

# LIBERTY TREE

Vol. 7 Number 10 — September, 2005

## NEW TWIST

### on an OLD SCAM

code of  
federal regulations

Fellowship members who have done their homework should be aware of the fraud perpetrated by the IRS known as Substitute for Return (SFR) procedures. These procedures are treated as if they are the implementation of Internal Revenue Code (IRC) § 6020(b). Yet, even the most cursory comparison of the practice to the statute shows that this is not the case. Here is the statute:

*(b) Execution of return by Secretary.*

*(1) Authority of Secretary to execute return.--If any person fails to make any return required by any internal revenue law or regulation*

*made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.*

*(2) Status of returns.--Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.*

This requires the Secretary to make “any return required by any internal revenue law or regulation” which has not been made by the person originally required by law to make it. The Secretary is to make such returns from his own knowledge and from any other information he is lawfully authorized to get. But the most important aspect of 6020(b) returns

is that they must be “subscribed by the Secretary” to be given the status of “*prima facie* good and sufficient for all legal purposes.”

*Subscribe*, according to Black’s Law Dictionary, means “*Literally to write underneath, as one’s name. To sign at the end of a document.*” Further, all the forms used for returns require the signature to be made under penalties of perjury. The reason for this is that someone, somewhere along the line, has to swear that the information is true, because the assessment officer who signs (certifies) the Summary Record of Assessments can’t possibly have personal knowledge of the tax liabilities of all those he is assessing. Instead, he must rely on the sworn testimony of others: either the taxpayers on their own return, or the Secretary (or his delegate) on the returns filed under § 6020(b).

This coincides with § 6201(a)(1), which establishes the assessment authority for “all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.” Despite the explicit requirement that § 6020(b) returns be signed (while § 6065 and the Form 1040 demand it be under penalties of perjury), the practice of the IRS has always been to generate Form 1040s with nothing on them other than the person’s name, address, and TIN. They use this “dummy return” to open up a tax module on the Individual Master File (IMF), and go through deficiency procedures to get to that point in time when assessments can be made.

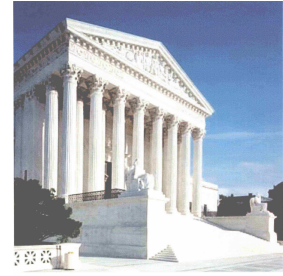
But what can be the point of all this procedural sleight-of-hand, other than a clear design to avoid swearing that their determinations are true and correct? Especially when you consider their alterna-

## ***Hot off the Press!***

Prompted by the Supreme Court's outrageous action ignoring the actual language of the 5<sup>th</sup> Amendment by declaring that private property may be seized by government and turned over to private developers for their personal gain, and the long history of abusive federal case law, the Fellowship's Fiduciary wrote this comprehensive documentary of the actual jurisdictional authority of the federal courts.

This treatise is not only an enlightening tool for the Patriot, but is ideal for dissemination to those thousands of uninformed Americans who are not only shocked by this attack on private property, but also concerned about the possibility of their own property being in jeopardy.

### ***Do Courts Have Law Making Powers?***



***John Baptist Kotmair, Jr.***

Cost: 8 FRNS ea. or 5 FRNS each for 5 or more, ppd.. For 25 or more, call for a price. See page 4 to learn how to order.

*(Continued from page 1)*

tive—enter the necessary information on the required return, calculate the tax, sign it under penalties of perjury, and ASSESS! This is like the fast track to assessments: it provides for the least possible delay until notice and demand can be sent, marking the beginning of collection actions. And yet, they made a conscious decision not to assess that way. Eventually, they tired even of the thin charade of filing a dummy return, and began merely entering a transaction code in the IMF which *indicates* that an SFR has been filed. In time, someone filed a suit about the assessment of a penalty that relied on the existence of an “amount shown as tax on any return.” Not even Tax Court, the IRS' own administrative appeals board, could approve penalties when the IRS never even bothered to make a return at all.

To solve that problem (that is, in order to continue assessing that particular penalty), the IRS began using a Form 13496, “IRC Section 6020(b) Certification” to falsely *certify* that a collection of documents, **none of which are a signed return**, have been magically transformed into a signed return, merely by claiming it to be so. Of course, as Abraham Lincoln once pointed out, calling a sheep's tail a leg doesn't result in a sheep having five legs. Likewise, an IRS officer's certification can't alter reality either. The collection of documents are no more a signed return after such a certification than they

were before it. And there was no justification for even making such a claim in the first place, since nothing within § 6020(b) authorizes anything other than the required signed return to be “good and sufficient for all legal purposes.”

The IRS has recently decided to justify their practice after the fact, by initiating the process to change the regulation for § 6020(b). They did this by publishing a new proposed regulation for 26 CFR § 301.6020-1 on page 41,144 of the Federal Register on July 18, 2005. Part of this process is the opportunity for the public to submit comments and even to request a public hearing concerning the proposed regulation. Such comments and requests must be received by October 17, 2005 at the following addresses:

Send submissions to: CC:PA:LPD:PR (REG-131739-03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. ... Alternatively, taxpayers may submit comments electronically via the IRS Internet site at <http://www.irs.gov/reg> or via the Federal rulemaking Portal at <http://www.regulations.gov> (IRS and REG-131739-03).

So, Fellowship members, this is your chance to be heard. You can find the proposed regulation at

*(Continued on page 3)*



www.gpoaccess.gov/fr/index.html. Type "Substitute for Return" (including quotes) into the search box for Vol. 70. The first hit should be the text of the regulation (page 41144) and the second hit should be the notice for comments (page 41165). Read what the IRS intends to implement, and let them know what you think about it. Write to them if you're concerned that this proposed regulation attempts to equate a return signed under penalties of perjury with a collection of documents signed only to certify that it *is* what it plainly *is not*.

It's important to remember that the signature contemplated by the statute certifies that the information shown on the return is true, while the signature contemplated by the proposed regulation certifies only that it constitutes a return for purposes of § 6020 (b), which of course is not true. Thus, the regulation does not implement the statute, but attempts to side-

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step the requirement that assessments must be based upon sworn statements found on signed returns. Essentially, this amounts to a return being deemed *prima facie* good, not because someone has sworn that it's true, but merely because someone has claimed that it's a return. It could hardly be more ridiculous.

One final word on submitting your comments: notice that the electronic alternative specifically refers only to comments, so anyone who intends to request a public hearing may want to use the first address listed above. It would probably be a good idea to also send them by certified mail, so that you will have a receipt to show for it.



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Larry Becraft, a leading exponent in the Constitutional Revivalist Movement, has written a really excellent article explaining what regulations are, and their history. Here's an excerpt:

*Prior to 1935, much of the internal documentation of federal agencies, as well as regulations promulgated by federal agencies to administer and enforce a variety of federal statutes, was not published and generally made available to the American public, notwithstanding the fact that such documentation and regulations purported to impose mandatory obligations. The first act which commanded the publication of agency requirements which affected the public was the Act of July 26, 1935, 49 Stat. 500, ch. 417; this act created the Federal Register and compelled federal agencies to publish therein agency orders and regulations (see §§ 4 and 5 of the act). To insure agency compliance with the act's requirements, § 7 provided as follows: "No document required under section 5(a) to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof."*

*An expansion of items required to be published in the Federal Register occurred as a result of the enactment of the Administrative Procedure Act; see Act of June 11, 1946, 60 Stat. 237, ch. 324. \* \* \* Further, the act established a certain method whereby agencies were to publish in the Federal Register proposed and final agency rules and were to accord public hearings in reference thereto. The well known requirements that federal agencies provide adjudication of certain contested matters, subject to judicial review, was established for the first time in this act. \* \* \* The benefits to the American public derived from the adoption of this act are many. For example, without the requirement to publish statements of the agency's organization, a party would not know, as a matter of law, what part of an agency was the proper unit or division responsible for the resolution of a particular problem, what part of an agency had enforcement authority, or what part of an agency was designated to receive "submittals" required of the public. \* \* \**

*As amended, the above noted statutes continue their existence today, codified within 5 U.S.C. §§ 551 through 558. These sections within Title 5 require that federal agencies must publish in the Federal Register a variety of information which affects the rights, duties and obligations of members of the public.*

You may find the entirety of Becraft's article at: <http://fly.hiwaay.net/~becraft/APAbrief.htm>. You might want to check out the rest of his extensive website.



## Shouldn't you make every effort possible to save our Constitutional Republic?

If you agree that the Fellowship program is a necessary element in this struggle to bring those in government back under the law, is it not worth the support needed to keep the Fellowship operating?

If you agree that a talk radio network would be a viable tool in restoring truly constitutional government, is it not worth the support needed to make it a reality?

In order to bring those in government back under the law, more than money is needed — your personal effort and some of your time is needed.

We're not saying that you should not send the 5 FRN monthly donation, for this donation more than once has kept the Fellowship HQ doors open. We are asking you to make every effort to become involved not only with your money, but also with some of your time. We are asking you to attend the Fellowship Independent Representatives' Conference, where plans will be developed to accomplish our goals. We are asking you to then be active in carrying out these plans in your local area. Isn't your and your children's Liberty worth such effort?

Please do not delay forwarding your monthly donation, and do make every effort to be a participant at the IR Conference November 4<sup>th</sup> through the 6<sup>th</sup>. Call 410-857-4441 for more details.

### ANNOUNCEMENTS

- ♣ The pleadings, motions, etc. for the IRS' Petition for a Permanent injunction are available on our website, [www.save-a-patriot.org](http://www.save-a-patriot.org).
- ♣ *Just the Facts* is now available on DVD for only 110 FRNS. This is about half the price of the VCR audio cassettes.
- ♣ SAPF Saturday night meetings can be heard on:  
[www.save-a-patriot.org](http://www.save-a-patriot.org)

### IR Conference:

**If you are planning on attending the November 4-6 Conference—and you should—you can call (410) 857-4441 ext. 100 for information on motels and transportation.**

## Octoberfest

Every year, several members set up a booth at the Octoberfest Festival in Annapolis, Maryland. We set up tables with literature, t-shirts, etc., and talk to passersby. We are quite well received, and many take more of an interest in this great country and our liberties—or lack thereof. We are “lighting candles,” and encourage you to do the same.

### *Do Courts Have Law Making Powers?*

This is the kind of booklet that needs to be passed around to friends and loved ones, for it is our collective ignorance that is ultimately killing this country. To order John B. Kotmair Jr.'s insightful booklet that explains the problems with our courts, and the law generally, he identifies the problem *and the solution* in a nutshell (36 pages). Send 8 FRNS for each copy; or 5 FRNS each for orders over 5, ppd. to:

**Save-A-Patriot Fellowship  
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