

## DEVIL'S DICTIONARY OF TAXATION

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#### I. INTRODUCTION:

The dry wit of American author Ambrose Bierce's *The Devil's Dictionary* has been cited in several American judicial opinions,<sup>1</sup> and by some foreign tribunals as well.<sup>2</sup> Humor and wit, after all, can make interesting an otherwise dry and dull court decision, so that it might be better appreciated and understood.<sup>3</sup>

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1. *E.g.*, *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1998) ("Ambrose Bierce's aptly named *Devil's Dictionary* defines 'impiety' as 'your irreverence toward my deity.'"); *United States v. Grant*, 860 F. Supp. 843, 845 (M.D. Ga. 1994), *aff'd*, 119 F.3d 9 (11th Cir. 1997) ("Ambrose Bierce in his *Devil's Dictionary* defines precedent in law as: 'A previous decision, rule or practice which, in the absence of a definite statute, has whatever force and authority a Judge may choose to give it, thereby greatly simplifying his task of doing as he pleases.'"); *In re Spectee Group, Inc.*, 185 B.R. 146, 150 n.3 (Bankr. S.D.N.Y. 1995) ("Gelbwaks is an optimist only in the sense that he is '[a] proponent of the doctrine that black is white.' Ambrose Bierce, *The Devil's Dictionary* . . ."); *United States v. Siroky*, 44 M.J. 394, 399 n.2 (C.A.A.F. 1996) ("It is this type of review that the author must have had in mind when he defined 'appeal' as: 'In law, to put the dice into the box for another throw.' Ambrose Bierce, *The Devil's Dictionary* (1906) . . ."); *see also* *People v. Harrison*, 553 N.E.2d 746, 749 (Ill. App. Ct. 1990) (Heiple, J., dissenting); *E. River Sav. Bank v. Steele*, 311 S.E.2d 189, 191 (Ga. Ct. App. 1983); *Matter of Oyster Bay Ass'n LP. v. Town Board, Town of Oyster Bay, N.Y.L.J.*, July 16, 2002, at 28 n.3 (Suffolk Cty. Sup. Ct.); *Shachak v. Super "K" Disc. Mkt., N.Y.L.J.*, Sept. 3, 1992, at 25 (King's Cty. Sup. Ct.).

2. *See, e.g.*, *Regina v. McDonald*, [1983] N.B.R.2d 424; *see also In re Chikweche*, 1995 (4) BCLR 533 (ZS) (Zimb.) (quoting *Reed*, 842 F.2d at 962 ).

3. *See, e.g.*, *Ex Parte Lingenfelter*, 142 S.W. 555, 565 (Tex. Crim. App. 1911) ("In that case the court considered the identity, likeness and similarity between a circus and a wild west show. The opinion is not only interesting, but also exceptionally able and well worth perusal as a proper and decorous expression of judicial humor.").

Tax law is one legal area in severe need of elucidation. It has stymied even learned members of the judiciary;<sup>4</sup> indeed, several commentators, including this author, have criticized the judiciary's handling of taxation cases on account of not fully comprehending the taxation law.<sup>5</sup>

Therefore, a taxation-specific lexicon inspired by the style of Bierce's *Devil's Dictionary*, but with legal citations to support its assertions, has great potential to help judges, lawyers, law students and others better appreciate and understand taxation. In such a spirit, this specialized glossary has been compiled.

## II. DEVIL'S DICTIONARY OF TAXATION

**adverse acceptance** (n., vt.): In the IRS's pilot Compliance Assurance Program for large and midsize businesses, the end of friendly discussions and the beginning of an audit, all apparently before the tax return has actually been filed.<sup>6</sup>

**Amish** (n.): A socio-religious group, popularly regarded as uninformed, benighted, naïve and backward,<sup>7</sup> that had the wisdom, foresight and political savvy to gain statutory exemption from the Social Security Self-Employment tax.<sup>8</sup>

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4. See, e.g., Judge Learned Hand, *Thomas Walter Swan*, 57 Yale L.J. 167, 169 (1947):

[T]he words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time.

See also *Houston Textile Co. v. Comm'r*, 173 F.2d 464, 464 (5th Cir. 1949) (“This petition brings up for solution one of those difficult jigsaw tax law puzzles all too common in the present deplorable crazy quilt patchwork state of the Internal Revenue laws.”); *Cohen v. United States*, 995 F.2d 205, 209 (Fed. Cir. 1993) (“It is rare that tax law bears any recognizable relationship to common sense . . .”).

5. E.g., Kenneth H. Ryesky, *Tax Simplification: So Necessary and So Elusive*, 2 PIERCE L. REV. 93, 123-27 (2004); Nancy C. Staudt, *Agenda Setting In Supreme Court Tax Cases: Lessons From the Blackmun Papers*, 52 BUFF. L. REV. 889, 890 (2004).

6. See Heather Bennett, *Nolan Gives First Glimpse of LMSB Compliance Assurance Pilot Program*, Tax Notes Today, Jan. 24, 2005, available at LEXIS 2005 TNT 14-3 (reporting remarks by IRS Large and Midsize Business (LMSB) Division Commissioner Deborah Nolan at the American Bar Ass'n Midyear Meeting, San Diego, Jan. 21, 2005).

7. See *Hershberger v. Zaino*, No. 01-V-1162, at 4 (Ohio B.T.A. Apr. 12, 2002), available at <http://www.bta.ohio.gov/01v1162.pdf> (accessed February 5, 2006) (reciting that delinquent taxpayer had proffered the excuse “I am Amish and not up on all the rules.”).

8. See I.R.C. § 1402(g) (2000); *United States v. Lee*, 455 U.S. 252, 256 (1982); H.R. Rep. No. 213, at 101-02 (1965).

**audit** (n., vt.): 1. Governmental harassment and extortion of the citizenry, conducted in the name of ensuring the integrity of the taxation system.<sup>9</sup> The threat of it has been used by individual IRS employees to coerce personal benefits from others.<sup>10</sup> 2. The IRS or state taxation authority agent's pretext for gaining respite from his or her bleak and dingy cubicle, located in an office having malfunctioning lights, climate controls and elevators,<sup>11</sup> a leaky roof,<sup>12</sup> and a poor workplace morale,<sup>13</sup> for the healthier work atmosphere to be found in the office of the taxpayer's accountant or attorney. The duration of the audit is determined, to a large extent, by the quality and opulence of the accoutrements at the site of the audit.

**bag job** (n.): A disfavored means of professional livelihood, whereby the client brings in a brown bag full of records and documents, which then must be sorted through and classified by the unfortunate accountant or tax return preparer.<sup>14</sup> *See* BROWN BAG METHOD; SHOEBOX METHOD.

**Blue Book** (n.): 1. A publication by and for a particular trade or industry, intended to enable participants in the industry to estimate the prices for the objects trafficked in that industry, but frequently used by the taxation authorities to determine value where the taxpayer's records are insufficient and the tax examiner believes the "Blue Book" values to be biased in the government's favor. Industries having a "Blue Book" include, but are not limited to, motor vehicles,<sup>15</sup> computer equipment,<sup>16</sup> firearms,<sup>17</sup> and pharmaceuticals.<sup>18</sup> 2. In Congressional and IRS parlance, the popular name for that thick tome, properly entitled GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986,

9. *See* I.R.C. § 7601 (2000).

10. *See* James v. Tablerion, 363 F.3d 1352, 1355 (Fed. Cir. 2004).

11. *See* Dep't of the Treasury and Nat'l Treasury Employees Union, 16 F.L.R.A. No. 27, No. 5-CA-1052 (Fed. Labor Relations Auth. Oct. 2, 1984) (discussing A.L.J. decision Dec. 11, 1981); *see also* Nanette v. Snow, 343 F. Supp. 2d 465 (D. Md. 2004); McCabe v. Workers Comp. App. Bd., 738 A.2d 503 (Pa. Commw. Ct. 1999).

12. *See, e.g.*, Russell & Assoc., Fresno, Ltd., v. Gen. Serv. Bd. of Contract Appeal 12879 (Nov. 9, 1994) available at <http://www.gsbca2.gsa.gov/oldappeals/w128791.txt> (accessed February 5, 2006).

13. *See, e.g.*, STAFF OF THE JOINT COMM. ON TAXATION, 107TH CONG., REPORT OF THE JOINT COMMITTEE ON TAXATION RELATING TO THE INTERNAL REVENUE SERVICE AS REQUIRED BY THE IRS REFORM AND RESTRUCTURING ACT OF 1998, at 7 (JCX-38-02, 2002).

14. United States v. Duncan, 850 F.2d 1104, 1115 (6th Cir. 1988).

15. *E.g.*, E. Ford, Inc. v. Comm'r, T.C.M. (CCH) 3068 (1994); L.B.D. Constr., Inc. v. Dir., 8 N.J. Tax 338 (Tax Ct. 1986).

16. *E.g.*, Martuccio v. Comm'r, 63 T.C.M. (CCH) 3082, *rev'd on other grounds*, 30 F.3d 743 (6th Cir. 1994); Moore v. Comm'r, 54 T.C.M. (CCH) 1407 (1987).

17. United States v. Morgan, 216 F.3d 557, 560-561 (6th Cir. 2000).

18. Louisiana v. United States, 905 F.2d 877, 879 (5th Cir. 1990).

compiled by the staff of the United States Congress Joint Committee on Taxation to explain and justify the complications of Congress's gravely misnomered piece of legislation.<sup>19</sup>

**Bosch doctrine** (n.): The principle that where property rights relevant to determining a taxable event or computing a tax are adjudicated in a state court proceeding to which the IRS was not a party, the IRS is bound only by the decisions of the highest court in the state, and may apply what it reasons to be the correct state law to override the decision of a lesser state tribunal.<sup>20</sup> In most states, the highest tribunal is known as the Supreme Court of such state, but in New York, that tribunal denominated the "Supreme Court" is in fact the *lowest* court of general jurisdiction,<sup>21</sup> which goes quite far towards explaining New York's chronic prevailing conditions of judicial inefficiency and dysfunction.

**brown bag method** (n.): See SHOEBOX METHOD; *q.v.* BAG JOB.

**browsing** (vt.): The abuse, by an employee of the IRS or other taxation authority, of taxpayer database access privilege in order to obtain personal information about public figures such as celebrities, politicians or professional athletes, or about private individuals such as neighbors, office rivals, girlfriends, ex-husbands or prospective sons-in-law.<sup>22</sup> Now carrying criminal and administrative consequences under the Taxpayer Browsing Protection Act of 1997,<sup>23</sup> the practice was formerly legal, and indeed, even ordinary private citizens formerly had the right to examine the government's income tax lists.<sup>24</sup>

**burden of proof** (n.): The standard which must be met by the taxpayer in order to rebut the tax auditor's determination.<sup>25</sup> When the auditor works for the IRS, the taxpayer need only prove the findings incorrect by a preponderance of evidence,<sup>26</sup> but if the auditor is employed by the New York State Department of

19. See *Chugach Alaska Corp. v. United States*, 34 F.3d 1462, 1466 n.6 (9th Cir. 1994); *Robinson v. Comm'r*, 119 T.C. 44 (2002).

20. *Comm'r v. Estate of Bosch*, 387 U.S. 456 (1967).

21. See FRANCIS BERGAN, *THE HISTORY OF THE NEW YORK COURT OF APPEALS, 1847–1932*, 25 (Columbia Univ. Press 1985); see also DAVID D. SIEGEL, *NEW YORK PRACTICE* § 12, at 15 (3d ed. 1999).

22. See *Practices and Procedures of the Internal Revenue Service: Hearings before the S. Comm. on Finance*, 105th Cong. 352 (1997) (statement of Witness No. 3).

23. Taxpayer Browsing Protection Act, Pub. L. No. 105-35, §§ 2-3, 111 Stat. 1104 (1997) (codified at I.R.C. §§ 7213(a)(2), 7213A, 7431 (2000)).

24. Act of July 1, 1862, ch. 119, 12 Stat. 432, 437 (1863); see also *New Order Issued to Tax Collectors to Show the Lists*, N.Y. TIMES, Oct. 30, 1924, at 1.

25. See BLACK'S LAW DICTIONARY 80 (2d pocket ed. 2001).

26. *Brewster v. Comm'r*, 607 F.2d 1369, 1375 (D.C. Cir. 1979).

Taxation and Finance the taxpayer must prove the auditor wrong by clear and convincing evidence.<sup>27</sup>

**Business Systems Modernization** (n., vt.): An ongoing and largely dysfunctional multi-year multi-billion dollar Congressional appropriations program to enable the IRS to modernize its antiquated information systems.<sup>28</sup> It does nothing to modernize America's antiquated and dysfunctional tax code.

**buy-sell agreement** (n.): A contract entered into by owners and other entities interested in particular corporate securities, to fix the price and conditions under which such securities will be transferred.<sup>29</sup> Such agreements are disregarded frequently by the parties, and more frequently still by the IRS.<sup>30</sup>

**calcutta** (n.): A wagering system at golf or tennis tournaments whereby players or teams are put up for bid at auction, the proceeds of which are distributed to the players or teams according to percentages and results of the athletic competition.<sup>31</sup> When conducted for profit, it is subject to the Federal wagering tax.<sup>32</sup> Those who accept calcuttas and/or other wagers for profit are subject to the wagering occupational tax.<sup>33</sup> The amount of the wager tax, when applicable, is one-fourth of one percent of the wager if the wager is legal, but two percent of the wager if the wager is illegal.<sup>34</sup> It remains unclear as to whether or how the term has any connection whatsoever to that populous city of the same name on the Ganges River delta.<sup>35</sup>

**career man** (n.): A dedicated, loyal and incorruptible IRS or state taxation authority agent having no plans to leave his employer until retirement day. Will always answer in the affirmative when asked whether he is a career man. An agent with lesser scruples will often answer "No, I'm a businessman." *q.v.* TOUGH AGENT. *fem.:* **career woman.**

27. *Blodnick v. State Tax Comm.*, 507 N.Y.S.2d 536, 538 (3d. Dept. 1986), *app. withdrawn* 520 N.Y.S.2d 1023 (1987).

28. *See generally* S. Rep. No. 108-342 at 153-57 (2004) (identifying problems and congressional appropriations); *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-207, HIGH-RISK SERIES: AN UPDATE 38 (2005).

29. *See* BLACK'S LAW DICTIONARY 81 (2d pocket ed. 2001); Treas. Reg. § 20.2031-2(h) (as amended in 1992).

30. *See, e.g.*, *Estate of Lauder v. Comm'r*, 64 T.C.M. (CCH) 1643 (1992).

31. *Augusta Golf Ass'n. v. United States*, 338 F. Supp. 272, 274 (S.D. Ga. 1971).

32. I.R.C. § 4401 (West 2000); *compare Augusta Golf*, 38 F. Supp. at 275 (exempting party from the I.R.C. § 4401 wagering tax) *with* *United States v. D.I. Operating Co.*, 362 F.2d 305, 307-09 (9th Cir. 1966) (applying wagering tax).

33. Rev. Rul. 79-145, 1979-1 C.B. 360.

34. I.R.C. § 4401(a) (West 2000).

35. *Augusta Golf*, 338 F. Supp. at 274.

**cash hoard** (n.): An often disingenuous claim advanced to explain how one was able to engage in significant transactions and/or a high profile lifestyle and yet receive no income to report on their tax return.<sup>36</sup> Purported repositories for cash caches have included receptacles as diverse as cedar chests,<sup>37</sup> fruit jars,<sup>38</sup> buckets,<sup>39</sup> mattresses<sup>40</sup> and “the safe, a night bag, in my cellar, and my pocket.”<sup>41</sup> Though few, if any, taxpayers have admitted to using the *Papillon plan* as employed by Henri Charrière to secrete cash on and in his person,<sup>42</sup> at least one woman has claimed a \$70,000 cash hoard in her brassiere.<sup>43</sup>

**casualty loss** (n.): A deduction from gross income available to a taxpayer who, under certain conditions, has sustained a property loss from fire, storm, theft, or similar calamity.<sup>44</sup> It has been unsuccessfully claimed by a taxpayer who failed to realize sufficient insurance proceeds from burning down his or her own home or business,<sup>45</sup> and while such deduction is denied to such an arsonist as a matter of policy, the deduction may yet be claimed by the spouse of such arsonist if such spouse was not complicit in the conflagration, and has exhausted his or her own claims against the insurance carrier.<sup>46</sup>

**Cuomo Tax** (n.): A much detested impost formerly levied by the State of New York from 1983 to 1996, which exacted 10% of the seller's profit on real estate transfers equaling or exceeding \$1 million in value.<sup>47</sup> Enacted during a robust real estate market, the tax eventually wreaked deleterious effects upon New

36. See generally 2 DEP'T OF JUSTICE, CRIMINAL TAX MANUAL § 32.03 [3] (2001), available at <http://www.usdoj.gov/tax/readingroom/2001ctm/32ctax.htm> (accessed February 5, 2006).

37. Curtis v. Comm'r, 623 F.2d 1047, 1052 (5th Cir. 1980).

38. Page v. Comm'r, 10 T.C.M. (CCH) 443 (1951), available at 1951 Tax Ct. Memo LEXIS 237, at \*16.

39. Peacock v. Comm'r, 73 T.C.M. (CCH) 3123 (1997), available at 1997 Tax Ct. Memo LEXIS 336, at \*15.

40. Salladay v. Comm'r, 49 T.C.M. (CCH) 827 (1985), available at 1985 Tax Ct. Memo LEXIS 544, at \*9.

41. Albino v. Comm'r, 18 T.C.M. (CCH) 1 (1959), available at 1959 Tax Ct. Memo LEXIS 248, at \*4, *aff'd*, 273 F.2d 450 (2d Cir. 1960).

42. See HENRI CHARRIÈRE, PAPILLON, *passim* (June P. Wilson et al. trans., William Morrow & Co., Inc., 1970).

43. Daniels v. Comm'r, 64 T.C.M. (CCH) 1439 (1992), available at 1992 Tax Ct. Memo LEXIS 742, at \*21.

44. I.R.C. § 165 (2000).

45. Blackman v. Comm'r, 88 T.C. 677, 682 (1987), *aff'd*, 867 F.2d 605 (1st Cir. 1988).

46. See Madsen v. Comm'r, 57 T.C.M. (CCH) 1307 (1989), available at 1989 Tax Ct. Memo LEXIS 429, at \*5-7.

47. 1983 N.Y. Laws ch. 15 (formerly codified beginning at N.Y. TAX LAW § 1400), repealed by 1996 N.Y. Laws ch. 309.

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York's business and housing when the market chilled.<sup>48</sup> Governor Mario Cuomo pushed for its legislation, thereby securing his dubious place in New York historical memory as the man for whom a tax was named. The ex-Governor's shameful dishonor stands in stark contradistinction to the plaudits and esteem accorded another New Yorker, Yankee first baseman Lou Gehrig, whose name was given to a fatal debilitating disease.

**deferred compensation** (n.): 1. An arrangement eagerly and voluntarily entered into by a corporate officer for certain remuneration after termination of employment, in order to ensure continuation and advancement of his lifestyle during and after the time of his or her employment, but to minimize the tax consequences of such remuneration. 2. An arrangement reluctantly entered into by an hourly employee for dubious promises of remuneration after termination of employment, in order to afford the employer sufficient cash flow to ensure continuation and advancement of its officers' lifestyles.<sup>49</sup>

**Division of Tax Appeals** (n.): In New York, a governmental agency created by the Legislature in 1986 as an independent and impartial body for the efficient resolution of tax and licensing disputes.<sup>50</sup> In most of the cases it adjudicates, the Division either upholds the New York State Department of Taxation and Finance, or else finds that it lacks jurisdiction to hear the dispute in the first place.

**Earned Income Tax Credit** (n.): A Federal welfare program, in the guise of a tax credit scheme, that burdens an organization designed to be a tax-collecting agency with the task of distributing alms to the poor.<sup>51</sup> In practice, the IRS is ill-suited to the task, and is compelled either to administer a program rife with error, abuse and fraud,<sup>52</sup> or bear the political burdens of being designated as racist by the liberals if it attempts to correct the program's misadministration.<sup>53</sup>

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48. See Richard A. Hause, *Repeal of 'Cuomo Tax' Good for Investment*, N.Y.L.J., Nov. 18, 1996, at S-4; Jeffrey Schwartz, *Real Property Transfer Gains Tax Repealed*, N.Y. REAL EST. L. REP., Aug. 1996, at 8.

49. See I.R.C. § 401 (2000).

50. N.Y. TAX LAW § 2000 (McKinney 2004).

51. I.R.C. § 32 (2000).

52. See, e.g., *United States v. Cockett*, 330 F.3d 706, 708 (6th Cir. 2003); *United States v. Hollender*, 85 F. App'x. 787, 788 (2d Cir. 2004); *United States v. Ankamah*, 93 A.F.T.R.2d 1727 (S.D.N.Y. 2004), available at 2004 U.S. Dist. LEXIS 5816, at \*2-3; *United States v. Ledesma*, 313 F. Supp. 2d 662, 664 (S.D. Tex. 2004); see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-92, EARNED INCOME TAX CREDIT: IMPLEMENTATION OF THREE TESTS PROCEEDED SMOOTHLY, BUT TESTS AND EVALUATION PLANS WERE NOT FULLY DOCUMENTED 8-9 (2004).

53. See, e.g., Laurence D. Cohen, *Tax-Credit Audit Suit Doesn't Recognize Reality*,

**electronic filing** (n.): The Congressionally favored mode of filing a tax return,<sup>54</sup> which enhances the speed and efficiency with which the IRS can process returns and collect the revenue, and also the speed and efficiency with which the Treasury and individual taxpayers can be cheated by criminally-disposed tax return preparers and other fraudsters.<sup>55</sup>

**Emerald City** (n.): A work area at the Philadelphia Internal Revenue Service Center, named for its green padded cubicle dividers. IRS employees prefer Emerald City over the other work areas at the Center,<sup>56</sup> where the standard prison-manufactured "Unicor" desks presumably lack the green padding, thus posing a safety hazard to those IRS employees overtaken by psychotic episodes.

**enrolled agent** (n.): An individual who, though lacking credentials to practice as a Certified Public Accountant and/or a lawyer, possesses sufficient knowledge of and toleration for the Internal Revenue Code and the Treasury Regulations so as to merit IRS permission to represent taxpayers who deal with the IRS.<sup>57</sup> Despite their generally inferior educational qualifications and professional accoutrements, enrolled agents frequently are better adept at navigating the IRS bureaucracy when their own clients receive audit notices from the IRS than are the attorneys or accountants who engage them in the first place.

**extension** (n.): Additional time to file a tax return beyond the legal due date without the imposition of lateness penalties.<sup>58</sup> Extensions are usually granted for the asking when requested prior to the original due date for the return,<sup>59</sup> but a significant number of taxpayers and tax practitioners, unable to take "yes" for an answer, fail even to file their tax returns by the extended deadline.<sup>60</sup>

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CONN. L. TRIBUNE, Jan. 24, 2005, at 19.

54. Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, tit. II, § 2001(a), 112 Stat. 685, 723 (codified at I.R.C. § 6011 (2000)).

55. See, e.g., *United States v. Searan*, 259 F.3d 434, 438 (6th Cir. 2001); *United States v. Noah*, 130 F.3d 490, 494 (1st Cir. 1997); *United States v. Jones*, 52 F.3d 697, 699 (7th Cir. 1995).

56. Dep't of the Treasury, IRS Philadelphia Serv. Ctr., 98 F.S.I.P. 127, n.2 (1998), available at 1998 WL 666731, at \*3.

57. Treas. Reg. § 601.502 (as amended in 1992).

58. I.R.C. § 6081 (2000).

59. E.g., Treas. Reg. §§ 1.6081-2 to -5 (2005), Treas. Reg. § 20.6081-1(b) (as amended in 2001).

60. *In re Cole*, 328 B.R. 237, 240 (Bankr. M.D. Fla., 2005); *Sklar v. Commissioner*, T.C. Memo 2000-118, 2000 Tax Ct. Memo LEXIS 135 at \*10, *aff'd* 279 F.3d 697 (9th Cir. 2002), *as amended* 282 F.3d 610 (9th Cir 2002); *Beran v. Commissioner*, T.C. Memo 1980-119, n.9.



**failure to file syndrome** (n.): An often futile defense interposed to avoid the consequences of failing to file one's tax return, usually asserted with the facilitation of a mercenary psychiatrist, and asserted in disproportionate numbers by members of the legal profession who have neglected their tax filing duties.<sup>61</sup> Though the conventionally recommended medical treatment for the malady often is Prozac and psychotherapy, the IRS has achieved a very high cure rate through the use of an alternative medicine remedy known as enhanced tax enforcement.

**fair market value** (n.): "The theoretical price at which the property in question would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts."<sup>62</sup> An enterprising investor might realize great wealth by purchasing property for the fair market value which would be reported as a taxable gift on a gift tax return, and then immediately selling the same property for the fair market value which would be reported as a charitable deduction on an income tax return.

**fats** (n.): Envelopes thicker than three-eighths of an inch. Before the IRS's incoming mail can be machine-sorted, IRS personnel must manually remove the fats and flats (envelopes larger than 6½ x 11½ inches).<sup>63</sup> When the male IRS managers at the service center discuss the physical attributes of the female IRS personnel who sort the mail, however, the use of the terms "fats" and "flats" constitutes sexual harassment.

**flat tax** (n.): An income tax system that imposes a single percentage rate of taxation. Its proponents tout it as a solution for the complexity and uncertainty that has developed in the Internal Revenue Code of 1954, while its opponents abhor the unequal burdens it imposes upon different individuals of differing levels of disposable income. All agree that the current Code needs to be revised, but the compromise necessary to achieve passage of a new Code will, no doubt, lead to a flat tax with so many exceptions so as to be both inequitable and complex.

**flats** (n.): Envelopes larger than 6½ x 11½ inches.<sup>64</sup> See FATS.

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61. See Elliott Silverman and Stephen J. Coleman, *'Failure to File' Syndrome: Legal and Medical Perspectives*, N.Y.L.J., Feb. 4, 1994, at 1.

62. Rev. Rul. 68-69, 1968-1 C.B. 80.

63. Internal Revenue Manual § 3.10.203.4.1.1 (2005).

64. Internal Revenue Manual § 3.10.203.4.1.1 (2005).

**Free Moorish** (n., adj.): One who espouses the belief that he or she is governed by the Moorish Zodiac Constitution, and not by any American law, and is therefore exempt from taxation by the American government or any of its subdivisions.<sup>65</sup> Such sincere and strongly held beliefs do not appear to prevent their holders from accepting employment or compensation from the governmental entities whose very authority and legitimacy they deny.<sup>66</sup>

**frivolous** (adj.): 1. The IRS's interpretation of the timely postmark rule.<sup>67</sup> 2. Tax fraud arguments [*q.v.* TAX PROTESTER].<sup>68</sup> According to the IRS, any taxpayer position inconsistent with that taken by the IRS.<sup>69</sup> 3. The IRS's simultaneous contentions that certain taxpayers are able to pay more than their installment agreement offer, but that the same taxpayers are unable to afford what they have offered for an installment agreement.<sup>70</sup> The United States Tax Court is empowered to impose penalties upon litigants who assert frivolous arguments,<sup>71</sup> though the deterrent effect of such penalties is often nonexistent.<sup>72</sup>

**grossing-up** (vt.): The addition of the value of some tax paid to the basis upon which the tax is computed. Though commonly applicable in the context of domestic corporations electing a foreign tax credit<sup>73</sup> and deathbed gifts made by a decedent,<sup>74</sup> it is also used in the context of greedy executives who manipulate and conceal their bonuses and forgiven loans,<sup>75</sup> whiny employees who

65. See, e.g., *El v. Riverside Maint. Corp.*, 1999 U.S. App. LEXIS 7764, at \*2 (2d Cir. Apr. 14, 1999); *Bey v. Dialysis Clinic, Inc.*, 2001 U.S. Dist. LEXIS 2319, at \*3-4 (S.D.N.Y. Mar. 7, 2001); *Jackson-Bey v. Brady*, 1992 U.S. Dist. LEXIS 11912, at \*1 (D.D.C. Aug. 7, 1992); *Hawk-Bey v. United States*, 1989 U.S. Dist. LEXIS 822, at \*2-3 (E.D. Pa. Jan. 25, 1989); *Habersham-Bey v. Comm'r*, 78 T.C. 304, 307 (1982); *Ezekunu-Bey v. Comm'r*, 47 T.C.M. (CCH) 1180, (1984).

66. See, e.g., *Bey v. MTA/New York City Transit Auth.*, 2001 U.S. Dist. LEXIS 5818, at \*1-2 (S.D.N.Y. May 7, 2001); *Bey v. City of New York Dep't of Corr.*, 1997 U.S. Dist. LEXIS 14075, at \*2-3, 7 (S.D.N.Y. Sept. 16, 1997); *Dep't of Corr. v. Rivera*, New York City Office of Admin. Trials & Hrgs. Index No. OATH 1170/01 (May 29, 2001).

67. I.R.C. § 7502 (2000); *Anderson v. United States*, 746 F. Supp. 15, 17 (E.D. Wash. 1990).

68. *United States v. Cooper*, 170 F.3d 691, 692 (7th Cir. 1999).

69. *Walsh v. Comm'r*, 76 A.F.T.R.2d (RIA) 7714 (9th Cir. 1995), available at 1995 U.S. App. LEXIS 34715.

70. *Lites v. Commissioner*, T.C. Memo. 2005-206.

71. I.R.C. § 6673(a).

72. See, e.g. *Silver v. Commissioner*, T.C. Memo. 2005-281; *Roe v. Commissioner*, T.C. Memo 1993-633.

73. I.R.C. § 78 (2000).

74. See I.R.C. §§ 78, 2035(c) (2000).

75. *People v. Kozlowski*, Supreme Court of the State of New York, N.Y. Co., Amended Indictment No. 5259/02 (2002), *passim*.

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insist on keeping their company car privileges,<sup>76</sup> and umpires, referees and players who receive free athletic event tickets.<sup>77</sup>

**head of household** (n.): A particular status with respect to computation of the Income Tax.<sup>78</sup> Initially enacted as tax relief for widows and widowers having dependent children and who, being unmarried, were ineligible for the favorable tax treatment accorded married couples,<sup>79</sup> the collective qualificatory requisites in the statute impose the dual dysfunctional effects of rewarding women for bearing children out of wedlock, and penalizing the fathers of such children who, given their self-created predicament, choose to support their needy offspring.<sup>80</sup>

**informant** (n.): An individual who, being privy to confidential information regarding another's tax-related indiscretions, informs the taxation authorities of such indiscretions.<sup>81</sup> Informants have included daughters,<sup>82</sup> sisters,<sup>83</sup> estranged spouses,<sup>84</sup> former girlfriends,<sup>85</sup> financial consultants of the taxpayer,<sup>86</sup> disgruntled employees<sup>87</sup> and veterans of business deals gone sour.<sup>88</sup> They do not necessarily fit the stereotypes popularly held by members of society regarding snitches.<sup>89</sup> The motivations for such mercenary placement of country over common decency are usually patriotism, pecuniary reward, and vengeance, not always in that exact order. Those fortunate

76. *Gall v. Liberty Mut. Ins. Group*, 26 Empl. Ben. Cas. (BNA) 1635 (N.D. Ill. 2001), available at 2001 U.S. Dist. LEXIS 3408, at \*3-7.

77. *IRS calls a foul on free tickets perk*, NEWSDAY, Jan. 20, 2005, at A-47.

78. I.R.C. § 2(b) (2000).

79. Revenue Act of 1951, 65 Stat. 452, 480.

80. *Awtrey v. United States*, 69 A.F.T.R.2d (RIA) 857 (W.D. Ky. 1992), available at 1992 U.S. Dist. LEXIS 2472, at \*1-5.

81. I.R.C. § 7623; see also Arthur Gelb, *Tax Dodge Traced by Blood Pressure*, N.Y. TIMES, 30 November 1948, p. 29.

82. *Streber v. Hunter*, 1998 U.S. Dist. LEXIS 20730 at \*12 - \*13 (W.D. Tex. 1998), modified and remanded 221 F.3d 701 (5th Cir. 2000).

83. *In re Estate of Glassman*, 628 N.E.2d 666, 669 (Ill. App. 1994).

84. *United States v. Peters*, 153 F.3d 445, 447 - 448 (7th Cir. 1998), cert. denied 525 U.S. 1070 (1999); *United States v. Lefkowitz*, 618 F.2d 1313, 1318 (9th Cir. 1980), cert. denied, 449 U.S. 824 (1980); *Taxacher v. Torbic*, 2000 U.S. Dist. LEXIS 15193 (W.D. Pa. 2000), aff'd 251 F.3d 154 (3d Cir. 2000); *Turner v. Turner*, 809 A.2d 18, 27 (Md. App. 2002).

85. *United States v. Heubusch*, 295 F. Supp. 2d 240 (W.D.N.Y. 2003), vacated and remanded 2005 U.S. App. LEXIS 2678 (2d Cir. 2005).

86. *Wang v. Horio*, 45 F.3d 1362 (9th Cir. 1995).

87. *United States v. Feffer*, 831 F.2d 734 (7th Cir. 1987); *United States v. Snowadzki*, 723 F.2d 1427 (9th Cir. 1984), cert. denied 469 U.S. 839 (1984).

88. *Trompeter v. Commissioner*, T.C. Memo 1998-35, 1998 Tax Ct. Memo LEXIS 36 at \*27 - \*28, supplemented 111 T.C. 57 (1998), vacated and remanded 279 F.3d 767 (9th Cir. 2002), decision on remand T.C. Memo 2004-27.

89. See, e.g. *Pleasant v. Lovell*, 974 F.2d 1222 (10th Cir. 1992) (reciting that "Grandbouche" was the name of the person informed upon, and not the informant.).

enough to receive a reward from the IRS for informing are expected by the IRS to report the same on their income tax returns.<sup>90</sup>

**innocent spouse** (n.): A co-signatory of a joint personal income tax return who is sufficiently astute, erudite, perceptive and crafty to prove that he or (usually) she was totally clueless regarding, and had no reason to know about, the misstatements and omissions made on such tax return by his or her co-signatory spouse.<sup>91</sup> By the time the matter is adjudicated in the courts, the innocent spouse is frequently an ex-spouse.<sup>92</sup>

**intangible religious benefit** (n.): The prospect of improving one's future position in the World to Come, in return for a donation improving the current position of an organized religious establishment.<sup>93</sup> The donor receives a favored place in paradise, while the donee receives a tangible monetary benefit. Thus, a donation given for a sin indulgence granted by the Catholic Church would clearly be an intangible religious benefit that would not serve to offset the charitable deduction for the amount donated, while a payment given for an air pollution emission indulgence granted by the Environmental Protection Agency<sup>94</sup> would not.<sup>95</sup>

**interrelated calculation** (n.): A reiterative arithmetic process using mutually dependent variables, necessitated when the dollar amount of the tax to be paid is a factor in its own determination.<sup>96</sup> In 1924, the Supreme Court agreed with a taxpayer, who contended that Congress did not intend that taxpayers should need to perform such squirrel-cage mathematics in computing a tax.<sup>97</sup> Congress forthwith overrode the Supreme Court and required such mathematical gymnastics when it passed the Revenue Act that year,<sup>98</sup> to the consternation of taxpayer and tax collector alike, neither of whom had the benefit of access to the yet-to-be invented electronic computer.<sup>99</sup>

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90. *Ellis v. Comm'r*, No. 11098-03S, T.C. Summ. Op. 2004-170 (2004), available at <http://www.ustaxcourt.gov/inohistoric/el5lis.sum.wpd.pdf> (accessed February 5, 2006).

91. I.R.C. § 6015 (2000).

92. *See, e.g., Cheshire v. Comm'r*, 282 F.3d 326 (5th Cir. 2002), cert. denied 537 U.S. 881 (2002); *Becherer v. Comm'r*, T.C.M. (RIA) 2004-282 (2004).

93. I.R.C. § 170(f)(8)(B)(iii) (2000).

94. *See* 42 U.S.C. §§ 7651(o), 7651(b).

95. Rev. Proc. 92-91, 1992-2 C.B. 503, at Q. 7.

96. *Martin v. United States*, 923 F.2d 504 (7th Cir. 1991); Treas. Reg. 20.2055-3(a)(2) (as amended in 1999).

97. *Edwards v. Slocum*, 264 U.S. 61 (1924), *aff'g* 287 F. 651, 654 (2d Cir. 1923).

98. S. RPT. 398, 68th Cong., 1st Sess. (1924), reprinted in 1939-1 C.B. 2, 266, 290 (1924).

99. The Electronic Numerical Integrator and Computer (ENIAC) would not be

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**jock tax** (n.): The practice of making professional athletes pay to play, by reason of pro-rata application and enforcement of state and local income tax statutes upon non-resident professional athletes who engage in athletic contests within the jurisdiction.<sup>100</sup> The publicity value of such enforcement efforts is often worth at least as much as the money actually collected. Many tax collectors include not only the actual players, but the team officials and general managers as well.<sup>101</sup> The State of California, which has long comprehended the functional similarities between professional athletic events and motion pictures, also targets the movie actors in its enforcement efforts.<sup>102</sup>

**Joe Blow** (n.): An alias sometimes used by the hearing officers of the Illinois Department of Revenue (IDOR), in their administrative hearing decisions, to denote an individual who played a bit part behind the tax liability of a taxpayer denoted as John Doe, Jane Doe, or the ABC Corporation,<sup>103</sup> such names all being aliases and used by the IDOR to protect the taxpayers from public scorn and ridicule. Often living in or around Anywhere, Illinois,<sup>104</sup> Blow and the Does are likely descendants of one Plony who appears with frequency throughout the Talmud, and possibly of Captain Nemo from Jules Verne's *20,000 Leagues Under the Sea*.

**kiddie tax** (n.): The taxation of the investment income of a child under the age of 14 at his or her parents' tax rate.<sup>105</sup> While this provision may well render futile the reprehensible practice of wealthy parents making gifts of cash, stocks and bonds to their minor children, it also deprives the economy of a major source of capital by discouraging young financial prodigies from investing their money in the securities markets.

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invented and delivered to the government until 1946. *See Sperry Rand Corp. v. Bell Tel. Labs., Inc.*, 208 F. Supp. 598, 600-01 (S.D.N.Y. 1962), *app. dismissed* 317 F.2d 491 (2d Cir. 1963).

100. *See, e.g.*, Elizabeth C. Ekmekjian, *The Jock Tax: State and Local Income Taxation of Professional Athletes*, 4 SETON HALL J. OF SPORT L. 229 (1994); *see also* Wilson v. Franchise Tax Bd., 25 Cal. Rptr. 2d 282 (Cal. Ct. App. 1993); Hume v. Limbach, 575 N.E.2d 150 (Ohio 1991).

101. *See, e.g.*, *In re King*, New York State Tax Commission, No. 64858 (April 6, 1987).

102. *See Newman v. Franchise Tax Bd.*, 208 Cal. App. 3d 972, 256 Cal. Rptr. 503 (Cal. Ct. App. 1989).

103. *See, e.g.*, Matter of John Doe, as responsible officer of ABC Corp., Illinois Dept. of Revenue Office of Admin. Hearings, Dkt. No. ST-01-1 (Jan. 12, 2001); Matter of Jane Doe, Illinois Dept. of Revenue Office of Admin. Hearings, Dkt. No. ST-00-21, (Aug. 21, 2000); *see also* Matter of ABC Aviation, Inc. Illinois Dept. of Revenue Office of Admin. Hearings, Dkt. No. UT-02-3, (Aug. 6, 2002).

104. *See, e.g.*, Matter of John Doe, Illinois Dept. of Revenue Office of Admin. Hearings, Dkt. No. UT-02-2 (Apr. 30, 2002).

105. I.R.C. § 1(g) (2000).

**Klein conspiracy:** (n.): The snagging by the government of a tax evader through the creative application of a general Title 18 penal conspiracy statute instead of a tax-specific provision of the Internal Revenue Code,<sup>106</sup> focusing upon the IRS's information-gathering function instead of its tax-gathering function.<sup>107</sup> Having perfected the prosecution strategy against a tax evader named Klein,<sup>108</sup> the government has gotten much traction from it against numerous defendants, including another Klein<sup>109</sup> and one Gross.<sup>110</sup> At least one Federal prosecutor named Klein has invoked the Klein conspiracy theory against a defendant.<sup>111</sup>

**Kovel letter** (n.): A document memorializing an arrangement whereby a skilled, knowledgeable and experienced accountant agrees that he or she is a mere subservient functionary to a perplexed lawyer of limited skills, knowledge and experience, in order to legally preserve the confidentiality privilege attached to information and disclosures conveyed by a third party client of both the attorney and the accountant, where such client faces actual or potential criminal tax charges.<sup>112</sup>

**LIFO** (n.) [acronym: *last-in, first-out*]: An accounting method based upon the usually fictitious premise that a merchant's goods are stored in long, narrow closets having only a single access door, such that the newest goods must be sold in order to access and sell the older goods.<sup>113</sup> Enacted by Congress to insulate merchants and manufacturers from the additional income taxes resulting from appreciation of the value of inventory during inflationary times,<sup>114</sup> those taxpayers who elect

106. 18 U.S.C. § 371.

107. *United States v. Gambone*, 125 F. Supp. 2d 128, 131 (E.D. Pa. 2000), *aff'd* 314 F.3d 163 (3d Cir. 2003), *cert denied* 540 U.S. 815 (2003).

108. *United States v. Hyman Harvey Klein*, 139 F. Supp. 135, 141 (S.D.N.Y. 1955), *aff'd* 247 F.2d 908 (2d Cir. 1957), *cert. denied* 355 U.S. 924 (1958).

109. *United States v. Lee J. Klein*, 1994 U.S. App. LEXIS 4056 (6th Cir. 1994). (Lee J. Klein convicted of a Klein conspiracy); *see also* *Matter of Disbarment of Klein*, 512 U.S. 1266 (1994).

110. *United States v. Gross*, 1993 U.S. App. LEXIS 20612 (6th Cir. 1993); *see also* *Drug Dealer's Tax Man Sentenced to 3 1/2 Years*, Plain Dealer (Cleveland), March 11, 1994, p. 2B (reporting sentence imposed upon Robert P. Gross for conspiring to defraud the IRS).

111. *See United States v. Romer*, 148 F.3d 359 (4th Cir. 1998), *cert. denied* 525 U.S. 1141 (1999) (indicating that Assistant Attorney General Joel I. Klein was the lead government attorney on the brief).

112. *United States v. Kovel*, 296 F.2d 918, 919 (2d Cir. 1961).

113. I.R.C. § 472 (2000); *R. H. Macy & Co. v. United States*, 255 F.2d 884, 885 (2d Cir. 1958), *cert. denied*, 358 U.S. 880 (1958).

114. *Mohawk Liqueur Corp. v. United States*, 324 F.2d 241, 243-44 (6th Cir. 1963), *cert. denied*, 377 U.S. 905 (1964).

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the LIFO method must comply with diverse and often ambiguous requisites,<sup>115</sup> and can never really be sure whether the election was proper until after the IRS audits their tax returns.<sup>116</sup> While of great concern to tax accountants and IRS agents, the hypothetical use of LIFO has not been shown to have any effect upon whether the goods actually can sell; moreover, the actual use of such inventory management methods can cause great loss when perishable goods are involved.<sup>117</sup>

**Martin Luther King Day** (n.): The third Monday of the month of January, observed as a legal holiday by the Federal government and most Northern states. In the State of New York, this day has frequently occurred during a one-week period during which the imposition of the state sales tax for certain articles of clothing and footwear has been suspended by the State Legislators,<sup>118</sup> who, in addition to their desire to stimulate business during a usually slow period of the winter, deep in their hearts do believe that they shall overcome the resistance to the official holiday from the state's non-Negro inhabitants.

**multiple support agreement** (n.): An uncomfortable, written contractual relationship between two individuals, usually ex-spouses, giving one and only one the right to claim a third person as a dependent. Such an arrangement is necessitated by Congress' solomonic policy against cutting babies in half for income tax exemption purposes.<sup>119</sup>

**nonacquiescence** (n.): An affirmative statement by the IRS to the effect that it does not accept the precedential validity of a decision rendered against it by the Tax Court or other tribunal.<sup>120</sup> **syn:** LAWLESSNESS.<sup>121</sup>

**obesity** (n.): The physical condition of being extremely overweight from adipose accumulations caused by eating too much of the wrong types of food, coupled with insufficient bodily exercise. Though not a valid excuse for failing to timely file one's tax returns or pay one's taxes,<sup>122</sup> those who live irresponsibly

115. Treas. Reg. §§ 1.472-1 to -8 (as amended by 2005).

116. Treas. Reg. § 1.472-3(d) (as amended in 1973); *Consol. Mfg., Inc. v. Comm'r*, 249 F.3d 1231, 1233 (10th Cir. 2001).

117. See *Childers Distrib. Co., Inc. v. Comm'r*, 46 T.C.M. (CCH) 3 (1983), available at 1983 Tax Ct. Memo. LEXIS 547, at \*10-12.

118. 1998 N.Y. Laws 56, § 87; 1997 N.Y. Laws 687, § 5; 1996 N.Y. Laws 309, § 222.

119. I.R.C. § 152(c) (2000).

120. See Treas. Reg. § 601.601(d)(2)(ii)(a) (2005 as amended in 1987).

121. *Nunn v. Heckler*, 732 F.2d 645, 650 (8th Cir. 1984) (Arnold, J., dissenting) ("The Secretary's behavior is lawlessness in high places.").

122. See *Smith v. Comm'r*, 47 T.C.M. (CCH) 1233 (1984), available at 1984 Tax Ct. Memo LEXIS 556, at \*4, \*10-11.

enough to have this condition are, under certain conditions, heavily subsidized by the taxpaying public through a big fat medical expense deduction.<sup>123</sup>

**ordinary and necessary** (adj.): For deductions allowable from gross income, business expenses directly connected with or pertaining to the individual or corporate taxpayer's trade or business.<sup>124</sup> This can include the annual 4-day company fishing trip.<sup>125</sup>

**park** (vt.): To place one's motor vehicle in a particular space where it is intended to remain unused and stationary until such time as the operator returns to drive it away.<sup>126</sup> This ordinary act can have tax implications when the parking is provided gratis, by or at the behest of the operator's employer, in a facility where other members of the public are required to pay for the privilege.<sup>127</sup>

**parsonage exemption** (n.): A tax subsidy for the clergy that excludes from the clergy's income the fair market rental value of their home, furnishings and utilities.<sup>128</sup> Though initially used by Protestant ministers, it is now available to clerics of all faiths, and often negotiated as part of employment terms by enterprising clergy; this exemption is regularly allowed by the IRS, provided that the clergyman/woman does not become too entrepreneurial.<sup>129</sup>

**Presidential Election Campaign Fund** (n.): An opportunity for each American taxpayer to designate \$3.00 of his or her taxes towards the financing of Presidential elections.<sup>130</sup> Regardless of whether or not this statutory scheme has achieved its purported intent to insulate the Presidential selection process from the dictates of private vested interests,<sup>131</sup> it has utterly failed to improve the caliber of those who occupy the Oval Office.

123. See Rev. Rul. 2002-19, 2002-1 C.B. 778; *Al-Murshidi v. Comm'r*, No. 4230-00S, 2001 WL 1922698 (U.S. Tax Ct. Dec. 31, 2001).

124. See I.R.C. § 162(a) (2000); Treas. Reg. § 1.162-1(a) (as amended in 1993).

125. See *Townsend Indus., Inc. v. United States*, 342 F.3d 890 (8th Cir. 2003) (holding that Townsend's annual four day fishing trips were business trips).

126. See 60 C.J.S. Motor Vehicles § 10 (2005).

127. See I.R.C. § 132(f)(2)(B) (2000) (limiting employee's non-income parking fringe benefit to \$175 per month); see also Treas. Reg. § 1.132-9(b)(Q-8) (2001) (providing examples of amounts includable in employee wages when a qualified transportation fringe exceeds the statutory limit).

128. See I.R.C. § 107 (2000 & Supp. II 2000).

129. See Rev. Rul. 58-221, 1958-1 C.B. 53 (extending the parsonage exemption to Jewish rabbis).

130. See I.R.C. § 6096 (2000) (allowing individuals to designate \$3 of their taxes to the Presidential Election Campaign Fund); see also I.R.C. §§ 9001-9013 (2000) (the 'Presidential Election Campaign Fund Act').

131. See *Buckley v. Valeo*, 424 U.S. 1, 26 (1976) (per curiam).



**private letter ruling** (n.): An IRS decree interpreting and applying the nebulous tax laws to the particular situation of a particular taxpayer.<sup>132</sup> Historically, the IRS has fought unsuccessfully to keep such rulings secret in order to avoid accountability for such rulings, but the courts have ruled them to be in the public domain, albeit sanitized of identifying information.<sup>133</sup> Though these rulings do not constitute valid precedent for anyone other than the taxpayer to whom the ruling is directed,<sup>134</sup> the judiciary keeps the IRS honest by occasionally citing private letter rulings.<sup>135</sup>

**reasonable compensation** (n.): Normally an allowable deduction from gross income to reflect salaries and wages paid to employees,<sup>136</sup> but used with some frequency by the IRS as a subjective limitation in order to block the shifting of income from the high corporate income tax brackets to the more favorable personal income tax rates of its employees.<sup>137</sup>

**responsible party** (n.): In the case of the TRUST FUND TAX,<sup>138</sup> an accessible low hanging piece of fruit in the orchard.<sup>139</sup>

**Republic of California** (n.): Formerly a secession province from Mexico which eventually became the 31st State of the United States;<sup>140</sup> now an entity, frivolously claimed as the motherland by many seeking to evade paying the Federal Income Tax,<sup>141</sup> and frivolously asserted as separate and distinct from the *State* of California (albeit geographically coterminous with it) by some seeking to evade California state taxes.<sup>142</sup> Freeloading

132. See Treas. Reg. § 601.201(a)(2) (as amended in 2002).

133. See *Tax Analysts & Advocates v. IRS*, 362 F. Supp. 1298, 1310 (D.D.C. 1973), *modified*, 505 F.2d 350 (D.C. Cir. 1974).

134. See I.R.C. § 6110(k)(3) (2000).

135. See, e.g., *Rowan Cos. v. United States*, 452 U.S. 247, 261 n.17 (1981); *Western Co. of N. Am. v. United States*, 323 F.3d 1024, 1032 (Fed. Cir. 2003).

136. See I.R.C. § 162(a)(1) (2000).

137. See, e.g., *Owensby & Kritikos, Inc. v. Comm'r*, 819 F.2d 1315, 1318 (5th Cir. 1987), *aff'g* 50 T.C.M. (CCH) 29 (1985).

138. See *infra*.

139. See I.R.C. § 6672(a) (2000); see also *Howard v. United States*, 711 F.2d 729, 737 (5th Cir. 1983) (holding that a corporation's vice president was a "responsible party" personally liable for unpaid employment taxes).

140. See Karl Manheim & Edward P. Howard, *Symposium on the California Initiative Process: A Structural Theory of the Initiative Power in California*, 31 LOY. L.A. L. REV. 1165, 1174-1181 (1998).

141. See, e.g., *Farr v. Comm'r*, 74 A.F.T.R.2d (RIA) 6909 (9th Cir. 1994), *available at* 1994 U.S. App. LEXIS 33009, at \*8 (9th Cir. Nov. 10, 1991); *Urwyler v. Comm'r*, 1991 U.S. App. LEXIS 22635, at \*5 (9th Cir. Sept. 25, 1991), *aff'g in part & vacating in part* 59 T.C.M. (CCH) 376 (T.C. 1990); *Carter v. Rubin*, 77 A.F.T.R.2d (RIA) 1291 (N.D. Calif. 1995) *available at* 1995 U.S. Dist. LEXIS 20379, at \*5; *Wieman v. Schumanski*, 1995 U.S. Dist. LEXIS 9633, at \*3 (C. D. Cal. Mar. 21, 1995).

142. See, e.g., *In re Appeal of Alfons Castillo*, 1992 Cal. Tax LEXIS 28, at \*2 (Cal.

residents of other states, intent on evading taxes, have similarly opted for such a perverse republican form of government.<sup>143</sup>

**Service Center** (n.): One of several facilities established by the Internal Revenue Service for a particular arbitrarily-designated geographical area, each being headed by a Director who is invested with diverse powers, an official seal and related trappings of peerage and nobility,<sup>144</sup> and each facilitating the efficient and orderly mishandling, loss and/or destruction of tax returns, tax documents and tax payments filed by the taxpaying persons and entities.<sup>145</sup>

**shekel** (n.): A standard monetary coin in ancient Israel. An annual per capita tax of one-half shekel was formerly levied on all Hebrew males aged twenty and over.<sup>146</sup> In modern times, politically liberal Jews who oppose Israeli sovereignty over the entire city of Jerusalem are no doubt motivated, in most instances, by a subconscious or unspoken aversion to paying this levy to the Levites when the Temple is rebuilt.

**shoebox method** (n.): A common recordkeeping system, of great convenience but of questionable efficacy, whereby all slips of paper and other documents of possible relevance to one's financial affairs are placed and stored in a shoebox or similar repository, without any further indexing, tracking, arrangement or classification.<sup>147</sup> Referred to on at least one occasion as the "brown bag method."<sup>148</sup> A cigar box will likewise suffice quite well as a receptacle when using this method.<sup>149</sup> See BAG JOB; BROWN BAG METHOD.

State Bd. of Equalization July 30, 1992) (per curiam); *In re Shollenburg*, 2003 FDIC Enf. Dec. LEXIS 34, at \*7 (Mar. 11, 2003).

143. See, e.g., *In re Ingram*, 78 A.F.T.R.2d (RIA) 7677 (Bankr. S.D. Fla. 1996), available at 1996 Bankr. LEXIS 1943, at \*8 ("Republic of Florida."); *United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992) ("Republic of Idaho"); *United States v. Nash*, 175 F.3d 429, 431 (6th Cir. 1999) ("Republic of Michigan."); *United States v. Lyman*, 83 A.F.T.R. 20 (RIA) 354 (10th Cir. 1998), available at 1998 U.S. App. LEXIS 32232, at \*4 ("Republic of Utah."); *United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993) ("Indiana State Republic").

144. Treas. Reg. § 301.7514-1(a)(6) (as amended in 1995).

145. See, e.g., *Andrew Crispo Gallery, Inc. v. Comm'r*, 16 F.3d 1336, 1339 (2d Cir. 1994); *In re Ashe*, 228 B.R. 457, 459 (C.D. Cal. 1998); *Palihnich v. Comm'r*, 86 T.C.M. (CCH) 488 (2003); *Cook v. United States*, 52 Fed. Cl. 62, 67 n.5 (2002); U.S. GEN. ACCOUNTING OFFICE, Report B-221000, TAX ADMIN., INFORMATION ON IRS' PHILADELPHIA SERVICE CENTER, 31-39 (1985).

146. *Exodus* 30:13-15 (New Oxford Annotated).

147. See *In re Jackson*, Bk. No. 03-10717-JMD, 2004 Bankr. LEXIS 1758, at \* 8 (Bankr. D.N.H. Apr. 26, 2004); *Callahan v. Comm'r*, 71 T.C.M. (CCH) 2103 (1996); *Patterson v. Comm'r*, 39 T.C.M. (CCH) 82 (1979).

148. *Norgaard v. Comm'r*, 939 F.2d 874, 880 (9th Cir. 1991).

149. *Clark v. Comm'r*, 55 T.C.M. (CCH) 161 (1988); *Agnellino v. Comm'r*, 20 T.C.M. (CCH) 100 (1961), vacated on other grounds, 302 F.2d 797 (3d Cir. 1962).

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**signature** (n.): An arbitrarily imposed sine qua non requirement for a valid tax return.<sup>150</sup> A taxpayer's willful failure to sign a tax return is grounds for imposition of a penalty.<sup>151</sup> It remains unclear as to how the absence of a signature prevents or impedes the tax collector from collecting the taxes, and how the act of signing a tax return ensures said return's accuracy. Indeed, many returns bearing the taxpayer's signature have proven to contain grossly false and inaccurate information.

**summary opinion** (n.): An adjudication by the United States Tax Court in which the taxpayer, in order to save litigation costs, elects a simplified procedure, in return for which the Tax Court waives all accountability for adjudicating bad precedent in the case.<sup>152</sup>

**sting tax** (n.): (1) The 15% tax levied from 1986 through 1997 on excess distributions from qualified pension plans, such as those distributions occurring on occasion of the pensioner's destitution or death.<sup>153</sup> (2) The tax currently imposed when the passive investment income of a Subchapter S corporation includes accumulated earnings and profits exceeding 25 percent of gross receipts.<sup>154</sup> The former penalized those who, having saved their hard-earned money for retirement, needed to draw upon such money too soon, while the latter penalizes business owners who choose to inject capital into the securities markets. So much for the intent of the Internal Revenue Code of 1954, whose intent was "to remove inequities, to end harassment of the taxpayer, and to reduce tax barriers to future expansion of production and employment."<sup>155</sup>

**tax** (n., vt., adj.): "Taxes are what we pay for civilized society."<sup>156</sup> These gems of wisdom by Mr. Justice Holmes (and from a dissenting opinion, at that) have been carved in stone and placed above the main entrance to the Internal Revenue Service

150. I.R.C. § 6061(a) (2000).

151. Olson v. United States, 760 F.2d 1003, 1004-05 (9th Cir. 1985) (noting that I.R.C. § 6702 authorizes the imposition of a civil penalty on an individual who files a tax return containing insufficient or incorrect information); Christenson v. Dept. of Revenue, TC-MD 020893D, 2004 Ore. Tax LEXIS 97, at \*13 (Or. T.C. Aug. 30, 2004).

152. I.R.C. § 7463(b) (2000).

153. I.R.C. § 4980A (1994); see also Alvin D. Lurie, *Kwatcher's Dark Shadow Lengthens After Nationwide Mutual Insurance Co. v. Darden*, 46 TAX LAW. 1, 12 (1992).

154. I.R.C. § 1375 (2000); see also I.R.S. Priv. Ltr. Rul. 92-24-027 (Mar. 13, 1992); Deborah H. Schenk, *Complete Integration in a Partial Integration World*, 47 TAX L. REV. 697, n.97 (1992).

155. H.R. REP. NO. 83-1337 (1954), reprinted in 1954 U.S.C.C.A.N. 4025; S. REP. NO. 83-1622 (1954), reprinted in 1954 U.S.C.C.A.N. 4629.

156. *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

("IRS") Headquarters building, 1111 Constitution Avenue, Washington, D.C.<sup>157</sup> Few if any attorneys or judges know or care about the legal precedent established in Mr. Chief Justice Taft's majority opinion in the case (which lost much of its precedential value in 1946, when the Philippine Islands, of which Taft had previously served as Governor General, became independent of American sovereignty).<sup>158</sup> Though the inscription carved on the stone molding continues to impart dignity and direction to the IRS's ongoing efforts to battle the barbarians, it has utterly failed to make paying one's taxes a pleasurable experience.<sup>159</sup>

**Tax Anything Act (n.):** A current or former Pennsylvania statute giving cities and other municipalities free reign to impose, as they see fit, any tax or license fee on persons, transactions, occupations, privileges, subjects and personalty not otherwise subject to state taxes.<sup>160</sup> It has facilitated the taxation of gross receipts of a trade or business,<sup>161</sup> vending machines,<sup>162</sup> per capita, <sup>163</sup> parking,<sup>164</sup> bowling alleys and billiards tables,<sup>165</sup> drive-in theaters and roller skate rinks,<sup>166</sup> trailer parks,<sup>167</sup> and self-service storage establishments.<sup>168</sup> Many Pennsylvania municipalities would quickly become financially solvent if they would impose such a tax on prostitution, adult bookstores and/or plastic lawn ornaments.<sup>169</sup>

157. *Id.*; *IRS v. Citizens: There is No Excuse for Reported Government Violence Against American Taxpayers*, NEWSDAY (New York), May 4, 1998, at A30; Internal Revenue Service, Governmental Liaison Contacts (listing headquarters address for Internal Revenue Service), available at <http://www.irs.gov/govt/liasons/article/0,,id=133086,00.html> (last visited Feb. 5, 2006).

158. *Compañía General de Tabacos de Filipinas*, 275 U.S. at 87; Joseph R. L. Sterne, Editorial, *A Century-Old Lesson in Nation-Building*, BALTIMORE SUN, Sept. 5, 2003, at 13A (discussing Taft's professional history and role in the Philippines).

159. *Cf.* Dru Sefton, *Enthusiasts Don't Mind Having to Pay Taxes*, NEW ORLEANS TIMES PICAYUNE, Mar. 24, 2002, available at [http://www.responsiblewealth.org/press/rwnews/2002/tax\\_fairness\\_new\\_orleans.html](http://www.responsiblewealth.org/press/rwnews/2002/tax_fairness_new_orleans.html) (accessed February 5, 2006) (reporting on rare tax enthusiasts happy to pay taxes in exchange for government services).

160. *E.g.*, PA. STAT. ANN. tit. 53, § 15971 (West 1998); Local Tax Enabling Act, PA. STAT. ANN. tit. 53, § 6901 (West 1997), *repealed where inconsistent with* Act of July 2, 1986, P.L. 38 No. 77 at § 23, and Act of July 11, 1996, P.L. 602, No. 102 at § 4(a).

161. *See* *Gilberti v. City of Pittsburgh*, 511 A.2d 1321 (Pa. 1986).

162. *See* *Shultz v. O'Neill*, 21 Pa. D. & C.2d 255 (Pa. D. & C. 1959).

163. *See* *Plum Borough Sch. Dist. v. Schlegel*, 855 A.2d 939 (Pa. Commw. Ct. 2004).

164. *See* *Philadelphia v. Samuels*, 12 A.2d 79 (Pa. 1940).

165. *See* *Commonwealth v. McCarthy*, 3 A.2d 267 (Pa. 1938).

166. *See* *Coe v. Duffield*, 138 A.2d 303 (Pa. Super. 1958).

167. *See In re* Real Estate In Sandycreek Township, 184 A.2d 127 (Pa. Super. 1962).

168. *See* *N.E. Oxford Enters. LP v. City of Philadelphia*, 834 A.2d 650 (Pa. Commw. Ct. 2003).

169. *See* Evelyn Nieves, *Shutdown Looming at Nevada's Oldest Bordello*, N.Y. TIMES, July 19, 1999, at A10 (chronicling the tax revenues of a Nevada county brothel).

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**tax matters partner** (n.): A partner designated, if not by the partnership itself, by the IRS as the focal point for all partnership dealings with the taxation authority, in order to allow the IRS to deal with but a single whining, screaming and irrational taxpayer, instead of fifty or more.<sup>170</sup> Like the concentration camp capo, the tax matters partner is sometimes accorded certain minor privileges as a reward for aiding and facilitating the tax Nazis in their audit of and/or litigation against the partnership.<sup>171</sup>

**tax protester** (n.): One who believes, with great fervor, that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional; and who has convinced himself or herself that such preposterous beliefs all lead to the elimination of the obligation to pay taxes; and who acts upon such erroneous beliefs.<sup>172</sup>

**tax return preparer** (n.): One whose gainful employment entails the preparation of a tax return document for another person or entity.<sup>173</sup> The courts look askance upon tax return preparers who are lax or remiss in discharging their own personal tax duties and obligations.<sup>174</sup> Tax return preparers perform a vital service, and contribute materially to the sound functioning of the tax system, by aiding IRS officials and other such persons who have not the knowledge, skills or ability to prepare their own tax returns.<sup>175</sup>

**tax shelter** (n.): An investment scheme having little or no logic, promoted and managed by individuals having little or no expertise in the field of the business enterprise, and promising no useful benefit to the investor or society other than a loss that

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that generates one-eighth of the county's budget).

170. See I.R.C. § 6231(a)(7) (2000).

171. See *Carroll v. United States*, 198 F. Supp. 2d 328, 335 (E.D.N.Y. 2001), *remanded on other grounds*, 339 F.3d 61 (2d Cir. 2003) (illustrating a scenario where the IRS refrained from prosecuting a tax matters partner in an independent legal action in exchange for his assistance in auditing a company); *Accord Thompson v. United States*, 223 F.3d 1206, 1208 (10th Cir. 2000).

172. *Coleman v. Comm'r*, 791 F.2d 68, 69 (7th Cir. 1986).

173. I.R.C. § 7701(a)(36) (2000); Treas. Reg. § 301.7701-15 (as amended in 2002).

174. See *McDonald v. Comm'r*, 71 T.C.M. (CCH) 2244 (1996); *McCarron v. Comm'r*, No. 8383-00S, 2004 WL 232138 (U.S. Tax Ct. Feb. 9, 2004).

175. See, e.g., Joy Vestal, *Newsmaker: Carol Landy*, NEWSDAY (New York), Apr. 11 1995, at A22 (quoting statement of Carol Landy, Director of the Internal Revenue Service Center, Brookhaven, NY: "I don't do my own tax return. I'm afraid to make a mistake."); James Toedtman, *Mr. Fix-It to the Rescue: IRS Chief Takes on Agency, Taxpayers, Employees, Critics*, NEWSDAY (Long Island, NY), Mar. 29, 1998, at F-8 (reporting that then Internal Revenue Commissioner Charles O. Rossotti has his taxes prepared by professionals); David Cay Johnston, *Spending It: Need Tax Help? So Do the Experts in Washington*, N.Y. TIMES, Apr. 14, 1996, § 3 at 8 (reporting that then Internal Revenue Commissioner Margaret Milner Richardson, a tax lawyer, uses professional help to prepare her income tax return).

might be used to offset income and result in the reduction of the investor's overall taxes. Promoters of such investments have great potential for financial gain if the scheme is approved by the IRS on account of a technicality and/or evades IRS muster.<sup>176</sup>

**tax simplification** (n.): The legislative repeal of a verbose, 1,500 word section of the Internal Revenue Code, and the replacement of the same with a different section of a different designation and consisting of 80 words. In order to administer and enforce the new statutory section, the Treasury Department invariably proceeds to immediately promulgate four or five separate Treasury Regulations of 700 to 4,500 words each.

**tobacco** (n.): A solanaceous weed which has been carved in stone on the internal architectural motifs of the United States Capitol building, and cultivated as the chief source of nicotine, an addictive carcinogenic alkaloid. In Colonial times, a medium of exchange for the payment of taxes;<sup>177</sup> currently a commodity upon which diverse Federal and state excises are levied, often under the pretext of underwriting the government's expenditures for the medical care of nicotine addicts, such excises exceeding by a large factor of the cost of the weed itself.<sup>178</sup>

**tough agent** (n.): An auditor for the Internal Revenue Service, or state taxation authority, who is competent, meticulous, resourceful, and not susceptible to bribes.<sup>179</sup> See CAREER MAN. Can sometimes be abrasive to the taxpayer, but such abrasiveness is overlooked by the courts when the taxpayer is less than fully cooperative.<sup>180</sup>

**trust fund tax** (n.): A legal fiction, using common law trust principles, by which the IRS and/or the various state taxation authorities can effect the collection of taxes withheld from employees' paychecks by those who were not trustworthy enough to remit the withheld funds to the public in the first instance.<sup>181</sup>

176. I.R.C. § 6662(d)(2)(C) (2000).

177. See, e.g., An Act, for settling the Allowance on Tobacco paid in the County of Lunenburg, in Discharge of Public Debts (Apr. 12, 1746), in 7 JOURNALS OF THE HOUSE OF BURGESSES OF VIRGINIA, at 220 (H. R. McIlwaine, ed., Va. State Libr., 1909); A bill appointing how Sherrifs & Collect<sup>ors</sup> shall acco<sup>unt</sup> for publicke dues & the times appointed for all persons to demand and tender tobacco, *id.* vol. 2 (1659/60 - 1693), at 463.

178. See, e.g., I.R.C. § 5701(b) (2000) (imposing tax of \$.39 per pack of 20 small cigarettes, and tax of \$.819 per pack of large cigarettes); N.Y. TAX LAW § 471 (McKinney Supp. 2005) (imposing tax of \$1.50 per pack of 20 cigarettes); N.Y. COMP. CODES R. & REGS. tit. 11 § 1302(a)(3) (2004) (imposing tax of \$1.50 per pack of 20 cigarettes); see also N.Y. TAX LAW § 1101(b)(4)(iii) (McKinney 2004) (requiring that the excise taxes be included in the price used to determine the sales tax on cigarettes).

179. See *United States v. Witt*, 215 F.2d 580, 582 (2d Cir. 1954), *cert. denied* 348 U.S. 887 (1954).

180. See *2121 Arlington Heights Corp. v. Comm'r*, 109 F.3d 1221, 1226 (7th Cir. 1997).

181. I.R.C. §§ 6672(a), 7501(a) (2000).

**uncodified provision** (n.): A tax statute enacted by Congress but not included in the Internal Revenue Code. Uncodified statutes have the full force of law.<sup>182</sup> In the case of an uncodified provision enacted for the sole benefit of a privileged politically-connected individual or entity,<sup>183</sup> its absence from the Internal Revenue Code simplifies tax administration by sparing much unnecessary ink and paper, but when the uncodified provision has general application, its absence from the Internal Revenue Code causes greater complications than would occur if the provision were codified.<sup>184</sup>

**untimely** (adj.): In the case of a tax return, tax payment or Tax Court petition, a document or payment filed with or remitted to the IRS, Tax Court or state taxation authority after the prescribed filing or payment deadline. Viewed by the taxation bureaucracy as an opportunity to augment the public revenue through the imposition of penalties and interest. As a practical matter, however, such penalties and interest are not imposed when it is the IRS that is submitting the document to Congress after the prescribed deadline has passed.<sup>185</sup>

**use tax** (n.): An alias for the sales tax, and imposed upon goods and services transactions that would otherwise escape the familiar exaction customarily made at the merchant's cash register. Thus, a matchbook provided in the hotel guest room is subject to sales tax at check-out as part of the traveler's lodgings,<sup>186</sup> while a similar matchbook placed in the hotel's lobby or bar for free accession and taking by members of the public is subject to the use tax imposed upon the hotel.<sup>187</sup>

**voluntary compliance** (n.): The American system of self-assessment in the timely initial filing of a tax return and

182. U.S. Nat'l Bank v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 448 (1993).

183. See, e.g., Tax Reform Act of 1986, Pub.L. No. 99-514 § 1423, 100 Stat. 2717 ("Jim Thompson Act" for the benefit of the family of silk magnate James H. W. Thompson).

184. Compare Economic Recovery Tax Act of 1981 ("ERTA"), Pub. L. No. 97-34, § 403(e)(3), 95 Stat. 172, 305 (uncodified transitional rule for testators' wills executed pre-ERTA) with *In re* Estate of Pouser, 975 P.2d 704 (1999) (arguing over application of ERTA § 403(e)(3)); *Estate of Libeu*, 253 Cal. Rptr. 456, 461 (Cal. Ct. App. 1988) (arguing over application of the same section); *In re* Estate of *Hickok*, 552 N.Y.S.2d 49 (N.Y. App. Div. 1990), *appeal denied*, 565 N.E.2d 516, (N.Y. 1990) (arguing over same); *In re* Estate of Eversole, 885 P.2d 657, 662 (Okla. 1994) (arguing over same).

185. Compare Taxpayer Bill of Rights 2, Pub. L. No. 104-168 § 401, 110 Stat. 1452, 1459 (1996) (requiring the Treasury Department to conduct studies on joint and several tax liability of spouses, and to report its findings by 30 January 1997), with U.S. TREASURY, REPORT TO CONGRESS ON JOINT LIABILITY AND INNOCENT SPOUSE ISSUES (1998) (submitted more than one year late).

186. *Hilton Hotels Corp. v. Bowers*, No. 48023, 1982 Ohio Tax LEXIS 539, at \*5 (Ohio Bd. Tax App. July 31, 1982).

187. *Hotel Metropole, Inc. v. Bowers*, No. 38608, 1959 Ohio Tax LEXIS 4, at \*2 (Ohio Bd. Tax App. Jan. 13, 1959).

calculation of the tax, and the payment of the proper amount of the tax. The system preserves the personal liberties held precious by Americans, and is, in the long run, far less expensive, uncomfortable and invasive to the taxpayer than being subjected to the well known and dreaded processes used by the Treasury to compel payment of imposts not voluntarily calculated, reported and tendered.

**war tax** (n.): Any of numerous excises or levies of now or yore whose imposition was motivated by the need to finance a particular military effort. The current Federal Income Tax had its origins in such an impost to finance the Civil War.<sup>188</sup> Many private citizens having sentiments against such military activities arbitrarily pick and choose which taxes or portions thereof they will forego paying, in order to not be party to such military activities.<sup>189</sup> Though the nonpayment of taxes coincidentally provides obvious monetary benefit to such alleged conscientious objectors, some actually have the integrity to part with the tainted funds by placing them in escrow for non-military purposes,<sup>190</sup> or avoid engagement in activities to which the war tax applies.<sup>191</sup> One who would resist paying a war tax must consider, in addition to the IRS's well-known and predictable responses to the nonpayment of taxes, the possible repercussions from the military establishment, which has a long memory in its own right.<sup>192</sup>

**withholding taxes** (n.): The coercive impressments by the Treasury of an employer into legalized larceny through the diminution of an employee's nominal compensation, all in the name of the efficient collection of the revenue.<sup>193</sup> The actual collection is sometimes of questionable efficiency, but it does keep Treasury personnel out of the direct line of fire from the pistols of

188. Act of July 1, 1862, ch. 119, §§ 89-93, 12 Stat. 432, 473-75.

189. See, e.g., *Dalton v. United States*, 800 F.2d 1316, 1318 (4th Cir. 1986); *Bersbach v. United States*, No. 84-0021-B, 1985 U.S. Dist. LEXIS 20634, at \*2-3 (D. Maine Apr. 17, 1985); *Greenberg v. Comm'r*, 73 T.C. 806 (1980); see also I.R.S. Priv. Ltr. Rul. 7904001 (June 30, 1977).

190. E.g., *Darling v. United States*, 352 F. Supp. 565 (E.D. Cal. 1972); *Egnal v. Comm'r*, 65 T.C. 255 (1975).

191. See, e.g., *United States v. Gardiner*, 310 F. Supp. 364, 366-67 (E.D.N.Y. 1970).

192. Compare *Darling*, 352 F. Supp. at 566 (highlighting Darrell W. Darling's previous lawsuit over paying his excise taxes to a trustee in an attempt to avert supporting the Vietnam war), with *Murphy v. United States*, 340 F. Supp. 2d 160 (D. Conn. 2004) (dismissing action to contest Air Force's denial of Military Claims Act benefits claim brought by, *inter alia*, Darrell W. Darling on account of his son Adam Noel Darling's death on April 3, 1996, in an airplane crash in Croatia while on mission with Commerce Secretary Ron Brown).

193. See generally I.R.C. § 3402 (2000).



vengeful employees,<sup>194</sup> who often deal directly with their employers. (vt.): The obligation so imposed upon an employer.

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194. See, e.g., Elizabeth Mehren, *Massachusetts Man Convicted of Office Massacre*, L.A. TIMES, Apr. 25, 2002, at A1 (describing a workplace massacre that was the result of a tax withholding dispute between employer and the defendant employee).