

# ***RESPONDING TO A CRIMINAL TAX INDICTMENT***

*Last updated: 9/10/2008*



## REVISION HISTORY

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9/10/08	1.01	<ol style="list-style-type: none"><li>1. Added section 5.</li><li>2. Added sections 6.4 through 6.10.</li><li>3. Added section 7.</li><li>4. Added section 8.</li><li>5. Added section 9.</li><li>6. Added section 11.</li><li>7. Added section 12.</li><li>8. Added section 13.7 and 13.8.</li><li>9. Added sections 20.1 through 20.6.</li><li>10. Added sections 22 through 27.</li></ol>

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1 The following information is intended to show what happens on ones first appearance before the magistrate or judge  
2 concerning a criminal indictment for an alleged violation of an income tax statute.

3 The author of this information is not aware of anyone in the patriot community who has published the specifics and  
4 importance of what should be done **before** the accused makes **any plea**, i.e. guilty or not guilty to any alleged charge.

## 5 **1 THE SCENARIO**

- 6 1. Grand Jury Indicts an accused based upon information supplied by the United States Attorney or his assistant. The  
7 Attorney is not required to submit exculpatory evidence about the accused to the grand jury.
- 8 2. An arrest warrant is issued for the accused by the court clerk.
- 9 3. The Accused is arrested by Federal Marshalls, fingerprinted and mugged, and, then brought, before a federal  
10 Magistrate or Judge for a Bond Hearing. Object to being fingerprinted, signing your name to the fingerprint card and  
11 being photographed. Both constitute a taking of property without due process or consent. Do not freely give consent.
- 12 4. The Court sets an arraignment Date, time and place certain.
- 13 5. At arraignment:
  - 14 5.1. Judge must join the case by eliciting a plea from the accused.
  - 15 5.2. Before asking for a plea, like guilty or not guilty from the accused, the Judge may question the accused as to  
16 whether he has a lawyer and can afford one, if not, that the accused is entitled to an attorney and that the court  
17 will appoint the accused an attorney, if requested, and before the accused answers any of the judges questions.  
18 The accused has the right to have an attorney at all phases of the court procedure. However, the court may decide  
19 to proceed anyway, and ask the accused as to whether he is a citizen of the United States, understands the nature  
20 and cause of the alleged charges in the indictment, and will inform the accused of his right to a jury trial.

21 **LET THE SHOW BEGIN: [and you can believe it, the Judge and attorneys are very good actors], ...** So the U.S.  
22 Attorney has indicted you by using the federal grand jury, for an alleged violation of the IR Code, 26 U.S.C. §7201 (tax  
23 evasion - a felony (infamous crime), or section 7203 (willful failure to file a 1040 tax return - a misdemeanor), or for  
24 something else.

25 What do you do now?:

- 26 1. Hire a lawyer?
- 27 2. Let the judge protect you and your rights?
- 28 3. Plea bargain?
- 29 4. Throw in the towel?
- 30 5. Call a local tax group?
- 31 6. Confide in a friend?
- 32 7. Handle it yourself?
- 33 8. Pray?

34 A very serious decision to make.

35 If one will take the time to look up the definitions of "joinder," "plea," "controversy," "mandamus," and "prohibition," in  
36 one of the leading law dictionaries, or in the Criminal and civil rules of procedure, one can see how important and  
37 significant the words are regarding one who has been indicted or charged by information.

38 Remember, one has to identify one's self in court, otherwise, the court is required to bring in witnesses' who can identify the  
39 accused. Use your own discretion.

40 The bond hearing. In order to compel one to give up his property in the nature of money to secure a bond for an alleged  
41 indictment requires a hearing before an independent judicial officer (See the Fourth Amendment right to be secure in your  
42 person, papers, and effects (property rights). Demand an independent judicial officer even at the BOND HEARING.

43 One must **belligerently claim** his rights, or he has none.

1                   *"The privilege against self-incrimination [Fifth Amendment] is neither accorded to the passive resistant, nor*  
2                   *the person who is ignorant of their rights, nor to one who is indifferent thereto. It is a fighting clause. Its*  
3                   *benefits can be retained only by sustained combat. It cannot be claimed by an attorney or solicitor. It is only*  
4                   *valid when insisted upon by a belligerent claimant in person."*  
5                   *[U.S. v. Johnson, 76 F. Supp. 538 (1947), Emphasis added]*

6    **2 TYPICAL SEQUENCE OF A FEDERAL CRIMINAL CASE**

7    The table below describes the typical sequence of a criminal tax case. It was derived by examining the federal criminal  
8    rules and the U.S. code.

**Table 1: Typical Sequence of a Federal Criminal Case**

#	Event	Authority
1	Federal agency investigates case	
2	Complaint filed with Dept of Justice for Prosecution by private individual or federal agency	<a href="#">28 U.S.C. §592</a> <a href="#">DOJTDCTM Sections 6-4.121</a>
3	Dept. of Justice investigates	<a href="#">28 C.F.R. § 0.70;</a> <a href="#">26 U.S.C. §6103(h)</a> <a href="#">USAM 6-4.122</a>
4	Dept of Justice decides to prosecute	<a href="#">28 U.S.C. §594</a> Authority of indep. Counsel.
5	Grand jury conducts discovery on suspect: <ul style="list-style-type: none"> <li>• May subpoena records on suspect.</li> <li>• May call suspect in to ask questions</li> </ul>	<a href="#">Fed.Rule.Crim.Proc. 16</a>
6	Suspect may file a declaration directly with the district court in lieu of testifying before the grand jury	<a href="#">Fed.Rule.Crim.Proc. 16(d)(1)</a>
7	U.S. Attorney from DOJ: <ul style="list-style-type: none"> <li>• For felonies involving a sentence of one year or more, brings evidence from investigation before a grand jury and requests an indictment</li> <li>• For misdemeanors with a combined sentence of no more than one year, files an "information" directly with the court</li> </ul>	<a href="#">28 U.S.C. §594(a)(1)</a> Authority of indep. Counsel. <a href="#">USAM §9-11.000</a> <a href="#">USAM §9-12.000</a>
8	Grand Jury indicts suspect	<a href="#">Fed.Rule.Crim.Proc 7</a>
9	Indictment filed with Federal District Court	
10	Judge randomly assigned	Local Rules (Local Criminal Rule 57.2 in Calif. Southern District)
11	Arrest Warrant or Summons issued	<a href="#">Fed.Rule.Crim.Proc. 9</a>
12	Suspect is Personally served with Summons or Arrested	<a href="#">Fed.Rule.Crim.Proc. 9</a>
13	Defendant selects private counsel or is appointed public defender	Local Rules (Local Criminal Rule 44.1 in Calif. Southern District)
14	Assignment of Magistrate Judge to prosecute discovery	<a href="#">28 U.S.C. §636</a> <a href="#">Fed.Rule.Civ.Proc. 72-73</a>
15	Preliminary hearing before Magistrate	<a href="#">Fed.Rule.Crim.Proc. 5.1</a>
16	Defendant is arraigned before Judge	<a href="#">Fed.Rule.Crim.Proc. 10</a>
17	Defendant enters a plea	<a href="#">Fed.Rule.Crim.Proc. 11</a>
18	Submit amended plea, joinder, etc.	
19	Pretrial motions: <ul style="list-style-type: none"> <li>• Motion alleging defect in instituting prosecution</li> <li>• Motion alleging defect in indictment or information</li> <li>• Motion to suppress evidence (motion in limine)</li> <li>• Motion to sever charges or defendants</li> <li>• Motion for discovery</li> </ul>	<a href="#">Fed.Rule.Crim.Proc. 12</a> <a href="#">Fed.Rule.Crim.Proc. 12(b)(3)(A)</a> <a href="#">Fed.Rule.Crim.Proc. 12(b)(3)(B)</a> <a href="#">Fed.Rule.Crim.Proc. 12(b)(3)(C)</a> <a href="#">Fed.Rule.Crim.Proc. 12(b)(3)(D)</a> and <a href="#">14</a> <a href="#">Fed.Rule.Crim.Proc. 12(b)(3)(E)</a> and <a href="#">16</a>
20	Discovery: <ul style="list-style-type: none"> <li>• Depositions</li> <li>• Subpoenas</li> </ul>	<a href="#">Fed.Rule.Crim.Proc. 16</a> (Discovery and inspection) <a href="#">Fed.Rule.Crim.Proc. 15</a> <a href="#">Fed.Rule.Crim.Proc. 17</a>
21	Completion of discovery	<a href="#">Fed.Rule.Crim.Proc. 16</a>
22	Submission of Pre-Trial Memorandums	Local Criminal Rule 16.1 in Calif. Southern District
23	Pretrial meeting between counsel and formulation of final pretrial order. Exhibits are displayed or exchanged.	Local Criminal Rule 16.1 in Calif. Southern District
24	Pretrial conference with judge. Date set to for trial, motions in limine, submission of trial briefs, exchange of exhibits and evidence	<a href="#">Fed.Rule.Crim.Proc. 17.1</a>
25	Two month wait (usually) before trial (criminal cases take priority)	
26	Parties exchange witnesses and exhibits used for trial Not Later Than 30 days before trial	
27	Parties submit trial briefs to judge usually Not Later Than two weeks before trial date	
28	Trial: <ul style="list-style-type: none"> <li>• Selection of jurors</li> <li>• Voire dir (examination of jurors)</li> <li>• Opening statements</li> <li>• Calling of Witnesses (establish foundation for evidence)</li> <li>• Discussion of evidence</li> <li>• Closing statements</li> </ul>	<a href="#">Fed.Rule.Crim.Proc. 23-31</a>
29	Probation officer conducts a presentence investigation and prepares a presentence report	<a href="#">Fed.Rule.Crim.Proc. 32(c)</a>
30	Judge determines sentence	<a href="#">Fed.Rule.Crim.Proc. 32(c)</a>
31	Sentencing hearing	<a href="#">Fed.Rule.Crim.Proc. 32</a>
32	Defendant files a notice of appeal within 10 days of the entry of judgment	<a href="#">Fed.Rule.Appellate Procedure 4(b)</a>

1 **3 THE INDICTMENT OR INFORMATION**

2 **3.1 How to know if a criminal indictment is being pursued**

3 It is often difficult to obtain evidence documenting that you are being criminally investigated for tax infractions because:

- 4 1. Criminal investigation information in the possession of the IRS is exempted from discovery under the Freedom of
- 5 Information Act and the Privacy Act. See 5 U.S.C. §552(b)(7).
- 6 2. Grand jury deliberations are secret and not discoverable. See Federal Rule of Criminal Procedure 6(e).
- 7 3. If you are called in for an IRS audit, the IRS agent likely will not admit that you are being criminally investigated, even
- 8 though he is required to. See U.S. v. Tweel, 550 F.2d 297, 299 (5<sup>th</sup> Cir. 1977); U.S. v. Prudden, 424 F.2d 1021 (5<sup>th</sup> Cir.
- 9 1970).

10 The first indication that most people have that an indictment is being pursued comes from the following sources:

- 11 1. A friend indicated that he or she was:
  - 12 1.1. Summoned by a grand jury.
  - 13 1.2. Called in for an IRS audit in which questions were asked about you
  - 14 1.3. Received a subpoena from a grand jury.
- 15 2. Your house or business is raided by the feds.
- 16 3. IRS sends out administrative summons to your financial institutions.
- 17 4. An IRS criminal investigator visits your workplace.

18 **3.2 Actions to take once you know or think an indictment is being pursued**

19 The first indication you get of any of the above, we recommend:

- 20 1. Downloading the following free book and securing your privacy:
 

21 *What to Do When the IRS Comes Knocking*, Form #09.002

22 <http://sedm.org/Forms/FormIndex.htm>
- 23 2. If you are being investigated for failure to file an income tax return, you take immediate actions to load your
 administrative record CHOCK FULL of defensive information by filing the following form on our website. Evidence
 of your state of mind prior to trial is the only defense you will have in front of the jury. The judge will try to keep
 everything you introduce out of evidence, but he can't do that with your IRS administrative record:
  - 24 2.1. Federal Nonresident Nonstatutory Claim for Return of Funds Unlawfully Paid to the Government-Long, Form
  - 25 #15.001-include as many of the enclosures as you can with this form.
  - 26 <http://sedm.org/Forms/FormIndex.htm>
  - 27 2.2. Why I Am Not Legally Liable to File Affidavit, Form #07.103
  - 28 <http://sedm.org/Forms/FormIndex.htm>
  - 29 2.3. Legal Requirement to File Federal Income Tax Returns, Form #05.009
  - 30 <http://sedm.org/Forms/FormIndex.htm>
- 31 3. Follow the instructions on our website for building a good and extensive administrative record. We call this record our
 "jury entertainment package". This record will become legal evidence used in any trial.
 

32 *Techniques for Building a Good Administrative Record*, Form #09.008

33 <http://sedm.org/Forms/FormIndex.htm>
- 34 4. That in the context of any contact you might have with anyone in the government, you should demand witness
 immunity pursuant to 18 U.S.C. §6002. If they won't grant the immunity, it is probably you they are investigating
 criminally.
- 35 5. That if you are summoned or must appear before a government employee, you should insist you're your First
 Amendment right to NOT SPEAK, rather than your Fifth Amendment right to not incriminate yourself. This will not
 implicate you in anything and deflect further curiosity by the agent. See:
 

36 *Silence as a Weapon and a Defense in Legal Discovery*, Form #05.021

37 <http://sedm.org/Forms/FormIndex.htm>
- 38 6. That you immediately send a Freedom of Information Act (FOIA) request to the IRS asking for the following:
  - 39 6.1. Individual Master File for the past ten years, which will tell you whether a criminal investigation is active. Look
  - 40 for transaction code 971 in the record.
  - 41
  - 42