

**REQUIREMENT OF THE PAPERWORK REDUCTION ACT
AND
DEMAND FOR COMPLIANCE**

From:

Richard Kelley
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S. Glastonbury, Connecticut 06073

To:

Attorney General Alberto Gonzales
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Certified Mail #

Commissioner of Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20081

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Taxpayer Advocate
Ogden Service Center
POB 9941, Stop 1005
Ogden, UT 84409

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ING USA Annuity & Life Ins. Co.
909 Locust Street
Des Moines, IA 50309

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James Rooney
Rebecca A. Chiaramida
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Internal Revenue Service
936 Silas Deane Highway
2nd Floor
Wethersfield, CT 06109

Certified Mail #

**NOTICE TO PRINCIPAL IS NOTICE TO AGENT
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Dear Sirs and Madams,

I, Richard Kelley, hereinafter Declarant, state that the facts contained herein are true and correct to the best of Declarant's firsthand knowledge and belief under penalty of perjury pursuant to the laws of united States of America.

Declarant has received a letter regarding Declarant dated 07/31/2006 signed by Rebecca A. Chiaramida of Department of the Treasury, Internal Revenue Service addressed ING USA Annuity & Life Ins. Co.; a copy is attached hereto and incorporated herein by reference as EXHIBIT A. The EXHIBIT A letter specifically

Page 1 of 6

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shows that the form 1040 is the alleged form that would be required for the payment of the alleged taxes owed.

The Paperwork Reduction Act of 1995 (hereinafter PRA) prohibits any person from being subject to any penalty regarding supplying information upon an information collection request form unless said form displays a valid OMB control number. (See 44 USC §§ 3501, 3507 and 3512.) These provisions offer "public protection" to the citizenry, who are given every reason to rely on these words of Congress.

The Commissioner, in the instruction booklet for years 1999, 2000, and 2001 placed the public on notice of the following: "You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number." Declarant has every right to rely upon this statement as well as the actual provisions of the PRA of 1995.

There are many violations of the PRA of 1995 regarding Form 1040 that the IRS knew about prior to attempting to deprive Declarant of property.

Title 44 USC § 3507(g) prohibits "The Director" from approving "...a collection of information for a period in excess of 3 years." The OMB #1545-0074 has appeared on Form 1040 from 1995 through 2005. Likewise, any changes to any approved form must be pre-approved. See § 3507(h)(3). Changes have been made to the forms at least annually since 1995, but without the statutory requirement for approval.

The forms that the IRS claimed Declarant was required by law to file, but allegedly did not file as "required by law" fail to comply with the PRA of 1995 for many reasons, including but not limited to the following:

- a) The forms do not inform the public of the legal right for the IRS to ask the public for the information sought on form 1040;
- b) The forms do not inform the public why the IRS is asking for the information;
- c) The forms do not inform the public how the IRS intends to use the information;
- d) The forms do not tell the public what could happen if the IRS does not receive the information;
- e) The forms do not inform the public their response is voluntary;
- f) The forms do not inform the public their response is required to obtain a benefit;
- g) The forms do not inform the public their response is mandatory under the law;
- h) The forms do not inform the public of the statute giving the IRS the legal right to ask for the information;
- i) The forms do not inform the public the IRS's legal right to ask for the information under specific regulations or revenue procedures;
- j) The forms do not contend that the IRS's legal right to ask for the information is not subject to the Paperwork Reduction Act.

The 1040 forms relevant to this case are clearly forms subject to the PRA of 1995. They do not claim otherwise. However, they also on their face fail to comply with the clear mandates of the PRA of 1995. The Internal Revenue Service's disdain for the requirements of the PRA of 1995 are nowhere made more clear than by the appearance of OMB #1545-0074 in January 2006 on the 1040A, 1040ES, 1040EZ, 2555 and W-4 forms.

No court has ever determined that the instruction booklets were subject to the PRA of 1995. In U.S. v. Dawes, 951 F.2d 1189, 1191 (10th Cir. 1991) the Court, speaking of the PRA of 1980, said:

"The 1040 form is the information collection request which arguably must comply with the PRA. It is through the 1040 form that the government obtains all of the tax information it requires; the instructions and the regulations do not request any additional information...As such, they are not

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independent information collection requests subject to the provisions of the PRA.”

Footnote 2 of Dawes is highly instructive. There the 10th Circuit said:

“[fn2] In response to a question from the court during oral argument, counsel for the government indicated that the government did not have a unified federal position regarding this issue. Given the fact that the issue is one of national scope which affects the tax revenues of the United States, we find this posture regrettable.”

The IRS has *chosen* to place OMB numbers on the 1040 form. The IRS has not given any citizen notice that it might claim that the form was not required to comply with the public protections of the PRA of 1995. Rather, the IRS has taken an ad hoc, case by case approach, tossing out irreconcilable and offer silly claims among the various jurisdictions, and sometimes even within a jurisdiction.

The PRA of 1980 prohibits the Director from approving a collection request for a period exceeding three years.

The OMB #1545-0074 approved for the 1040, in 1980 does not show that it has ever been approve since that time, rendering any argument to the contrary, void.

In Salberg v. U.S. 969 F.2d 379 (7th Cir. 1992) the 7th Circuit said:

[16] The Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq. (1988) (the PRA or the Act), was enacted in response to a concern that in its tireless quest for information, the federal bureaucracy was imposing an ever-increasing burden on citizens and small businesses. The PRA requires federal agencies to submit all “information requests” to the Office of Management and Budget (the OMB) for approval. Information requests include “tax forms, medicare forms, financial loan applications, job applications, questionnaires, compliance reports, and tax or business records.” Dole v. United Steelworkers, 494 U.S. 26, 33, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990) If the Director of the OMB approves the information request, the Act requires that he assign it a control number. An agency may not attempt to collect information unless it has obtained the Director’s approval along with a control number to display on the information request. 44 U.S.C. § 3507. If an agency’s information request does not display an OMB number, “no person shall be subject to any penalty for failing to maintain or provide information “to the agency pursuant to the request. 44 U. S. C. § 3512.

Salberg and Dawes were both just after the PRA of 1980, and long before the PRA of 1995 now in place. These cases are of no assistance in determining why the IRS would fail to make a meaningful attempt at complying with the laudable purposes and reasonable mandates of the PRA of 1995 or 1980. However, these cases do make it clear that a failure to comply with the public protections enacted by Congress renders any sanctions altogether improper and untenable, where the plain language of the statute creating the public protection prevents any punishment for failing to comply with a “bootleg” form.

1. The 1040 relied upon for the information in connection with EXHIBIT A as the mandatory form fails miserably in having the mandatory disclosures on the form, although it does refer the reader to the instruction booklets. These instruction booklets

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for the year(s) of EXHIBIT A say that the IRS's legal right to ask for the information comes from the Internal Revenue Code, sections 6001, 6011, and 6012 "and their regulations." The instructions say that these authorities "say you must file..."

2. Declarant is a member of the public and deserves the protection the public has been granted by Congress in the passage of the PRA of 1995 and 1980.
3. The IRS knew of PRA discrepancies and proceeded with the case to maliciously deprive Declarant of property.
4. The IRS, with some cooperation by the OMB, at least since 1995, has knowingly violated the requirements of the PRA by failing to obtain and print a valid OMB control number on Form 1040 and other IRS forms.
5. The IRS follows the policy of unlawfully persecuting, penalizing, and prosecuting individuals for failure to file a 1040, rather than admitting that the 1040 serves as a "bootleg" form due to its violation of federal law by not bearing a valid OMB control number.
6. Examples of IRS violations of the PRA and its implementing regulations that invalidate Form 1040 include these:

1. IRS has continually violated PRA Section 3506(c)(1)(B)(iii). The section mandates that the 1040 form must inform the recipient of:

- (I) the reasons the information is being collected;

- (II) the way such information is to be used;

- (III) an estimate, to the extent practicable, of the burden of the collection;

- (IV) **whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory;** and

- (V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a 1040 form unless it displays a valid control number (i.e., issued in accordance with the requirements of PRA).

2. IRS has continually violated of PRA Section 3507(a)(1)(C). The section mandates that the IRS shall *not* conduct or sponsor the collection of information via a 1040 unless in advance of the adoption or revision of the 1040 the IRS has submitted to OMB the proposed 1040 form along with **copies of pertinent statutory authority and regulations authorizing the IRS to collect the information on the 1040 form. The clearance packages that the IRS submits to the OMB make no mention of IRC Section 1, 61, 63, 6011, 6012, 6091, 7203 or any of the other sections federal judges alternately cite as "the" authority that authorizes IRS to collect information via the 1040.**

3. The IRS and OMB have continually violated PRA Section 3507(g) and 5 CFR Section 1320.8(b)(1). Those sections mandate that OMB control numbers **must expire after three years**, even if the IRS made no changes to its 1040 form during that time. Form 1040 has had the same OMB control number for 24 years. Under Section 3507(g), every OMB control number must expire every three years, or sooner. OMB approves a 1040 for only a three year period so as to ensure that at least once every three years the IRS reviews the 1040 form, publishes its review in the Federal Register, and seeks public input.

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Apparently, the IRS has not submitted a certification to OMB with an explanation of why it would be inappropriate for OMB to issue a control number with an expiration date.

4. The IRS has continually violated PRA Section 3512 ("Public Protection"). This section prohibits the IRS from penalizing any person for failing to file a "bootleg" 1040. The 1040 form falls into the "bootleg" class if it does not display a valid OMB control number and the disclaimer that no response is required without such a control number. The 1995 amendments strengthened this provision by making clear that IRS victims can invoke this protection *"in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto."* In spite of this, the IRS routinely penalizes and prosecutes people for failing to file the 1040 tax return. Although required by law, IRS never informs people about the bootleg nature of the 1040 form, nor the fact that its hapless victims have no legal obligation to file such bootleg forms.

Section 3512 of the PRA, titled "Public Protection" reads as follows:

(a) **Notwithstanding any other provision of law**, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter [44 USCS § § 3501 et seq.] if--

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter [44 USCS § § 3501 et seq.]; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

Because of the PRA's Public Protection clause, agencies have an incentive to make sure that all forms and related regulations bear valid, up-to-date, prominently legible OMB control numbers.

The instructions for OMB Form 83-I, which the IRS must use in submitting its request for approval of the 1040 form and an OMB control number, require each agency to submit with the form a "supporting statement" which is to "identify any legal or administrative requirements that necessitate the collection." The supporting statement must also include information regarding the "burden" imposed upon the public as a result of the "collection of information."

Declarant questions not only the actions of IRS and DOJ since 1981, but also OMB's behavior as it appears to have willingly looked the other way rather than to require IRS to fully comply with the Law and to report the IRS's miscreant negligence to the U.S. Treasury Secretary and the President.

In addition, various federal judges and their law clerks who know the legal meaning of the phrase, "Notwithstanding any other provision of law," have blatantly ignored the clear and unambiguous meaning

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of the provisions of the PRA. Instead of heeding it and advancing its protections to the aid of IRS victims, they have waged complicit war against the People for willful failure to file a bootleg 1040 form under any of a variety of vague, confusing, circuitous, and questionable provisions of the Internal Revenue Code.

Pursuant to and in compliance with the PRA of 1995 and 1980, Declarant has no obligation to file a bootleg form 1040.

However, if the IRS still embraces the belief that Declarant somehow is required to file the 1040, Declarant will need the following documentation:

1. A copy of any documentation that the IRS form 1040 is not subject to the PRA of 1980 or 1995.
2. A copy of any documentation giving any IRS representative the authority to over-ride the mandates of the PRA as required by the Congress of the United States of America.
3. A copy of any documentation giving any IRS representative the authority to violate any of the mandates of Congress.

Declarant is not a tax protester or tax resister. Declarant will, upon receipt of the proper documentation as outlined above, fill out and file any forms in addition to paying any taxes that Declarant has a legal, lawful liability to pay.

If you, as a representative of the DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, do not respond in part or in whole to this letter within 30 days, it will be presumed that the DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE agrees with this letter and with Declarant. This letter will stand as witness of Declarant's good-faith efforts to understand, correct, or clarify any and all documents from the DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE with Declarant's name and/or social security number that is not applicable to Declarant.

Thank you for your cooperation in this matter.

Richard Kelley

Date

Notary Statement

state of Connecticut }

}

county of _____ }

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BE IT REMEMBERED, that on the _____ day of _____ 2006, before me, the undersigned, a Notary Public in and for the state of Connecticut, personally appeared, Richard Kelley who proved to me to be the same individual who executed the within instrument, and, affirmed that he is personally fully aware of the contents and accuracy of the statements made therein, and affirms that the document is, to the very best of his knowledge, true and correct.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My Official seal the day and year last above written.

Notary Public for _____

Commission Expires on _____

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