The IRS frequently receives information returns from third parties documenting receipt of taxable “trade or business” income pursuant to [26 U.S.C. §6041](#). These information returns are frequently the only proof of liability available to the IRS, and yet they

1. Do not satisfy any of the requirements of the [Federal Rules of Evidence](#).
2. Are not verified by a signature under penalty of perjury or testimonial oath as required by [26 U.S.C. §6065](#). The only exception to this rule is IRS forms W-2G and W-3G.
3. Are excludible under the [Hearsay Rule, Federal Rule of Evidence 802](#).

Based on the foregoing, all information returns are simply “prima facie evidence” of a liability that can only be verified if they are accompanied by a tax return signed under penalty of perjury by the subject of the information return. Absent this type of verification, they cannot lawfully be used as a basis for instituting a substitute return against the subject of the report without their consent. Where these presumptions are challenged by the affected party, the moving party must sustain using admissible, verified evidence signed under penalty of perjury, the existence of a lawful liability.

If the subject of the information return is a natural person who would ordinarily file using IRS form 1040 or its variants, then the IRS Internal Revenue Manual does NOT authorize the completion of a Substitute For Return (SFR) or Automated Substitute For Return (ASFR), as shown in Internal Revenue Manual (I.R.M.), Section 5.1.11.6.8. Notice the conspicuous absence of Form 1040:

*Internal Revenue Manual*  
*5.1.11.6.8 (03-01-2007)*  
*IRC 6020(b) Authority*

1. The following returns may be prepared, signed and assessed under the authority of IRC 6020(b):

- A. Form 940, Employer's Annual Federal Unemployment Tax Return
- B. Form 941, Employer's Quarterly Federal Tax Return
- C. Form 943, Employer's Annual Tax Return for Agricultural Employees
- D. Form 720, Quarterly Federal Excise Tax Return
- E. Form 2290, Heavy Vehicle Use Tax Return
- F. Form CT-1, Employer's Annual Railroad Retirement Tax Return
- G. Form 1065, U.S. Return of Partnership Income.

2. Pursuant to IRM 1.2.2.97, Delegations of Authority, Order Number 182 (rev. 7), dated 5/5/1997, revenue officers GS-09 and above, and Collection Support Function managers GS-09 and above, have the authority to prepare and execute returns under IRC 6020(b).

Even the statutes cited by the IRS as authority, the Internal Revenue Code, constitute a prejudicial presumption, since they are only "prima facie evidence of law" pursuant to 1 U.S.C. §204 which is applicable exclusively to the District of Columbia pursuant to [28 U.S.C. §1366](#). Therefore, the IRS proceeds almost entirely and exclusively upon "presumption" not substantiated by any verified evidence of any kind in the process of collecting taxes pursuant to the I.R.C. Subtitle A. This abundance of "presumption" constitutes the equivalent of the establishment of a state-sponsored religion in violation of the First Amendment, where presumption operates as the equivalent of religious faith. Religious faith is simply a belief which cannot be proven with evidence, and that is what presumption of liability for tax operates as: religious faith.

## 8 Resources for Further Study and Rebuttal

If you would like to study the subjects covered in this short pamphlet in further detail, may we recommend the following authoritative sources, and also welcome you to rebut any part of this pamphlet after you have read it and studied the subject carefully yourself just as we have:

**Table 1: Resources for further study and rebuttal**

Reference	Type	Available at:
Presumption: Chief Weapon for Unlawfully Enlarging Federal Jurisdiction, Form #05.017	Free memorandum of law	<a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>
Reasonable Belief About Income Tax Liability, Form #05.007	Free memorandum of law	<a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>
Authorities on presumption	Free link	<a href="http://famguardian.org/TaxFreedom/CitesByTopic/presumption.htm">http://famguardian.org/TaxFreedom/CitesByTopic/presumption.htm</a>
Legal Deception, Propaganda, and Fraud, Form #05.014	Free memorandum of law	<a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>
Who are Taxpayers and who needs a 'Taxpayer Identification Number', Form #05.013	Free memorandum of law	<a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>
Your Rights as a NONTaxpayer, Form #08.008	Free pamphlet	<a href="http://sedm.org/LibertyU/NontaxpayerBOR.pdf">http://sedm.org/LibertyU/NontaxpayerBOR.pdf</a>
Federal Jurisdiction, Form #05.018	Free memorandum of law	<a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>
SEDM Liberty University	Free educational materials for regaining your sovereignty as an entrepreneur or private person	<a href="http://sedm.org/LibertyU/LibertyU.htm">http://sedm.org/LibertyU/LibertyU.htm</a>
Family Guardian Website, Taxes page	Free website	<a href="http://famguardian.org/Subjects/Taxes/taxes.htm">http://famguardian.org/Subjects/Taxes/taxes.htm</a>
Sovereignty Forms and Instructions Online, Form #10.004	Free references and tools to help those who want to escape federal slavery	<a href="http://famguardian.org/TaxFreedom/FormsInstr.htm">http://famguardian.org/TaxFreedom/FormsInstr.htm</a>
Rebutted version of the IRS pamphlet: "The Truth About Frivolous Tax Arguments", Form #08.005	Free downloadable pamphlet	<a href="http://famguardian.org/PublishedAuthors/Govt/IRS/friv_tax_rebuts.pdf">http://famguardian.org/PublishedAuthors/Govt/IRS/friv_tax_rebuts.pdf</a>
Proof of Claim: Your Main Defense Against Government Greed and Corruption, Form #09.073	Memorandum of law	<a href="http://sedm.org/Forms/FormIndex.htm">http://sedm.org/Forms/FormIndex.htm</a>

## 9 Questions that Readers, Grand Jurors, and Petit Jurors Should be Asking the Government

These questions are provided for readers, Grand Jurors, and Petit Jurors to present to the government or anyone else who would challenge the facts and law appearing in this pamphlet, most of whom work for the government or stand to gain

### Government Burden of Proof

Copyright Sovereignty Education and Defense Ministry, <http://sedm.org>  
Form 05.025, Rev. 10-4-2018

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EXHIBIT: \_\_\_\_\_



1 financially from perpetuating the fraud. If you find yourself in receipt of this pamphlet, you are demanded to answer the  
2 questions within 10 days. Pursuant to [Federal Rule of Civil Procedure 8\(b\)\(6\)](#), failure to deny within 10 days constitutes an  
3 admission to each question. Pursuant to [26 U.S.C. §6065](#), all of your answers must be signed under penalty of perjury. We  
4 are not interested in agency policy, but only sources of reasonable belief identified in the pamphlet below:

*Reasonable Belief About Income Tax Liability*, Form #05.007  
<http://sedm.org/Forms/FormIndex.htm>

5 Your answers will become evidence in future litigation, should that be necessary in order to protect the rights of the person  
6 against whom you are attempting to unlawfully enforce federal law.

7 1. Admit that tax liabilities are considered “debts” pursuant to the Fair Debt Collection Practices Act.

8  
9 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

10  
11 CLARIFICATION:\_\_\_\_\_

12 2. Admit that pursuant to [15 U.S.C. §1692g\(b\)](#), a creditor who receives a dispute of a debt and which demands proof of  
13 the debt must provide verified original proof of the debt within 30 days.

14  
15 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

16  
17 CLARIFICATION:\_\_\_\_\_

18 3. Admit that pursuant to [15 U.S.C. §1692g\(b\)](#), a creditor who fails to provide verified proof of the debt when challenged  
19 after 30 days forfeits his right to further collection activity and repudiates the debt.

20  
21 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

22  
23 CLARIFICATION:\_\_\_\_\_

24 4. Admit in all administrative proceedings, the burden of proof is upon the moving party.

25 [TITLE 5 > PART I > CHAPTER 5 > SUBCHAPTER II > § 556](#)  
26 [§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of](#)  
27 [decision](#)

28 *(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral*  
29 *or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of*  
30 *irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued*  
31 *except on consideration of the whole record or those parts thereof cited by a party and supported by and in*  
32 *accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with*  
33 *the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation*  
34 *of section 557 (d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed*  
35 *such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by*  
36 *oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be*  
37 *required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or*  
38 *applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures*  
39 *for the submission of all or part of the evidence in written form.*

40 [SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode05/usc\\_sec\\_05\\_00000556----000-.html](http://www4.law.cornell.edu/uscode/html/uscode05/usc_sec_05_00000556----000-.html)]

41  
42 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

43  
44 CLARIFICATION:\_\_\_\_\_

45 5. Admit that in tax collection actions of the government, the government is the moving party asserting the existence of a  
46 legal liability.

47  
48 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION: \_\_\_\_\_

6. Admit that as the moving party in tax collection actions, the government has the burden of proving liability.

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION: \_\_\_\_\_

7. Admit that the burden of proof in tax collection actions may only be shifted from the government to the person who is the target of the collection if that person is a “taxpayer” as defined in [26 U.S.C. §7701\(a\)\(14\)](#) and [26 U.S.C. §1313](#).

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION: \_\_\_\_\_

8. Admit that a person who claims to be a “nontaxpayer” under penalty of perjury and who refutes all evidence that he is a “taxpayer” under penalty of perjury may not be imputed as having the burden of proof pursuant to [26 U.S.C. §7491](#) to prove nonliability in any tax collection action.

[TITLE 26](#) > [Subtitle F](#) > [CHAPTER 76](#) > [Subchapter E](#) > § 7491  
[§ 7491. Burden of proof](#)

(a) Burden shifts where taxpayer produces credible evidence

(1) General rule

If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations

Paragraph (1) shall apply with respect to an issue only if -

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section [7430\(c\)\(4\)\(A\)\(ii\)](#). Subparagraph (C) shall not apply to any qualified revocable trust (as defined in section [645\(b\)\(1\)](#)) with respect to liability for tax for any taxable year ending after the date of the decedent's death and before the applicable date (as defined in section [645\(b\)\(2\)](#)).

(3) Coordination

Paragraph (1) shall not apply to any issue if any other provision of this title provides for a specific burden of proof with respect to such issue.

(b) Use of statistical information on unrelated taxpayers

In the case of an individual taxpayer, the Secretary shall have the burden of proof in any court proceeding with respect to any item of income which was reconstructed by the Secretary solely through the use of statistical information on unrelated taxpayers.

(c) Penalties

Notwithstanding any other provision of this title, the Secretary shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount imposed by this title.

[SOURCE: [http://www4.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00007491----000-.html](http://www4.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007491----000-.html)]

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION: \_\_\_\_\_

- 1 9. Admit that no provision of the Internal Revenue Code may be cited against or create a legal duty for anyone who is a  
2 “nontaxpayer”.

3 *“The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers,*  
4 *and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no*  
5 *attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not*  
6 *assume to deal, and they are neither of the subject nor of the object of the revenue laws...”*  
7 *[Long v. Rasmussen, 281 F. 236 (1922)]*

8 *“Revenue Laws relate to taxpayers and not to non-taxpayers. The latter are without their scope. No procedures*  
9 *are prescribed for non-taxpayers and no attempt is made to annul any of their Rights or Remedies in due course*  
10 *of law. With them[non-taxpayers] Congress does not assume to deal and they are neither of the subject nor of*  
11 *the object of federal revenue laws.”*  
12 *[Economy Plumbing & Heating v. U.S., 470 F.2d. 585 (1972)]*

13  
14 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

15  
16 CLARIFICATION:\_\_\_\_\_

- 17 10. Admit that presumption is neither evidence nor may it lawfully be used as a substitute for evidence without violating  
18 due process of law.

19 *A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption*  
20 *is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden*  
21 *of proof. Calif.Evid.Code, §600.*  
22 *[Black’s Law Dictionary, Sixth Edition, p. 1185]*

23  
24 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

25  
26 CLARIFICATION:\_\_\_\_\_

- 27 11. Admit that conclusive presumptions which prejudice or injure constitutionally protected rights are a violation of due  
28 process of law.

29 *(1) [8:4993] **Conclusive presumptions affecting protected interests:** A conclusive presumption may be defeated*  
30 *where its application would impair a party's constitutionally-protected liberty or property interests. In such*  
31 *cases, conclusive presumptions have been held to violate a party's due process and equal protection*  
32 *rights. [Vlandis v. Kline (1973) [412 U.S. 441](#), 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur (1974)*  
33 *[414 U.S. 632](#), 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit*  
34 *violates process]*  
35 *[Federal Civil Trials and Evidence, Rutter Group, paragraph 8:4993, p. 8K-34]*

36  
37 ***This court has held more than once that a statute creating a presumption which operates to deny a fair***  
38 ***opportunity to rebut it violates the due process clause of the Fourteenth Amendment.** For example, Bailey v.*  
39 *Alabama, [219 U.S. 219](#), 238, et seq., 31 S.Ct. 145; Manley v. Georgia, [279 U.S. 1](#), 5-6, 49 S.Ct. 215.*

40 *'It is apparent,' this court said in the Bailey Case ( [219 U.S. 239](#), 31 S. Ct. 145, 151) 'that a constitutional*  
41 *prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can*  
42 *be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional*  
43 *restrictions.'*

44 *If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove*  
45 *the facts of his case, certainly the power cannot be made to emerge by putting the enactment in the guise of a rule*  
46 *of substantive law.*  
47 *[Heiner v. Donnan, 285 U.S. 312 (1932)]*

48  
49 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

50  
51 CLARIFICATION:\_\_\_\_\_

12. Admit that one of the main purposes of due process of law is to remove all presumptions which might prejudice rights from the consideration of the factfinder(s).

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION:\_\_\_\_\_

13. Admit that “prima facie law”, such as the Internal Revenue Code, is “presumed to be law” for the United States exclusively applicable to the District of Columbia pursuant to [28 U.S.C. §1366](#).

*“Prima facie evidence. Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence. State v. Haremza, 213 Kan. 201, 515 P.2d 1217, 1222.*

*That quantum of evidence that suffices for proof of a particular fact until the fact is contradicted by other evidence; once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence with all the other probative evidence presented. Godesky v. Provo City Corp., Utah, 690 P.2d 541, 547. Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced. An inference or presumption of law, affirmative or negative of a fact, in the absence of proof, or until proof can be obtained or produced to overcome the inference. See also Presumptive evidence.”*

*[Black’s Law Dictionary, Sixth Edition, p. 1190]*

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION:\_\_\_\_\_

14. Admit that once “prima facie law” is challenged, the moving party asserting the authority of that specific law has a duty to prove that the provisions he is citing as authority are positive law, by providing evidence of enactment into positive law from the Statutes at Large.

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION:\_\_\_\_\_

15. Admit that in the absence of non-prima facie evidence that a statute cited as authority is “positive law” (see [1 U.S.C. §204\(a\)](#)) or that Congress has expressly extended authority of said law to the states ([4 U.S.C. §72](#)), then any said statute may not be cited against a person domiciled in a state of the Union whose rights are protected by the Constitution because this would be an abuse of presumption to prejudice constitutionally guaranteed rights.

*(1) [8:4993] Conclusive presumptions affecting protected interests: A conclusive presumption may be defeated where its application would impair a party’s constitutionally-protected liberty or property interests. In such cases, conclusive presumptions have been held to violate a party’s due process and equal protection rights. [Vlandis v. Kline (1973) [412 U.S. 441](#), 449, 93 S.Ct 2230, 2235; Cleveland Bd. of Ed. v. LaFleur (1974) [414 US 632](#), 639-640, 94 S.Ct. 1208, 1215-presumption under Illinois law that unmarried fathers are unfit violates process]*

*[Federal Civil Trials and Evidence, Rutter Group, paragraph 8:4993, p. 8K-34]*

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION:\_\_\_\_\_

16. Admit that a violation of due process of law produces a void judgment of no force and effect.

*“A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoy v. Neff, 95 U.S. 714, 732-733 (1878).”*

*[World-Wide Volkswagen Corp. v. Woodson, [444 U.S. 286](#) (1980)]*

YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

CLARIFICATION: \_\_\_\_\_

17. Admit that all doubt must be resolved in favor of the person against whom a tax is laid:

*"Keeping in mind the well-settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid."*  
[Spreckels Sugar Refining Co. v. McClain, [192 U.S. 297](#) (1904)]

*"In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of clear expression to the contrary, to operate prospectively; that, if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer..."*  
[Hassett v. Welch., [303 US 303](#), pp. 314 - 315, 82 L.Ed. 858. (1938)]

YOUR ANSWER: \_\_\_\_ Admit \_\_\_\_ Deny

CLARIFICATION: \_\_\_\_\_

18. Admit that evidence used in determining liability or a legal duty in any tax collection proceeding must follow the Federal Rules of Evidence.

YOUR ANSWER: \_\_\_\_ Admit \_\_\_\_ Deny

CLARIFICATION: \_\_\_\_\_

19. Admit that evidence which is not authenticated with a perjury statement or a testimonial oath is not admissible in any administrative proceeding for use as evidence of liability, pursuant to [26 U.S.C. §6065](#).

[TITLE 26 > Subtitle F > CHAPTER 61 > Subchapter A > PART IV > § 6065](#)  
[§6065. Verification of returns](#)

*Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.*

YOUR ANSWER: \_\_\_\_ Admit \_\_\_\_ Deny

CLARIFICATION: \_\_\_\_\_

20. Admit that information returns submitted to the IRS pursuant to [26 U.S.C. §6041](#) must be signed by the submitter under penalty of perjury in order to be used as evidence of the receipt of taxable earnings.

YOUR ANSWER: \_\_\_\_ Admit \_\_\_\_ Deny

CLARIFICATION: \_\_\_\_\_

21. Admit that with the exception of IRS forms W-2G and W-3G, none of the information returns require a signature under penalty of perjury. This includes IRS forms 1098, 1099, 1042-S, K-1.

YOUR ANSWER: \_\_\_\_ Admit \_\_\_\_ Deny

CLARIFICATION: \_\_\_\_\_

22. Admit that because of the foregoing, all information returns except the W-2G and W-3G are hearsay evidence that is not admissible under the Federal Rules of Evidence and which essentially amount to "hearsay evidence" excludible under the [Hearsay Rule, Federal Rule of Evidence 802](#).

YOUR ANSWER: \_\_\_\_ Admit \_\_\_\_ Deny

1 CLARIFICATION:\_\_\_\_\_

2 23. Admit that the IRS has not authority to create a Substitute For Return or Automated Substitute For Return for IRS  
3 forms 1040, 1040EZ , 1040A, 1040NR, 1040NR-EZ, etc.

4  
5 YOUR ANSWER: \_\_\_\_Admit \_\_\_\_Deny

6  
7 CLARIFICATION:\_\_\_\_\_

8  
9 **Acknowledgment:**

10 I declare under penalty of perjury as required under [26 U.S.C. §6065](#) that the answers provided by me to the foregoing  
11 questions are true, correct, and complete to the best of my knowledge and ability, so help me God. I also declare that these  
12 answers are completely consistent with each other and with my understanding of both the Constitution of the United States,  
13 Internal Revenue Code, Treasury Regulations, the Internal Revenue Manual, and the rulings of the Supreme Court but not  
14 necessarily lower federal courts.

15 Name (print):\_\_\_\_\_

16 Signature:\_\_\_\_\_

17 Date:\_\_\_\_\_

18 Witness name (print):\_\_\_\_\_

19 Witness Signature:\_\_\_\_\_

20 Witness Date:\_\_\_\_\_