

from

Was Grandpa Really a Moron?
Critical Inquiries for a New American Century

by

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**Regarding The Use Of Government-Printed Forms (Such
As 1040s)**



For most Americans, the question of whether anyone can be *required* to file a 1040 is entirely irrelevant. Indeed, it is worse-- it is a harmful distraction from understanding and addressing the reality of the "income" tax scheme. For most Americans, the real "file-or-not-file" question is, *"Do I file a return for my own good (voluntarily), or do I not file and instead accept liability for a tax I don't really owe, and kiss a whole lot of money, power and integrity good-bye?"*

This is so because the reason you (anyone) are presumed to be, and are legally treated as, liable for the tax, is that somebody has said that you engaged in a taxable activity (conventionally expressed by saying you "received income"). Period. That is the case regardless of whether you really did engage in a taxable activity, because it is only by way of such an assertion-- either made by someone who paid you, by you yourself, or by some contrivance of circumstantial evidence presented by a bureaucrat or a prosecutor-- that "the system" which enforces such liabilities can be made legally aware of the possibility that you might owe a tax.

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If that assertion stands unanswered, "the system" which enforces the associated liabilities IS ENTITLED TO ENFORCE THEM, AND WILL DO SO. Look at it this way. When someone says you did something which, if true, would mean that you owe a debt, and you stand mute, you're going to be held to owe the debt. Judgment goes to the alleged creditor by default. What part of this is hard to understand?

Filing a proper, truthful and accurate return is the means provided by law for the definitive affirmation, or correction, of allegations about having engaged in an "income" taxable activity.

"And be it further enacted,...that any party, in his or her own behalf,...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... the amount of his or her annual income,... liable to be assessed,... and the same so declared shall be received as the sum upon which duties are to be assessed and collected." Revenue Act of 1862, Sec. 93

Senator Clark: *"Of course, you withhold not only from taxpayers but nontaxpayers."*

Mr. Hardy: *"Yes."*

...

Senator Danaher: *"I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?"*

Mr. Friedman: *"You're thinking of a corporation or an individual?"*

Senator Danaher: *"I am talking about an individual."*

Mr. Friedman: *"An individual will file an income tax return, and that income tax return will constitute an automatic claim for refund."*

From a hearing before a subcommittee of the committee on finance, United States Senate, during the 77th Congress, Second Session on withholding provisions of the 1942 Revenue Act on August 21 and 22, 1942.

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"Even if you do not otherwise have to file a return, you should file one to get a refund of any Federal income tax withheld." From the instructions for the 2002 Form 1040

26 CFR § 301.6402-3 Special rules applicable to income tax.

(a) In the case of a claim for credit or refund filed after June 30, 1976--

(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

26 CFR § 301.6203-1 Method of assessment.

... The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown,...

(... and even "\$0.00" is an amount. By the way, those disturbed by the gratuitous use of the term "taxpayer" in this regulation should relax and read 'About 1040s And Claiming Refunds' in CtC.)

I said "the definitive affirmation, or correction,..." and that's exactly what I meant. Until a return is made, any presumptions favorable to any tax agency's desire to claim your money will be sustained. But once a return is made, that return rules, legally.

That said, let me clarify something for the benefit of those who have not actually read CtC, but have instead gotten what they imagine to be a sense of its lessons by way of the descriptions or explanations of others (which in some cases, at least, means from others who wish to discourage the reading of the book): What is taught about the law in CtC has nothing to do with any particular forms (or any particular formal procedures) as such. The discussion of certain treasury department forms in the book, such as 1040s, 4852s, etc., takes place not because these forms are integral to its message, but because the existence, nature and declared purposes of these forms help communicate that message.

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CtC explains what is subject to the "income" tax, and why; how it is that much that is NOT subject to the tax is made to appear as though it were (and comes to be treated by the law as though it were); that there are, of necessity, remedies to the misapplication of the law; and why the whole subject is critically important. The part of the book that deals with remedies to the misapplication of the law discusses the basic principles of due process, and the inherent right of anyone being made the subject of a legal proceeding-- such as someone about whom tax-related allegations have being made-- to introduce his or her own testimony into the proceedings at a legally meaningful time and in a legally meaningful manner. The fact that the government itself produces and makes available instruments such as 1040s and 4852s by which this right can be readily exercised, and specifies the use of these instruments for this purpose, helps to make clear that this fundamental principle of law is fully integrated into the tax structure. That integration is not dependent on the existence of such forms, of course. One's rights remain fully intact, whether a ready means of exercising them has been helpfully provided by government or not.

Nor does the existence of forms like 4852s and 1040s limit or shape the right to testify. Such forms simply facilitate the exercise of that right. One's right to testify is not dependent on the use, or controlled by the format, of some prescribed or pre-printed form or another. If erroneous testimony has been made on a W-2, for instance, the victim of the offense could rebut that testimony on a napkin or a piece of birch-bark with just as much fundamental legal significance as doing so on a "Form 4852", as long as all pertinent assertions are meaningfully addressed. The same is true of the broader testimony typically submitted by way of a 1040. There are only a few "rules" about the validity of a tax return: That the instrument purports to be a return; that it contains sufficient information by which a tax liability can be calculated; that it

represents an honest effort to abide by the tax laws; and that it be executed under penalties of perjury. These simple requirements can be met without the use of a "Form 1040":

"Anyway, as we held in Salberg, the obligation to file a tax return stems from 26 U.S.C. 7203, not from any agency's demand. The Paperwork Reduction Act does not repeal 7203. " "...7203 requires a "return" but does not define that word or require anyone to use Form 1040, or any "official" form at all. All that is required is a complete and candid report of income."

7th Circuit Court Of Appeals, United States v. Patridge, 507 F.3d 1092 (2007)

(Also, see the IRS Office of Chief Counsel Memorandum at www.losthorizons.com/tax/taximages/OCCO107035.pdf.)

However, the practical utility of testimony submitted on napkins or birch-bark is pretty obviously compromised, in the sense that any bureaucratic recipient of such testimony will be unable to handle it in the routine manner. Further, and more importantly, the chances of any home-made version of a testimonial form actually comprehending all the aspects of the law to which it is intended to relate are remote. If this IS accomplished, the home-made form will end up being identical in every significant respect to the form being spurned, making the effort a pointless exercise.

To summarize, then: No aspect of the provisions of law involved in rebutting, or otherwise responding to, "income" allegations discussed in CtC rely upon, or inherently relate to, forms such as 1040s, 4852s, etc.. But when such forms are prescribed and provided, obvious benefits accompany their informed, accurate and truthful deployment.

Can Anyone Be Required To Accept A Legal Infirmary In Order To Exercise A Right?

It should be clear without extended explanation that under no circumstances can the exercise of a right be the

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occasion of the diminishment, or impairment, of any other right. For purposes of this discussion, this means that the exercise of one's right to answer the testimony of others about one's receipts, and to assert one's claim for the recovery of property put into the hands of a government against the possibility of the arising of a tax liability during the relevant period, cannot result, in and of itself, in any legal infirmity:

"...a statute which imposes a tax upon an assumption of fact which the [presumed] taxpayer is forbidden to controvert is so arbitrary and unreasonable that it cannot stand under the Fourteenth Amendment." United States Supreme Court, Heiner v. Donnan 285 U.S. 312 (1932)

"...irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments." United States Supreme Court, Vlandis v. Kline, 412 U.S. 441 (1973)

"A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394 . It is an opportunity which must be granted at a meaningful time and in a meaningful manner." United States Supreme Court, Armstrong v. Manzo, 380 U.S. 545 (1965)

The exchange of evidence by way of returns (information returns and 1040s, etc..) IS the "meaningful time and manner" involved in the "income" tax, so much so that penalties can be imposed on someone about whom an information return is created by someone else, should that person fail to file a response. Further, the testimony of that information return will be taken as true even when doing so significantly disadvantages its silent subject.

So, no burden or punishment, either civil or criminal, can attend the exercise of one's right to testify by way of a tax return, with the sole and indirect exception being that the

testimony submitted, like all testimony, must be affirmed under oath. The statutory structure provided by Congress fully complies with this fundamental legal principle, ensuring that timely testimony to whatever is true, complete and correct to the best of the knowledge and belief of the filer invites no adverse consequences whatsoever.

Indeed, to attempt to burden, punish, prevent, discourage or even merely influence such testimony without direct personal knowledge of the matter being attested to, is criminalized-- as a misdemeanor at least, if not a felony. For instance:

Title 18 § 1512. Tampering with a witness, victim, or an informant

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

shall be fined under this title or imprisoned not more than ten years, or both.

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than one year, or both.

(The filing of a tax return, particularly one which involves rebutting the testimony of another filer, is every bit an "official proceeding"-- but even if doubts were entertained in that regard, the testimony made on a return is unquestionably relevant to, and anticipatory of, more formal judicial contests of several varieties, and Congress has thoughtfully provided that,

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense:)

I'll say it one more time: However much some may have convinced themselves to the contrary, no legitimate criminal or civil penalty, loss of rights or property, alienation of citizenship or other civil diminishment, obligatory assumption of contract, or infirmity of any other kind whatsoever is, or can be, attendant upon the making of an honest tax return as a response to an information return created by another or to claim the return of one's property; rather, the precise opposite is true - one or more of these ill effects can result from FAILING to respond.

The above being true, is it possible that honest, good-faith use of a form prescribed by the Secretary of the Treasury for the making of a return can, secretly or otherwise, impose or establish a criminal or civil penalty, loss of rights, alienation of citizenship or other civil diminishment, obligatory assumption of contract, or infirmity of any other kind whatsoever? Obviously not.

Is A 1040 A "Tax Return For A U.S. Individual" Or A "U.S. Tax Return For An Individual"? Does It Matter?

I deliberately included the expression "good-faith" in the last paragraph because a portion of those to whom these words are addressed do their mental stumbling over the issue of WHICH form to use, even if they recognize their unencumbered right to make a return. These folks have been convinced to forego the exercise of their rights by the proposition that the form they use in that exercise imposes upon them the status or legal characteristics of some class of persons which is bureaucratically intended to use that form. That is, if there is a class of persons of unique or specialized legal status known as "U.S. Individuals", for instance, and one uses a form specified

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as being for the use of "U.S. Individuals", one thus adopts the status (and related infirmities, if any) of a "U.S. Individual".

However, even if a form bore an unambiguous specification as to those for whose use it is intended, it's not that easy to change one's legal status, and, in any case, the law does not favor complicated and irrational presumptions over the simple and obvious. If one were to use a form intended exclusively for the use of some group or class to which one did not actually belong, all it would presumptively mean is that *one had made a mistake*.

That the use of the wrong form is/was an inadvertent mistake would be self-evident if that use caused membership in a special group, attendant upon which is some legal infirmity to which the filer is not already subject. No one in their right mind would do such a thing, and one who did so, having self-evidently been ignorant of the legal import of their actions, would be relieved of the consequences of those actions. One cannot be bound by mere presumptions arising from a legal process undertaken in ignorance of the consequences. If the mistake was not thus self-evident (because no ill consequences are attendant upon the use of the form), it would be readily established by declaration, if necessary, although I have yet to see a single case in which anyone has ever been accused, or even notified, of "Using The Wrong Form" in the fashion or context being discussed here.

As noted in the subtitle above, the intended use of the "Form 1040 U.S. Individual Income Tax Return is certainly not unambiguously confined to "U.S. Individuals"-- which is not, in any case, a defined category of persons-- even if it being so would raise one's hackles. Looking at the specifications for its use relevant to most Americans:

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(a) In the case of a claim for credit or refund filed after June 30, 1976—

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(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.

...

(5) A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or amended return)

...

(e) In the case of a nonresident alien individual or foreign corporation, the appropriate income tax return on which the claim for refund or credit is made must contain the tax identification number of the taxpayer required pursuant to section 6109 and the entire amount of income of the taxpayer subject to tax, even if the tax liability for that income was fully satisfied at source through withholding under chapter 3 of the Internal Revenue Code (Code). ...

(There IS an alternative version of the 1040, known as "Form 1040NR", which is particularly adapted to special provisions of the law regarding the taxation of "income" received under certain circumstances by "non-resident aliens". However, while the IRS instructions for "non-resident aliens" specify the use of that form in lieu of a standard 1040 when those special provisions are being exploited, or for non-resident aliens who are *"engaged in a trade or business in the United States, or have any other U.S. source income on which the tax was not fully paid by the amount withheld"*, the same instructions merely say that a return must be filed, without specification as to version, when a refund is being sought.)

Furthermore, the positions adopted by the IRS Office of Chief Counsel (OCC) regarding the content of a legitimate, valid 1040 (OCC memoranda about which have long been posted on this site for the benefit of anyone not too busy haring off after the latest "silver-bullet" distraction) make clear that a 1040 has

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no hidden agenda or effect. The OCC has admitted that any document merely purporting to be a "return", containing sufficient information by which a tax liability can be calculated, representing an honest effort to abide by the tax laws, and signed as an affidavit serves as a fully sufficient substitute for a 1040; by the same token a 1040 itself need have nothing more than these same characteristics to be a fully valid return, sufficient for all purposes for which the form is designed.

The OCC has also acknowledged that the addition of a declaration to a 1040 that signing the form is not to be taken as a waiver of any rights or an acceptance of any legal infirmity has no effect on the validity of the form. That is, a 1040 serves as a legitimate and fully functional tax return even when suspected secret agenda or hidden legal effects have been pre-emptively nullified.

Because there are none...