

**STATEMENT OF FACTS AND BELIEFS REGARDING
IRS TERRITORIAL JURISDICTION**

September 2003

(Attachment 3)

PRELIMINARY STATEMENT

The IRS lacks territorial jurisdiction. The current system of enforcement of the Internal Revenue Code, Subtitle A and C is repugnant to and violative of Article I, Section 8, Clause 17 of the Constitution and its implementing statute, 40 USC 255.

FACT

IRS LACKS TERRITORIAL JURISDICTION

The Constitution is unambiguous about defining WHAT Congress is authorized to do and WHERE they can do it. The IRS cannot tax where the US cannot legislate.

Specifically with respect to “where” Congress enjoys legislative, i.e., police/taxing jurisdiction, the Constitution reads:

“To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;”

Constitution: Article 1, Section 8, Clause 17

The Department of Justice’s own Criminal Resource Manual documents the true limits of the DOJ’s police authority:

664 Territorial Jurisdiction

Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . . (3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution. This clause provides:

“The Congress shall have power. . . *To exercise exclusive Legislation in all Cases whatsoever*, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority *over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.*” (Emphasis added.)

The constitutional phrase "exclusive legislation" is the equivalent of the statutory expression "exclusive jurisdiction." See *James v. Dravo Contracting Co.*, 302 U.S. 134, 141 (1937), citing, *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).

Until the decision in *Dravo*, it had been generally accepted that when the United States acquired property with the consent of the state for any of the enumerated purposes, it acquired exclusive jurisdiction by operation of law, and any reservation of authority by the state, other than the right to serve civil and criminal process, was inoperable. See *Surplus Trading Co. v. Cook*, 281 U.S. at 652-56. When *Dravo* held that a state might reserve legislative authority, e.g., the right to levy certain taxes, so long as that did not interfere with the United States' governmental functions, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," to restore criminal jurisdiction over those places previously believed to be under exclusive Federal legislative jurisdiction. See H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1 (1940).

Dravo also settled that the phrase "other needful buildings" was not to be strictly construed to include only military and naval structures, but was to be construed as "embracing whatever structures are found to be necessary in the performance of the function of the Federal Government." See *James v. Dravo Contracting Co.*, 302 U.S. at 142-43. It therefore properly embraces courthouses, customs houses, post offices and locks and dams for navigation purposes.

The "structures" limitation does not, however, prevent the United States from holding or acquiring and having jurisdiction over land acquired for other valid purposes, such as parks and irrigation projects since Clause 17 is not the exclusive method of obtaining jurisdiction.

The United States may also obtain jurisdiction by reserving it when sovereign title is transferred to the state upon its entry into the Union or by cession of jurisdiction after the United States has otherwise acquired the property. See

Collins v. Yosemite Park Co., 304 U.S. 518, 529-30 (1938); *James v. Dravo Contracting Co.*, 302 U.S. at 142; *Surplus Trading Co. v. Cook*, 281 U.S. at 650-52; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 526-27, 538, 539 (1885).

The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. See *Kohl v. United States*, 91 U.S. 367, 371, 372 (1976). But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. See *Mason Co. v. Tax Commission*, 302 U.S. 97 (1937); *James v. Dravo Contracting Co.*, 302 U.S. at 141-42.

State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. See *Adams v. United States*, 319 U.S. 312 (1943); *Surplus Trading Co. v. Cook*, 281 U.S. at 651-52.

Whether or not the United States has jurisdiction is a Federal question. See *Mason Co. v. Tax Commission*, 302 U.S. at 197.

Prior to February 1, 1940, it was presumed that the United States accepted jurisdiction whenever the state offered it because the donation was deemed a benefit. See *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. at 528. This presumption was reversed by enactment of the Act of February 1, 1940, codified at 40 U.S.C. § 255. This statute requires the head or authorized officer of the agency acquiring or holding property to file with the state a formal acceptance of such "jurisdiction, exclusive or partial as he may deem desirable," and further provides that in the absence of such filing "it shall be conclusively presumed that no such jurisdiction has been acquired." See *Adams v. United States*, 319 U.S. 312 (district court is without jurisdiction to prosecute soldiers for rape committed on an army base prior to filing of acceptance prescribed by statute). The requirement of 40 U.S.C. § 255 can also be fulfilled by any filing satisfying state law. *United States v. Johnson*, 994 F.2d 980, 984-86 (2d Cir. 1993). The enactment of 40 U.S.C. § 255 did not retroactively affect jurisdiction previously acquired. See *Markham v. United States*, 215 F.2d 56 (4th Cir.), cert. denied, 348 U.S. 939 (1954); *United States v. Heard*, 270 F. Supp. 198, 200 (W.D. Mo. 1967).

In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

- A. Where it reserved such jurisdiction upon entry of the state into the union;

- B. Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;
- C. Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and
- D. Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance.

U.S. DOJ Criminal Resource Manual,
October 1997 Section 664

The police power is vested in the States and not the federal government. See Wilkerson v. Rahrer, 140 U.S. 545, 554, 11 S.Ct. 865, 866 (1891) (the police power "is a power originally and always belonging to the States, not surrendered to them by the general government, nor directly restrained by the constitution of the United States, and essentially exclusive"); Union National Bank v. Brown, 101 Ky. 354, 41 S.W. 273 (1897); John Woods & Sons v. Carl, 75 Ark. 328, 87 S.W. 621, 623 (1905); Southern Express Co. v. Whittle, 194 Ala. 406, 69 So.2d 652, 655 (1915); Shealey v. Southern Ry. Co., 127 S.C. 15, 120 S.E. 561, 562 (1924) ("The police power under the American constitutional system has been left to the states. It has always belonged to them and was not surrendered by them to the general government, nor directly restrained by the constitution of the United States ... Congress has no general power to enact police regulations operative within the territorial limits of a state"); and McInerney v. Ervin, 46 So.2d 458, 463 (Fla. 1950)

"No sanction can be imposed absent proof of jurisdiction." Standard v Olson, 74 S.Ct. 768. "It has also been held that jurisdiction must be affirmatively shown and will not be presumed." Special Indem. Fund v Prewitt, 205 F2d 306, 201 OK. 308

Even the IRS's own CID manual shows it does not have jurisdiction inside the fifty states:

"The Criminal Investigative Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws involving United States citizens residing in foreign countries and non-resident aliens subject to federal income tax filing requirements."
IRS Criminal Investigation Division

The Supreme Court says the government has an obligation to ascertain bona fide authority: "Anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of this authority." Federal Crop Insurance v. Merrill, 33 U.S. 380 at 384 (1947).

The Federal Rules of Civil Procedure even states there is no jurisdiction inside the States: " 'Act of Congress' includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession." See 18 USC, Rule 54 of the Federal Rules of Criminal Procedure. Note: There is NO reference to the 50 "states."

The IRS must establish jurisdiction or it will be sanctioning FRAUD: "Silence is a species of conduct, and constitutes an implied representation of the existence of facts in question. When silence is of such character and under such circumstances that it would become a fraud, it will operate as an Estoppel." Carmine v. Bowen, 64 U.S. 932

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading. ... We cannot condone this shocking conduct by the IRS. Our revenue system is based upon the good faith of the taxpayers and the taxpayers should be able to expect the same from government in its enforcement and collection activities This sort of deception will not be tolerated and if this is

the 'routine' it should be corrected immediately." [U. S. v. Tweel, 550 F.2d 297, 299 (1977)][quoting U.S. v. Prudden, 424 F.2d 1021, 1032 (1970)]

The USC codifies the Constitutional requirement at Article I, Section 8, Clause 17 and proscribes the procedure and required documentation for the federal government to successfully assert jurisdiction inside one of the fifty states. To wit: 40 USCS § 255 (now 3111 and 3112) clearly and specifically requires that a "notice of acceptance" is to be filed "with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated." "Such lands," of course, referring to those lands that the federal government, through its agents, is claiming exclusive or concurrent jurisdiction over the people living thereon.

The text of § 255 concludes with the statement "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, *it shall be conclusively presumed that no such jurisdiction has been accepted.*" [Emphasis added]

Obviously, if the requirements of Article 1, Section 8, Clause 17 of the Constitution of the United States are not complied with, and/or if the procedural requirements of 40 USCS § 255 are not complied with, then no public servant who is acting as an agent of the United States, i.e. the federal government, has any bona fide authority whatsoever to attempt to force compliance with any federal law, rule, code, statute, etc. on anyone living in such an area that is not subject to any bona fide jurisdiction of the federal government.

In support of this rather obvious conclusion, the second paragraph of interpretive note 14 of 40 USCS § 255 says: "In view of 40 USCS § 255, **no jurisdiction exists in United States to enforce federal criminal laws, unless and until consent to accept jurisdiction over lands acquired by United States has been filed in behalf of United States as provided in said**

section, and fact that state has authorized government to take jurisdiction is immaterial. Adams v. United States (1943) 319 US 312, 87 L Ed 1421, 63 S Ct 1122." (plaintiff's emphasis).

[Federal jurisdiction] " ...must be considered in the light of our dual system of government and may not be extended. . .in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." United States v. Lopez, 514 U.S. 549, 115 S.Ct.1624 (1995).