

Chapter 9:
The Law of Presumption

A nonresident alien who has filed one or more Forms 1040 in the past is *presumed* by the IRS to be an individual who was required to file those forms. The filed forms entitle the IRS to presume that this individual either was *required* to file, or *elected* to be treated as one who *is* required to file. Such a requirement would be triggered by changing to resident status, changing to citizen status, and/or opting to derive income from a source inside the federal zone (like federal employment). Accordingly, the IRS is entitled to presume that this nonresident alien has "volunteered" to become a "taxpayer", that is, a person who is subject to any internal revenue tax.

Quite apart from the day-to-day assumptions we all make about life in general, the term "presumption" has a very special meaning in law. A presumption in law is a logical inference which is made in favor of a particular fact. The Uniform Commercial Code ("UCC") defines "presumption" and "presumed" as follows:

"Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

[UCC 1-201 (31)]

Black's Law Dictionary, Sixth Edition, defines "presumption" as follows:

A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. ... A legal device which operates in the absence of other proof to require that certain inferences be drawn from the available evidence.

There are, in law, two different and directly opposite kinds of presumptions: a conclusive presumption and a rebuttable presumption. A *conclusive* presumption is one for which proof is available to render some fact so "conclusive", it cannot be rebutted. To "rebut" a fact is to expose it as false, to disprove it. Thus, a "rebuttable fact" is one which can be disproven and exposed as false. In other words, a rebuttable fact is a lawyer's way of describing a fact that is not a fact. (1984 was a long time ago; the book 1984 is even older than that.)

The opposite kind of presumption is a rebuttable presumption. A *rebuttable* presumption is a one that can be overturned or disproven by showing sufficient proof. We are interested primarily in this second type of presumptions -- rebuttable presumptions -- because the Code of Federal Regulations makes explicit certain presumptions about nonresident aliens. The regulations have this to say about the proof of alien residence:

Proof of residence of aliens.

- (a) *Rules of evidence.* The following rules of evidence shall govern in determining whether or not an alien within the United States** has acquired residence therein for purposes of the income tax.
- (b) *Nonresidence presumed.* **An alien by reason of his alienage, is presumed to be a nonresident alien.**

[26 CFR 1.871-4, emphasis added]

The regulations are very clear about a key presumption which the IRS does make about aliens. Because of their "alienage", that is, because of their status as aliens in the first place, all aliens are *presumed* by Treasury regulations to be nonresident aliens. This presumption is built into the law, because the Code of Federal Regulations is considered to have the force of law.

(The CFR is judicially noticed, and courts have ruled that the CFR is a supplement to the published Federal Register, which puts the general public on actual notice too.)

This presumption is not a *conclusive* presumption, however; it is a *rebuttable* presumption. The regulations establish the rules by which this presumption can be rebutted or disproven, as follows:

Other aliens. In the case of other [not departing] aliens, the presumption as to the alien's nonresidence may be overcome by proof --

- (i) That the alien has filed a declaration of his intention to become a citizen of the United States** under the naturalization laws; or
- (ii) That the alien has filed Form 1078 or its equivalent; or
- (iii) Of acts and statements of the alien showing a definite intention to acquire residence in the United States** or showing that his stay in the United States** has been of such an extended nature as to constitute him a resident.

[26 CFR 1.871-4]

Filing a declaration of intent to become a U.S.** **citizen** will "rebut the presumption". Acts or statements by aliens showing a definite intent to acquire **residence** will also "rebut the presumption".

Form 1078 is a Certificate of Alien Claiming Residence in the United States**. The IRS Printed Product Catalog, Document 7130, describes this form as follows:

1078

171951

(Each)

Certificate of Alien Claiming Residence in the United States

Who May File. A resident alien may file the original and one copy of this certificate with the withholding agent **to claim the benefit of U.S.** residence for income tax purposes.** (A withholding agent is responsible for withholding tax from your income.) *D:RF:F* Tax Form or Instruction

[page 10, emphasis added]

Notice, in particular, the explicit reference to "the **benefit** of U.S.** residence for income tax purposes". What are the benefits of U.S.** residence for income tax purposes? Recall, from the previous chapter, the "benefits" of being under the protection of Congress and thereby subject to its exclusive jurisdiction. The actual scope of Social Security, for example, is limited to the federal zone, except for those outside the zone who wish to partake of its "benefits" voluntarily. Under the law of presumption, your use of a Social Security Number can be seen by the federal government as proof that you have opted to obtain benefits from the federal zone. Form 1078 is likewise ready-made for those who *begin* as nonresident aliens, but later opt to declare themselves "resident" in the United States** in order to claim the benefit of that "residence". Simply stated, Form 1078 declares a nonresident alien to be a "resident" for income tax purposes. It moves nonresident aliens out of the square at row 2/column 2 in *The Matrix*, and into the square at row 1/column 2.

There are other ways by which the presumed nonresidence of aliens can be rebutted, or disproven, thereby moving their four-square checkers into a square that is within the federal zone. The regulations make reference to Form 1078 **or its equivalent.** (Try to find a definition of the term "equivalent" in the statute or its regulations.) If nonresident aliens sign a Form W-4, for example, they are presumed to be government employees with income from a source *inside* the federal zone. Employers are to treat all employees as "residents" and to withhold pay as if the employers have not been instructed otherwise.

Notice how the presumption has shifted. Contrary to the regulations at 26 CFR 1.871-4 (quoted above), employers are told by the IRS to make the opposite "presumption" about the residence of their employees, even if they are not true "employees" as that term is defined in the IRC. If individuals have W-4 and W-2 forms, the presumption is that they were either required to sign these forms, or they have made elections to be treated as residents. Recall that the instructions for Form 1040NR describe the "election to be taxed as a resident alien". This is accomplished by filing an income tax return on Form 1040 or 1040A, and attaching a statement confirming the "election".

An extremely subtle indicator of one's status is the perjury oath which is found on IRS forms. Under Title 28 of the U.S. Code, Section 1746, there are two different perjury oaths to which penalties attach: one *within* the United States**, and one *without* the United States** (see Appendix R for the precise wording of 28 U.S.C. 1746). If an oath is executed *without* the United States**, it reads as follows:

I declare ... **under the laws of the United States of America** that the foregoing is true and correct.

[emphasis added]

If an oath is executed *within* the United States**, it reads as follows:

I declare ... that the foregoing is true and correct.

Thus, your signature under the latter oath can be presumed to mean that you are already **subject** to the jurisdiction of the United States**. This latter oath is the one found on IRS Form 1040.

Federal courts now appear to be proceeding on the basis of the presumption that we are all "citizens of the United States**" because the courts have shifted onto defendants the burden of proving that they are not "citizens of the United States**". Despite the obvious logical problem that arises from trying to prove a negative, the United States District Court in Delaware ruled as follows when it granted an IRS petition to enforce a summons:

Defendant's protestations to effect that he derived no benefit from United States government had no bearing on his legal obligation to pay income taxes; **unless he could establish that he was not a citizen of the United States, IRS possessed authority to attempt to determine his federal tax liability.** U.S.C.A. Const. Art. 1, Sec. 8, Cl. 1; **Amend. 16;** 26 U.S.C.A. Sec. 1. [!!!]

[United States v. Slater, 545 F.Supp. 179 (1982)]

[emphasis added]

It should be clear by now that the IRS may well be making presumptions about your status which are, in fact, not correct. If an original presumption of nonresidence has been rebutted, for example, because a nonresident alien filed one or more 1040 forms in the past, the filed forms do not cast the situation into concrete. The IRS is entitled to formulate a presumption from these filed forms, but this presumption is *also rebuttable*. If you filed under the *mistaken* belief that you were required to file, that mistaken belief, in and of itself, does not suddenly turn you into a person who *is* required to file. Tax liability is not a matter of belief; it is a matter that arises from status and jurisdiction.

The best approach is to "clean the slate". In other words, clear the administrative record of any written documents which may have been filed in error, or in the mistaken belief that the filer was required. In Appendix F of this book, there is an Affidavit of Rescission which can be used to clean the slate. This affidavit is not meant to be a document with universal application, because everyone's situation is different. For example, the affidavit makes certain statements about the laws and regulations which have been studied by the individual who signs it. Not everyone has read these same laws and regulations.

The affidavit does, however, cover a wide range of factual matters which will serve to educate the reader about the constructive fraud which Congress and other federal officials have perpetrated on the American people.

Various qualified organizations are now available to assist individuals with the procedure for executing this affidavit, filing it with a County Recorder, and serving it on the appropriate government officials. The State Citizen Service Center in Canoga Park, California Republic, is one such organization. Their mailing location is found in the list of organizations in Appendix M of this book.

Now, let's have a little fun with this law of presumption, as it is called. The law works both ways. This means that you can use it to your advantage as well as anyone else can. One of the most surprising and fascinating discoveries made by the freedom movement in America concerns the bank signature card. If you have a checking or savings account at a bank, you may remember being asked by the bank officer to sign your name on several documents when you opened that account. One of these documents was the bank signature card. You may have been told that the bank needed your signature in order to compare it with the signatures that would be found on the checks you write, to detect forgeries. That explanation sounded reasonable, so you signed your name on the card.

What the bank officer probably did not tell you was that you signed your name on a contract whereby you agreed to abide by all rules and regulations of the Secretary of the Treasury. You see, bank signature cards typically contain such a clause in the fine print. These rules and regulations include, but are not limited to the IRC (all 2,000 pages of it) and the Code of Federal Regulations for the IRC (all 10,000 pages of it). These rules may also include every last word of the Federal Reserve Act, another gigantic statute. Now, did the bank have all 12,000 pages of the IRC and its regulations on exhibit for you to examine upon request, before you signed the card? Your bank should be willing, at the very least, to identify clearly what rules and regulations adhere to your signature.

You are presumed to be a person who knows how to read, and who knows how to read a contract before signing your name to it. Once your signature is on the contract, the federal government is entitled to presume that you knew what you were doing when you signed this contract. *Their* presumption is that you entered into this contract *knowingly, intentionally, and voluntarily*. Why? Because your signature is on the contract. That's why. Is this presumption rebuttable? You bet it is. Here's why:

Instead of telling you that the bank needed your signature to catch forgeries, imagine that the bank officer described the signature card as follows:

Your signature on this card will create a contract relationship between you and the Secretary of the Treasury. This Secretary is *not* the U.S. Secretary of the Treasury, because the U.S. Treasury Department was bankrupted in the year 1933. The Treasury Department referred to on this card is a private entity which has been set up to enforce private rules and regulations. These rules and regulations have been established to discharge the bankruptcy of the federal government. Your signature on this card will be understood to mean that you are volunteering to subject yourself to a foreign jurisdiction, a municipal corporation known as the District of Columbia and its private offspring, the Federal Reserve system. You accept the

benefits of limited liability offered to you by this corporation for using their commercial paper, Federal Reserve Notes, to discharge your own debts without the need for gold or silver.

By accepting these benefits, you are admitting to the waiver of all rights guaranteed to you by the Constitution for the United States of America, because that Constitution cannot impair any obligations in the contract you will enter by signing this card. Your waiver of these rights will be presumed to be voluntary and as a result of knowingly intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences, as explained by the Supreme Court in the case of Brady v. U.S. With your signature on this card, the Internal Revenue Service, a collection agency for the Federal Reserve system, will be authorized to attach levies against any and all of your account balances in order to satisfy any unpaid liabilities which the IRS determines to exist. You will waive all rights against self-incrimination. You will not be entitled to due process in federal administrative tribunals, where the U.S. Constitution cannot be invoked to protect you. Your home, papers and effects will not be secured against search and seizure. Now, please sign this card.

How does the law of presumption help you in this situation? First of all, you *presumed* that your signature was required, to compare it with the signatures on checks you planned to write. This was a reasonable presumption, because that's what the bank officer told you, but it is also a rebuttable presumption, because of what the fine print says. That fine print can be used to rebut, or disprove, your presumption when push comes to shove in a court of law. The federal government is entitled to presume that you knew what you were doing when you signed this *contract*. Well, did you? Did the bank officer explain *all* the terms and conditions attached thereto, as explained above? Did you read all 12,000 pages of law and regulations before deciding to sign this contract? Did you even know they existed? Was your signature on this contract a voluntary, intentional and knowingly intelligent act done with sufficient awareness of *all* its relevant consequences and likely circumstances? The Supreme Court has stated clearly that:

Waivers of Constitutional Rights not only must be voluntary, but must be knowingly intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.

[Brady v. United States, 397 U.S. 742, 748 (1970)]

Fortunately, the federal government's presumption about you is also rebuttable. Why? Because the feds are guilty of fraud, among other reasons, by not disclosing the nature of the bankruptcy which they are using to envelope the American people, like an octopus with a suction tentacle in everybody's wallet, adults and children alike. The banks became unwitting parties to this fraud because the Congress has obtained a controlling interest in the banks through the Federal Deposit Insurance Corporation and their traffic in Federal Reserve Notes and other commercial paper issued by the Federal Reserve banks, with the help of their agent, the private Treasury Department. For further details, read "Return to Constitutional Money" by Dr. Edwin Vieira, Jr., in the Supreme Law Library on the Internet.

Because this fraud can attach to bank accounts without your knowledge or consent, it is generally a good idea to notify your bank(s), in writing, that the IRS cannot inspect any of your bank records unless you have *specifically* authorized such inspections by executing IRS Form 6014. The IRS Printed Products Catalog describes this form as follows:

6014

42996R

(Each)

Authorization -- Access to Third Party Records for Internal Revenue Service Employees

Authorization from Taxpayer to third party for IRS employees to examine records. Re-numbered as a 4-digit form from Letter 995(DO) (7/77). Changes suggested per IRM Section 4082.1 to help secure the correct information from the third party. *EX:E:D* Tax Related Public Use

[IRS Printed Product Catalog]
[Document 7130, Rev. 6-89, p. 49]

Make explicit reference to this Form in a routine letter to your bank(s). Inform the appropriate bank officers that they must have a completed Form 6014 on file, **with your authorized signature**, before they can legally allow any IRS employees to examine your records. Then state, discretely, that you hereby reserve your fundamental right to withhold your authorized signature from Form 6014, because it might otherwise constitute a waiver of your 4th Amendment Rights, and no agency of government can compel you to waive any of your fundamental Rights such as those explicitly guaranteed by the 4th Amendment in the Constitution for the United States of America. (Banks are chartered by the States in which they do business, and as such they are "agencies" of State government.)

For good measure, you might also cite pertinent sections in your State Constitution, particularly where it mandates that the U.S. Constitution is the supreme Law of the Land, as it does in the California Constitution of 1879. Finally, you may wish to state that Form 6014 is not applicable to you *anyway*, because you are not a "Taxpayer" as that term is defined by Section 7701(a)(14) of the Internal Revenue Code. Therefore, the bank is simply not authorized to release information about you to IRS employees, period!

Social Security is another example of a fraudulent contract with built-in presumptions. Your signature on the original application for Social Security, the SS-5 Form, is presumed by the federal government to mean that you knew what you were getting into, namely, that you knew it was voluntary, that you knew it wasn't a true insurance program, that you knew it was a tax, that you knew Congress reserved to itself the authority to change the rules *at any time*, and that you knew it would render you a **subject** of the Congress because you knowingly, intentionally, and voluntarily chose to accept the "benefits" of this government program.

Now ask yourself the 64,000 dollar questions: How could you have known *any* of these things, if nobody told you? How could you have known, if the real truth was systematically kept from you? How could you have known, if all applicable terms and conditions were not disclosed to you *before* you joined the program? And how could you have made a capable, adult decision in

this matter when you signed the form as a minor, or your parents signed it for you? The answers to these questions are all the same: there is just no way. For the record, Black's Sixth Edition defines "fraud" as follows:

An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. **A false representation of a matter of fact**, whether by words or by conduct, by false or misleading allegations, or **by concealment of that which should have been disclosed**, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

[emphasis added]

The case law with respect to fraud is crystal clear:

Constructive fraud as well as actual fraud may be the basis of cancellation of an instrument.

[El Paso Natural Gas Co. v. Kysar Insurance Co.]
[605 Pacific 2d. 240 (1979)]

How do you reverse these ominous presumptions which the federal government is entitled to make about the "contract" you signed at your friendly local bank, or the "contract" you signed to apply for Social Security? Spend some time to read carefully the Affidavit found in Appendix F of this book. This Affidavit is normally served on the Secretary of the Treasury. You might also be motivated to obtain and study some of the other books listed in the Bibliography (Appendix N) and/or to join some of the organizations listed in Appendix M. The situation is a serious one, but knowledge can help to set you free. It is better to light a candle than to curse the darkness. And light always drives out darkness; darkness never drives out light.

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Reader's Notes:

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