

**ABOVE AND BEYOND THE CALL OF DUTY:
ENHANCED TAX OBLIGATIONS OF
THE PUBLIC EMPLOYEE**

KENNETH H. RYESKY, ESQ.

Attorney, East Northport, New York

ABSTRACT

Like other members of the public, those employed by the federal and state governments have personal tax filing and payment obligations. Government agencies seem to hold public employees and officers to enhanced standards in the discharge of their personal tax obligations. The degree and extent to which the tax obligations are so enhanced is dependent on several factors, including the government agency to which the employee reports, the employee's duties, the employee's rank within the agency, and other circumstances relevant to the employee in question. Tax collection agencies such as the Internal Revenue Service generally impose the most stringent tax compliance standards on their employees. The enhanced tax obligations must be viewed in light of the employees' personal rights. As the tax law grows increasingly complex, the tax obligations of public employees can be expected to be called to question with increasing frequency, raising concerns for public employer and employee alike.

The Internal Revenue Code (IRC) clearly and unequivocally requires individuals whose income exceeds a relatively low threshold to file their federal income tax returns in a timely manner [1, 2]. Failure to do so can lead to significant consequences, both civil [3] and criminal [e.g., 4-5]. Most states have analogous requirements [e.g., 6-8].

The American system of income taxation is based on self-assessment in the initial filing of the return and calculation of the tax [9]. Such a system can operate only through the enforcement of "strict filing standards" [10]. Truthfulness on the part of the taxpayer is most imperative [11-13].

Government employees are expected to comply with the tax laws. This article explores the standards to which government agencies hold their employees in the discharge of the employees' common tax obligations.

GOVERNMENT INTEREST IN PERSONAL CONDUCT OF PUBLIC EMPLOYEES

It is axiomatic that the government can discipline its employees for job-related misbehavior, and indeed, the government has been upheld in disciplining its employees for numerous offenses, including (but hardly limited to) making false statements on employment applications [e.g., 14], theft [e.g., 15], failure to make required reports of personal financial transactions [e.g., 16], and falsification of time records and/or travel vouchers [17-19].

It is also well-established that in order for the federal or a state government to discipline an employee for off-duty conduct, the government must demonstrate a "nexus" between the conduct and a governmental interest such that the misconduct adversely affects the employee's performance, discredits the government, or is detrimental to the efficiency of the service [20-25]. Merely because off-duty conduct is objectionable does not give the government the right to discipline; the government must also show that the objectionable behavior clearly has an adverse impact upon the efficacy of the service [27]. Moreover, there are due process safeguards to which the federal and state governments are held, including adherence to their own rules and procedures in taking adverse or disciplinary actions against employees [30-34].

Notwithstanding the government's burden of showing the nexus, government employees are generally held to a somewhat higher standard in their personal actions than are members of the general public. "The peculiar relationship of employer-employee permits the government, when it acts as employer, to exact more of its employees than it may require of the general public" [29 at 70]. Indeed, for as long as governments have ruled, those employed in the service of government have been held to more stringent restrictions and regulations in the conduct of their personal affairs than have the ordinary citizens and subjects. Moreover, the nature and mission of the particular government agency might dictate an especially stringent standard of personal conduct on and off the job, with commensurate modes of discipline for infractions [37]. Likewise, all else being equal, higher-ranking government employees are held to stricter standards than lower ranking ones [38-41].

There is a special obligation on the part of any governmental employee to not engage in off-duty conduct directly contrary to the key objectives of the agency by whom s/he is employed.

[W]here an employee's off-duty behavior is blatantly inconsistent with the mission of the employer and is known or likely to become known, most any

employer, public or private, however broadminded, would want to fire the employee and would be reasonable in wanting to do so; and we find no evidence that Congress intended to deny this right to federal agencies. . . . A customs officer caught smuggling, an immigration officer caught employing illegal aliens, an IRS employee who files false income tax returns, a HUD appraiser moonlighting as a “slumlord”—these are merely the public counterparts of a form of conflict of interest that is not less serious for not being financial, that would not be tolerated in the private sector, and that we do not believe Congress meant to sanctify in the public sector [42, at 1133].

Indeed, termination of a federal employee has been upheld for offenses such as a Department of Housing and Urban Development employee moonlighting as a slumlord [42], a customs officer who used the very illegal drugs his duty was to intercept [43], an Immigration and Naturalization Service employee who hired illegal aliens [44], and a purchasing agent who committed theft [15, 45].

CONFIDENTIALITY OF TAX RETURNS

The American taxation system is based on voluntary compliance on the part of the taxpayer. “Implicit in the [Internal Revenue] Code is Congress’ understanding that it expects voluntary compliance with the tax laws. This means that taxpayers are expected to comply with the law without being compelled to do so by action of a federal agent; it does not mean that the taxpayer is free to decide whether or not to comply with the law” [47, p. 4]. Accordingly, a key element of the IRS mission is to foster voluntary compliance with the tax laws [48-49]. The voluntary compliance system is vitally dependent on the confidential safekeeping of taxpayer and tax-return information by the taxation authorities [50-52]. The Internal Revenue Code specifically regulates the disclosure of information in IRS files [53], and provides sanctions against those who make improper disclosure [54-56]. Law in the various states likewise provides for confidentiality of tax returns [57-63].

In view of the privileged nature of individuals’ tax affairs, the disclosure of tax returns is most strongly disfavored by the courts, and will only be compelled where the information to be gained therefrom is indispensable to the resolution of the case and such information is not reasonably available from other sources [e.g., 64-70]. Even where tax returns are discoverable, the courts have permitted them to be sanitized of personal data not germane to the issues being litigated [e.g., 71].

THE STANDARDS TO WHICH PUBLIC EMPLOYEES ARE HELD

Information regarding an individual’s tax affairs is highly privileged information, and any interest of the government, as an employer, in its employees’

personal tax returns must be cogent enough to outweigh the confidentiality accorded personal taxation matters. The interplay between the confidentiality of taxation affairs and the government's interest in its employees' personal conduct is always a key factor that affects the standard to which a particular governmental agency will hold its employees in their personal tax obligations. Various governmental agencies, and the standards to which they hold their employees in personal taxation matters, are discussed below.

Internal Revenue Service ("IRS") Employees

The very mission of a taxation authority such as the Internal Revenue Service (IRS) is to administer the tax laws and collect taxes [see, e.g., 72]. Discord and insecurity among revenue collection personnel have long been recognized as a peril to the stability of any government, democratic or otherwise [73-77]. The conflict and chaos among the tax collection hierarchy materially contributed to the decline and fall of the Ptolemaic dynasty in Egypt [74]. Top officials in federal and state taxation bureaucracies, well aware of history's lessons, have good reason to insist on maintaining morale, order, and discipline among the ranks of their employees.

Apart from and in addition to the need for concord within the echelons of a taxation authority, public perceptions are obviously vital to fostering the IRS mission of voluntary tax compliance [16, 19, 75-76]. "[I]t is important, if not absolutely necessary, for the integrity and morality of Internal Revenue Service agents to be above reproach at all times. Their honesty and good character are taken for granted and must never be compromised" [16]. "The IRS is rightly concerned with its image of honesty and integrity. Members of the public, who must turn square corners in tax matters, demand no less of revenue officers" [19 at 537]. Accordingly, the IRS seeks to avoid even the appearance that it tolerates any tax law noncompliance by anyone of any rank or duties within its own work force [76].

Accordingly, IRS employees are held to a most stringent standard with respect to their duty to timely file proper tax returns [78-80], being expected to file their returns timely, fully pay their taxes when due, and have no subsequent adjustments that lead to extra tax being owed or a penalty being assessed [78]. Failure of IRS employees to discharge that duty is grounds for removal from the service [75-76, 81-84], and such ultimate sanction, while commonly upheld, will especially be upheld in the presence of aggravating circumstances, such as where the IRS employee's duties are criminal investigation [84], or where improper deductions are claimed on a personal tax return of an IRS employee whose very duties are to screen tax returns for improper deductions [83]. Even where removal from the service has been found to be too harsh a penalty, there is little question that the failure of an IRS employee to file proper tax returns is a serious offense for which some sanction, albeit one short of removal, is appropriate [85-86]. So

stringent is the IRS standard that IRS employees' improper filing (or nonfiling) of a state income tax return is conduct no less sanctionable than improper filing of a federal tax return [79, 81-82, 87].

IRS employees are held to more stringent standards in their personal tax affairs, not only by their employer, but also by the courts [89-93]. It is interesting that the tax court also takes pains to hold *former* IRS employees to the same stringent standard, even in personal tax matters that have arisen after leaving the IRS's employ [94-97]. The standard to which the courts hold former IRS agents most certainly influences the standard to which IRS tax examination personnel will hold their former colleagues in personal tax audit situations.

Conversely, it is also noteworthy that in the *Taylor* case [98], the Merit Systems Protection Board found the fact that the federal employee who failed to file his tax returns was *not* employed by the IRS to be a mitigating factor in reducing his penalty from removal to a ninety-day suspension.

Internal Revenue Service employees are thus held to a most rigid standard in their personal tax relationships (and that of their spouses [85]) with federal and state governments and are subject to relatively draconian consequences for failure to fully comply. The tradition of imposing a rigid disciplinary regime on those who implement taxation policy, practiced in the Roman Empire [99-100], continues in modern times as an integral part of American tax policy.

Other Employees of the Treasury Department

The IRS is perhaps the most visible, feared, and despised branch of the Treasury Department [101-102]. Nevertheless, the Treasury Department has other functional agencies under its authority, including the Secret Service and the Customs Service, as well as headquarters staff functions [103].

The nexus between nonfiling of tax returns and the official duties of a non-IRS treasury employee, though still a valid concern in view of the Treasury Department's missions, is somewhat more attenuated where the employee is employed in a nontaxation function than where the employee is an IRS employee [104]. Thus, failure to file tax returns by a police officer employed by the Treasury Department but whose job duties are not tax-related would be an offense meriting a lesser penalty than the same offense committed by an IRS agent or other employee whose duties specifically entail income tax administration and enforcement [104].

By the same token, public image concerns and related factors dictate a stronger nexus with respect to tax-related indiscretions on the part of any high-ranking Treasury Department official. One federal district judge, Thomas F. Hogan, was of that mind when he sentenced former United States Treasurer Catalina Villalpando to prison on tax evasion charges [105]. Judge Hogan found that Ms. Villalpando's high position in the Treasury Department imposed a special duty upon her to comply with the tax laws and did not yield to Ms. Villalpando's

entreaties for an alternative to incarceration [105]. Another case where such a principle played a role was a New York attorney discipline case, *Matter of Anderson* [106], where, in disbaring an attorney, the state court found the attorney's violations of federal banking laws to be particularly egregious in light of the attorney's former position as Secretary of the Treasury, the cabinet officer whose duty had been to apply and enforce the very laws he had violated. Enforcing the Internal Revenue Code is no less the duty of the Secretary of the Treasury; therefore, a current or former Secretary of the Treasury or other high Treasury official who runs afoul of the Internal Revenue Code is accordingly held to a standard no less stringent than that applied to current or former IRS employees.

It therefore can fairly be said that any employee of the federal Department of the Treasury does have some degree of an enhanced duty to properly file his/her personal tax returns, and that such a duty is especially scrutinized when the employee is employed in a tax assessment or tax collection function, or ranks in the upper echelon of the Treasury's hierarchy.

Employees of Federal Government Agencies Other Than the IRS

Federal employees are specifically expected to meet their just financial obligations [107-108], including and especially their federal, state and local taxes [109]. Executive Order No. 12,674 states that “[e]mployees *shall* satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law [emphasis added]” [109]. The wording of the analogous predecessor provision in the now-superseded Executive Order No. 11,222 stated that “[a]n employee *is expected to* meet all just financial obligations, especially those—such as Federal, State or local taxes—that are imposed by law [emphasis added]” [110]. While the polite diplomatic language of the predecessor provision might arguably have left some small amount of room for ambiguity, the directive of Executive Order No. 12,674 unequivocally and emphatically requires federal employees to meet their personal federal and state tax obligations [111]. The IRS reportedly assigns a special selection code to classify the tax returns of federal employees, effectively subjecting such returns to a closer degree of scrutiny [114].

Where a federal employee's position entails the entrustment of sensitive information in the performance of his/her official duties, the willful and knowing attempt to evade taxes by preparing a fraudulent return calls into question the good judgment, ethics, and trustworthiness so essential to the employee's position [115]. It is immaterial in such instances whether such an employee actually discloses the sensitive information with which s/he is entrusted for the purposes of the federal position held [115, 116].

At least one court has gone so far as to implicitly characterize the understating of taxable income by a federal employee as falsification of a government record,

a serious offense by a public employee under any circumstances. The decision of the *Gipson* case [38], in citing various examples of falsifying government records, referred, inter alia, to the *Rotolo* case [76], where an IRS employee was removed for filing a tax return that claimed improper deductions and failed to report income.

All that being so, noncompliance with the tax laws by federal employees who report to agencies other than the Treasury Department is less likely to reflect negatively on the employee's agency, and therefore, the nexus between such conduct and the employee's employment would tend to be attenuated so as to warrant a lesser penalty than that which would be meted out to a Treasury employee for a like offense [98, 117].

It thus can safely be said that all federal employees have some sort of an enhanced duty to comply with the tax laws. Any noncompliances would have a nexus to the employees' federal employment duties by virtue of the applicable employment terms and conditions, and such nexus would be all the more proximate if the worker were employed in a tax collection function.

State and Local Government Workers Employed in Taxation Functions

To varying degrees, many state and local government employees are held to a special standard with respect to their personal tax affairs.

The same considerations for holding IRS agents to a stringent standard in their personal tax affairs also apply to employees of state and local taxation authorities. The case of *Kooi v. Chu* [118-119], which upheld the dismissal of employees of the New York State Department of Taxation and Finance, is most illustrative. Shortly after his appointment as commissioner of taxation and finance, Roderick G. W. Chu initiated a crackdown to enforce the employee tax-filing rules whose enforcement had grown lax [120, pp. 49-50]. The enforcement action first systematically identified employees of the department who had not filed their personal tax returns and then implemented a three-step process with respect to such nonfiler employees: The first step was to send a relatively friendly reminder letter to all identified nonfiler employees, who were given the opportunity to file their returns or to explain the apparent nonfiling. In the second step, employees who did not respond to the letter in the first step were called in for an interview with the simultaneous imposition of a one-month suspension and a specified deadline for complying with the filing requirements. Employees who did not comply by the step-two deadline were to be dismissed [119-120]. Despite the opportunity for the nonfilers to file delinquent returns at step two and thus limit their disciplinary penalties to one-month suspensions, thirty-five department employees failed to so file after the stated deadline, including eleven tax compliance agents, three excise tax investigators, and four audit clerks [120, pp. 28-29], individuals whose official duties were to "directly monitor tax compliance by other taxpayers"

[120, p. 54]. Some of those thirty-five individuals who were dismissed from employment brought suit.

In the department's brief, Commissioner Chu emphatically asserted his department's concerns for public perceptions and internal order as compelling the dismissal of those employees:

All individuals employed by the Department [of Taxation & Finance] are either directly or indirectly charged with the responsibility of administering and enforcing the State's tax laws. It is vital to the integrity of the Department and to the equitable, fair, and effective administration of the State's tax laws that all officers and employees of the Department performing such duties be above reproach with respect to the requirement to file New York State personal income tax returns pursuant to Tax Law § 651. Toleration of violation by any such officer or employee carries with it *the risk of a creeping rot within the Department itself*, with a consequent serious adverse effect on the morale of those officers and employees with the Department who are in full compliance with the tax laws [emphasis added] [120, pp. 55-56].

The case of *Department of Revenue v. Smith* [121] is an Illinois case whose fact pattern stretches the edges of the envelope to their extremes. The *Smith* case is quite instructional about official policy regarding employees of the Illinois Department of Revenue, and the consistency (or lack thereof) with which that policy was enforced during the early to mid-1980s. Thomas J. Smith was not merely an employee of the Illinois Department of Revenue, but was a high-level supervisor whose duties included liaison between the department and the Internal Revenue Service for the very purpose of coordinating tax enforcement. Smith admittedly was well aware that department policy required all employees to file their state tax returns and subjected violators to removal from office, yet he had filed neither federal nor state returns for 1982 and 1983. The Department of Revenue sought to terminate Smith's employment, but the Illinois Civil Service Commission reduced the penalty to a ninety-day suspension, noting the diverse inconsistency with which the department had enforced its policy in the past.

On its face, the relatively mild sanction of a ninety-day suspension in the *Smith* case might appall those who strongly believe a taxation authority must strictly insist on tax compliance among its own employees, particularly those of higher rank and significant tax-enforcement responsibility. If that alone were not a sufficient nexus to Mr. Smith's official duties, the IRS district director specifically informed the director of the Illinois Department of Revenue that the IRS "could no longer work with [Smith] as a liaison person" in light of Smith's nonfiling of his federal tax returns. If anybody deserved to be fired for nonfiling of tax returns, it was Mr. Smith. Indeed, Mr. Smith was ultimately removed from his position with the Illinois Department of Revenue, albeit not through a

disciplinary removal but, surreptitiously, by not being reappointed according to the applicable Illinois civil service laws [see 122, 123].

It seems that most, if not all, state taxation authorities have ample statutory or regulatory authority to discipline employees who fail to perform their personal tax obligations, but, as the facts of the *Kooi* [118-120] and *Smith* [121-122] cases illustrate, the enforcement of such policies often falls into disuse. Irregular and inconsistent enforcement of a personal tax compliance requirement, as with any other type of employment rule, makes it difficult for a governmental agency to successfully discipline those who honor such rule in the breach.

The New York State Department of Taxation & Finance's proactive and systematic initiative to revitalize its disused rules positioned that agency quite well to successfully assert its disciplinary authority, while Illinois's reactivity to Mr. Smith's noncompliance made removal of the delinquent employee possible only through expenditure of time and money that would not have had to be expended if proper enforcement policies had been observed. The contrasting examples of *Kooi* and *Smith* stand as valuable lessons in the craft of personnel administration for those government agency executives who are inclined to learn from the past triumphs and mistakes of others.

State and Local Government Workers Employed in Other Functions

State and local government employees whose duties are other than taxation do not present public image problems for their agencies to the same degree as would an employee of a taxation authority. Nevertheless, the employee's particular job function, and the mission of his/her agency, might yet be a factor in determining the consequences of the employee's noncompliance with the tax laws.

For police officers, whose very duty is to generically uphold the law, a nexus can be found between their employment and their personal tax affairs. In the *Baskin* case [124] a Houston police officer was removed for, inter alia, not filing his federal tax returns. It is not clear in *Baskin* whether the discipline was imposed primarily because the police officer's alleged departures from the bounds of the law were egregious taxation failings, or whether he was disciplined because he was under investigation for federal charges that just happened to be violations of the Internal Revenue Code. *Baskin*, however, hints but does not directly hold that police officers have an enhanced duty to properly file their tax returns. In a matter involving certain New York City police officers who allegedly failed to properly file their tax returns, however, the federal prosecutor minced few words about the seriousness of a police officer intentionally disobeying the tax laws [125-127]. It is clear that a police officer's position does carry with it some sort of enhanced personal tax compliance duty, though there remains some limited room for argument as to the degree of this enhancement.

In *Pisano v. McKenna* [128] a firefighter was dismissed following his conviction of sales tax offenses in connection with his personal business venture. As in *Baskin* [124], it is not clear how much the taxation nature of Mr. Pisano's offense exacerbated the fact that it was a conviction for a criminal offense. *Pisano*, however, can certainly be cited as precedent in imposing discipline upon a firefighter for not complying with the tax law.

At least one state has been known to rule that a conviction of tax fraud crimes has a sufficient nexus to the job of professional educator, a position requiring moral turpitude in light of such an employee's position as role model to young school students [129]. In that case, however, the seriousness of the situation was obviously exacerbated by the fact that the educator was a school principal and not merely a classroom teacher. Nevertheless, the *Logan* case [129] can be cited as precedent for meting out some form of disciplinary action upon an ordinary school teacher who fails to comply with the tax laws.

Elected officials, who ostensibly serve as role models for their constituents, can also be said to have a special duty to file their tax returns and otherwise comply with the tax laws [130-132]. In the words of one federal prosecutor, "[i]t's particularly troubling to see people who were once given significant public trust who have violated tax laws that we're all supposed to follow" [131, 135].

Accordingly, state and local employees and officials also have some sort of special duty to file their personal tax returns, particularly where the employees' duties include law enforcement or tax administration.

Attorneys at Law

Unless they happen to be employed by a governmental agency, attorneys at law are not, strictly speaking, government employees as that term is commonly used and understood. Attorneys are, however, officers of the court and do have certain special obligations to the public in their capacities as such [137-138]. Accordingly, the federal and state taxation authorities seem to look to attorneys to set the example for proper tax filing practices, singling them out for particularly exacting treatment in well-publicized audit projects and initiatives [139-144]. Moreover, attorneys who have represented clients before the United States Tax Court are apparently held to a stringent standard in their personal tax affairs by that tribunal [see 146-147]. Tax-return offenses can serve as a basis for the imposition by state authorities of professional discipline upon an attorney [see, e.g., 130, 148-154].

CONCLUSION

Generally speaking, every public employee is, to one degree or another, expected to conduct his/her personal affairs with a special eye toward complying with the federal and state tax laws and regulations. The extent of this special expectation and the consistency with which it is imposed will vary according to

the employee's agency, position, and duties. Though the most stringent and exacting standards are reserved for those employed by federal and state taxation authorities, the special expectations have been applied in disciplining public employees from diverse public positions.

As is obvious even to the average citizen, the American tax laws are growing increasingly complex from year to year [155]. As the tax laws become increasingly complex, the voluntary compliance rate among the population can be expected to decrease as more and more citizens will become entangled in tax traps [156-161].

State taxation statutes have a strong tendency to follow the scheme of the Internal Revenue Code in determining and computing parameters such as gross income and allowable deductions [162-166]. Moreover, many state statutes explicitly defer to federal redeterminations of such parameters [167-169]. Thus, a tax confrontation with the IRS frequently means an analogous encounter with the state taxation authority.

Accordingly, the incidence and saliency of public employees' special tax law compliance obligations issues can be expected to increase in the coming years. At least two factors will likely give such issues increased exposure. First of all, the increasing numbers of individuals who run afoul of the tax laws will likely have all segments of the population among their ranks, including public employees. Secondly, there will be increased pressures on governmental agencies and offices to take all necessary measures to promote voluntary compliance [160]. Accordingly, government agencies will find it increasingly difficult to ignore the issue, regardless of whether the Internal Revenue Code as we know it today remains in force.

Both internal managerial and external public image concerns exert strong pressures on government agencies to maintain order within their own houses. The prospect of making an example of an errant employee may likely be viewed as a convenient and effective way to address both the internal and the external imperatives for eliciting voluntary compliance with the tax laws.

Accordingly, compliance with tax laws by public employees can be expected to present many challenges to government agencies, to the members of their workforces, and to the labor organizations that represent such employees. As governmental agencies assert their tax compliance agendas, those who champion the interests of individuals in the public service will be compelled to assert and vigilantly guard government employees' rights. The issue can be expected to persist in the foreseeable future, so long as the tax laws with which the public employee is expected to comply remain abstruse, complex, and ambiguous.

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Kenneth H. Ryesky, Esq. is admitted to the bar in New York, New Jersey, and Pennsylvania. Mr. Ryesky is now a solo practitioner attorney at law, East Northport, New York, and an adjunct assistant professor at Queens College of CUNY,

Flushing, NY. Prior to going into private practice, Mr. Ryesky served as an attorney for the Internal Revenue Service, Manhattan District, and as a contracting officer for the Defense Logistics Agency of the U.S. Department of Defense.

ENDNOTES

1. I.R.C. § 6012.
2. In establishing the particular filing threshold for any given taxpayer, I.R.C. § 6012 makes direct and indirect references to other sections of the Internal Revenue Code. Navigating through the code's complexities is beyond the scope of this article.
3. I.R.C. § 6651.
4. I.R.C. § 7201.
5. I.R.C. § 7203.
6. Md. Code Ann., Tax—Gen. §§13-701 and 13-1001 through 13-1003.
7. N.Y. Tax Law §§ 685 and 1801 through 1805.
8. 72 Pa. C.S.A. §§ 7352 and 7353.
9. I.R.C. § 6501(a)(1).
10. *United States v. Boyle*, 469 U.S. 241, 2249, 105 S.Ct. 687, 691, 83 L.Ed. 2d 622, 630, 1985-1 C.B. 372, 374 (1985).
11. *United States v. Taylor*, 574 F.2d 232, 234 (5th Cir. 1978), *reh'g denied* 576 F.2d 931 (5th Cir. 1978), *cert. denied* 439 U.S. 893, 99 S.Ct. 251, 58 L.Ed. 2d 239 (1978).
12. Sheldon S. Cohen, "Morality and the American Tax System," *Geo. Wash. L. Rev.*, 34, p. 839, 1966.
13. *United States v. Bisceglia*, 420 U.S. 141, 145, 95 S.Ct. 915, 918, 43 L.Ed. 2d 88, 93 (1975).
14. *Williams v. United States*, 193 Ct.Cl. 440, 434 F.2d 1346 (1970).
15. *Sears v. Dept. of the Navy*, 680 F.2d 863 (1st Cir. 1982).
16. *Kandall v. United States*, 186 Ct.Cl. 900, 904 (1969), *cert. denied* 396 U.S. 837, 90 S.Ct. 98, 24 L.Ed.2d 89 (1969).
17. *Byrnes v. United States*, 213 Ct.Cl. 675 (1977).
18. *Pascal v. United States*, 211 Ct.Cl. 183, 543 F.2d 1284 (1976).
19. *Birnholz v. United States*, 199 Ct.Cl. 532 (1972).
20. *Phillips v. Bergland*, 586 F.2d 1007, 1010-11 (4th Cir. 1978) and cases cited therein.
21. 5 U.S.C. 7513(a).
22. *Ramirez v. State Personnel Board*, 204 Cal.App.3d 288, 251 Cal.Rptr. 9 (2d Dist. 1988).
23. *Craddolph v. Ackerman*, 57 Ohio App.2d 1050, 385 N.E.2d 1091, 11 Ohio Op.3d 135 (1978).
24. *Commonwealth Office of the Atty. Gen. v. Colbert*, 142 Pa.Comm. 657, 589 A.2d 344 (1991), *appeal granted* 530 Pa. 634, 606 A.2d 903 (1992), *appeal dismissed as improvidently granted*, 533 Pa. 95, 619 A.2d 1062 (1993).
25. Not content to rely upon statute and case law alone, some federal government unions have apparently seen fit to specify the nexus requirement in collective bargaining agreements [see, e.g., 26].
26. Internal Revenue Service, *National Agreement between Internal Revenue Service and National Treasury Employees Union ("NORD III")*, Arts. 38.1(C) at p. 59 39.1(C) at p. 61 (IRS Document 6647, July 1989).

27. Compare, e.g., *Wathen v. United States* [28] (Removal upheld of employee who, in highly publicized case, was acquitted by reason of insanity of murdering his mistress) with *Major v. Hampton* [29] (Removal of employee not upheld. "The service was not discredited by the employee's renting of a tryst apartment in the French Quarter of New Orleans, described by the court as "the city that care forgot," and where the landlord and neighbors condoned the immoral behavior.)
28. *Wathen v. United States*, 208 Ct.Cl. 342, 527 F.2d 1191 (1975), *cert. denied* 429 U.S. 821, 97 S.Ct. 69, 50 L.Ed.2d 82 (1976).
29. *Major v. Hampton*, 413 F.Supp. 66 (E.D. La. 1976).
30. *Service v. Dulles*, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957).
31. *Starzec v. United States*, 145 Ct.Cl. 25 (1959).
32. *Inwang v. Community College Dist. No. 508*, 116 Ill.App.3d 608, 73 Ill.Dec. 71, 453 N.E.2d 896 (5th Dist. 1983).
33. *Glone v. City of Philadelphia*, 112 Pa.Comm.w. 205, 535 A.2d 266 (1987).
34. *Powell v. Brown*, 160 W.Va. 723, 238 S.E.2d 220 (1977).
35. The following restriction upon the personal conduct of government employees was literally carved in stone over 4,000 years ago by King Hammurabi: "An officer, constable or tax-gatherer shall not deed to his wife or daughter the field, garden or house, which is his business (i.e., which is his by virtue of his office), nor shall he assign them for debt" [36].
36. *Code of Hammurabi King of Babylon*, § 38 at p. 25 (R. F. Harper, transl., U. of Chicago Press, 1904).
37. United States Office of Personnel Management, *Manager's Handbook*, p. 94 (Washington: GPO, November 1979).
38. *Gipson v. Veterans Administration*, 682 F.2d 1004, 1011 (D.C. Cir. 1982).
39. *Brewer v. U.S. Postal Service*, 227 Ct.Cl. 276, 282-83, 647 F.2d 1093, 1098 (1981), *cert. denied* 454 U.S. 1144, 102 S.Ct. 1005, 71 L.Ed.2d 296 (1982).
40. *Caster v. Dept. of the Army*, 62 M.S.P.R. 436 (1994), *aff'd* 59 F.3d 180 (Fed. Cir. 1995).
41. *Woodbridge v. Commw. Dept. of Revenue*, 62 Pa.Comm.w. 140, 435 A.2d 300, 302 (1981).
42. *Wild v. United States Dept. of Housing & Urban Development*, 692 F.2d 1129, 1133 (7th Cir. 1982).
43. *Massino v. United States*, 589 F.2d 1048 (Ct.Cl. 1978).
44. *Wroblaski v. Hampton*, 528 F.2d 852 (7th Cir. 1976).
45. Theft of government property by a government employee is a serious offense, but the employee's position can make the theft of government property all the more intolerable, e.g., where the employee is a purchasing agent [15 at 867] or a sales manager at a Navy Exchange [46].
46. *Portela Gonzalez v. Secretary of the Navy*, 913 F.Supp. 122, 128 (D. Puerto Rico 1996).
47. Internal Revenue Service, *Pub. 1273, Guide to the Internal Revenue Service for Congressional Staff* (Washington: GPO, January 1996) (SuDoc No. T22.44/2: 1273/996).
48. D. C. Alexander, Commissioner, Directive: IRS Organization and Functions § 1111.1 (Mar. 25, 1974), *reprinted at* 39 Fed. Reg. 11,572 (Mar. 29, 1974).
49. 1989-2 C.B. p. ii.

50. *Crown Cork & Seal Co. v. Pa. Human Relations Comm.*, 463 F.Supp. 120, 122-23 (E.D.Pa. 1979).
51. *N.Y. State Dept. of Taxation & Finance v. N.Y. State Dept. of Law*, 44 N.Y.2d 575, 406 N.Y.S.2d 747, 378 N.E.2d 110 (1978).
52. J. H. Tully, Jr., *State Secrecy Laws and Federal Grand Jury Subpoenas in Non-Tax Investigations*, *Albany L. Rev.*, 46, pp. 78-83, 1981.
53. I.R.C. § 6103.
54. I.R.C. § 7213.
55. I.R.C. § 7216.
56. *United States v. Richey*, 924 F.2d 857 (9th Cir. 1991).
57. Ga. Code Ann. § 48-2-15.
58. La. Rev. Stat. Ann. § 47:1508.
59. N.Y. Tax Law § 202.
60. Phoenix (AZ) Tax Code § 14-510 (posted at <<http://www.ci.phoenix.az.us/plt/artv.html#14-510>>, 10 October 1996).
61. *King v. Mobile Home Rent Review Bd.*, 216 Cal.App.3d 1532, 265 Cal.Rptr. 624 (1989).
62. *Finance Commission of Boston v. Commissioner of Revenue*, 383 Mass. 63, 417 N.E.2d 945 (1981).
63. B. D. Goldstein, "Confidentiality and Dissemination of Personal Information: An Examination of State Laws Governing Data Protection," *Emory L. J.*, 41, p. 1185, 1992.
64. *DeMasi v. Weiss*, 669 F.2d 114, 119-20 (3d Cir. 1982).
65. *Ex Parte Morris*, 530 So.2d 785 (Ala. 1988).
66. *Active Fire Sprinkler Corp. v. American Home Assurance Co.*, 203 A.D.218, 609 N.Y.S.2d 663 (2d Dept. 1994).
67. *Briton v. Knott Hotels Corp.*, 111 A.D.2d 62, 489 N.Y.S.2d 186 (1st Dept. 1986).
68. *Estate of Harry Borman*, N.Y.L.J., 8/12/96 at 33, col. 2 (Surr. Ct. Nassau Co.).
69. *Estate of Ethel M. Cramer*, N.Y.L.J., 10/18/95 at 32, col. 5 (Surr. Ct. Westchester Co.).
70. *Matter of Martin Kraus*, N.Y.L.J., 8/15/94, p. 33, col. 5 (Surr. Ct. Westchester Co.).
71. *Estate of Samuel Charnoff*, N.Y.L.J., 5/15/96 at 29, col. 2 (Surr. Ct. Nassau Co.).
72. 1995-1 C.B., p. ii.
73. Ibn Khaldûn, *Muqaddimah* (c. 1377), F. Rosenthal, translator, Bollingen Ser. XLIII, Pantheon Books, 1958 (Pagination in original Arabic version: II, 113) vol. 2, pp. 123-24 (New York: Pantheon Books, 1958).
74. M. Rostovtzeff, *The Social & Economic History of the Hellenistic World*, vol. 2, pp. 724-26 (Oxford: Clarendon Press, Oxford, 1967).
75. *Monaco v. Dept. of Treasury*, I.R.S., 15 M.S.P.R. 72 (1983).
76. *Rotolo v. Merit Systems Protection Board*, 636 F.2d 6, 8 (1st Cir. 1980).
77. "It becomes common for one tax collector to denounce another, because of their mutual jealousy and envy. . . . The dynasty loses the pomp and magnificence it had possessed through them" [73].
78. G. Guttman, "IRS Employees Less Tax Compliant than Officials Would Like," *Tax Notes*, May 1, 1995, p. 597.
79. Internal Revenue Service, *Rules of Conduct (Document 7098)* (May 1989), § 216.1 and 216.7 at p. 6 (Reprinted in *Followup on Investigation of Senior-Level Employee*

- Misconduct and Mismanagement at the Internal Revenue Service: Hearing before the Committee on Government Operations, Commerce, Consumer and Monetary Affairs Subcommittee*, 101st Cong., 2d Sess., p. 172 (Washington: GPO, 1990) (SuDoc No. Y4.G74/7: EM 7/14)).
80. Internal Revenue Service, *Internal Revenue Service Highlights 1989* (Pub. 1265), p. 21 (Washington, GPO, Oct. 1990).
 81. *Giles v. United States*, 213 Ct.Cl. 602, 553 F.2d 647 (1977).
 82. *Dargan v. United States*, 208 Ct.Cl. 993 (1975).
 83. *Hoover v. United States*, 206 Ct.Cl. 640, 513 F.2d 603 (1975).
 84. *Micali v. Dept. of the Treasury*, 56 M.S.P.R. 127 (1992), *aff'd* 11 F.3d 1070 (Fed. Cir. 1993).
 85. *Boyce v. United States*, 211 Ct.Cl. 57, 543 F.2d 1290 (1976).
 86. In the *Boyce* case [85] the penalty of removal from the service was found to be disproportionately harsh under the circumstances, including the fact that the employees in question who failed to timely file were female GS-2 and GS-3 grade employees who depended upon their respective husbands to file joint returns. The court nevertheless called for some form of punishment to be meted out to the employees.
 87. In the *Danese* case [88], the IRS filed to demonstrate that the employee in question did in fact have an obligation to file a Mississippi state tax income return in view of factual questions, including the employee's claimed residence in Louisiana. Had the IRS shown that the employee did in fact neglect his state tax filing responsibilities, however, there is little question that the discipline imposed upon the employee would have been sustained.
 88. *Danese v. Internal Revenue Service*, 11 M.S.P.R. 97 (1982).
 89. *Marianna Crismali v. Commissioner*, T.C. Memo 1995-3, 69 TCM (CCH) 1579.
 90. *Goldenberg v. Commissioner*, T.C. Memo 1993-150, 65 TCM (CCH) 2338.
 91. *Addison v. Commissioner*, T.C. Memo, 1992-349, 63 TCM (CCH) 3157, 3158.
 92. *Langer v. Commissioner*, T.C. Memo 1992-46, 63 T.C.M. (CCH) 1900, *aff'd* 989 F.2d 294 (8th Cir. 1993).
 93. *Langer v. Commissioner*, T.C. Memo 1990-268, 59 T.C.M. (CCH) 740, *aff'd* 980 F.2d 1198 (8th Cir. 1992).
 94. *Price v. Commissioner*, T.C. Memo 1997-61, 73 TCM (CCH) 1906.
 95. *Grossman v. Commissioner*, T.C. Memo 1996-452, 72 TCM (CCH) 845, 882-83.
 96. *Sisson v. Commissioner*, T.C. Memo, 1996-338, 72 TCM (CCH) 200, 202.
 97. *Michael A. Shapiro v. Commissioner*, T.C. Memo 1994-105, 67 TCM (CCH) 2389.
 98. *Taylor v. Dept. of Justice*, 60 M.S.P.R. 686, 693 (1994).
 99. *Code of Justinian* 12.62.3 (Gratian & Valentinian) (c. 380), S. P. Scott, trans., *The Civil Law*, vol. 15, p. 319 Cincinnati: Central Trust Co. 1932 (photo. reprint, New York: AMS Press, 1973).
 100. Circa the year 380, Emperors Gratian and Valentinian decreed that "[w]henever a collector is accused and convicted of depredations, he must suffer the penalty prescribed by law, *without appealing to Our clemency* [emphasis added]" [99].
 101. David Burnham, *A Law Unto Itself* (1989).
 102. 104 Cong. Rec. S10547-49 (Daily ed., Sept. 13, 1996) (remarks of Sen. Coverdell).
 103. *United States Government Manual 1995/1996*, pp. 449-80 (Washington: GPO, 1995).
 104. *Crawford v. Dept. of the Treasury*, 56 M.S.P.R. 224, 227 (1993).

105. "Former United States Treasurer Gets Prison Term for Tax Fraud," *New York Times*, 14 September 1996, p. A-12, col. 4.
106. *Matter of Anderson*, 142 A.D.2d 498, 536 N.Y.S.2d 765 (1st Dept. 1989).
107. 5 C.F.R. § 2635.809 (1996).
108. *Phillips v. General Services Admin.*, 878 F.2d 370, 374 (Fed. Cir. 1989) (Reprimand upheld of federal employee whose credit card account was 120 days delinquent).
109. Exec. Order No. 12,674, § 101(1), 54 Fed. Reg. 15,159 (April 12, 1989), *reprinted as amended* in 5 U.S.C.A. § 7301, Appendix, p. 170-71 (St. Paul: West, 1996).
110. Exec. Order No. 11,222, § 205, 30 Fed. Reg. 6469 (May 8, 1969).
111. The salaries of federal employees were, once upon a time, exempt from state taxation, as reflected in the *Dobbins* decision by the Supreme Court in 1842 [112]. Beginning in 1941, Congress specifically permitted states to tax federal employees on the same basis as any other persons [113].
112. *Dobbins v. The Commissioners of Erie County*, 41 U.S. (6 Pet.) 435, 10 Law.Ed. 1022 (1842).
113. 4 U.S.C. §§ 104-111.
114. G. Guttman, "The Tax Compliance of Federal Government Employees," *Tax Notes*, March 18, 1996, p. 1589.
115. *Brandt v. Dept. of the Navy*, 22 M.S.P.R. 36 (1984).
116. The circumstances in the *Brandt* case [115] were aggravated by the fact that the federal employee in question, who held a top secret security clearance, had actually been convicted on felony tax evasion charges.
117. *Mitchell v. U.S. Postal Service*, 32 M.S.P.R. 362 (1987).
118. *Kooi v. Chu*, 129 A.D.2d 393, 517 N.Y.S.2d 601 (3d Dept. 1987).
119. Perhaps the most interesting and illustrative facts from the *Kooi v. Chu* [118] decision are to be found not in the reported decision itself, but in the well-documented appellate brief submitted in the case by the New York State Department of Taxation and Finance. The brief is available on Fiche No. 3-87-466 of the *Appellate Division Briefs* [120].
120. Affidavit of Roderick G. W. Chu, in Brief for Respondent, *Kooi v. Chu*, Index No. 53842, New York Supreme Court, Appellate Division, 3d Dept. 1987, *reprinted on* Fiche No. 3-87-466 (microform) (Rochester: Micro Copy, Inc., 1987).
121. *Department of Revenue v. Smith*, 150 Ill.App.3d 1039, 103 Ill.Dec. 832, 501 N.E.2d 1370 (1986) *app. denied* 114 Ill.2d 544, 108 Ill.Dec. 415, 508 N.E.2d 726 (1987).
122. *Smith v. United States*, 723 F.Supp. 1300, 1303 (C.D. Ill., 1989), *modified on other grounds* 964 F.2d 630 (7th Cir. 1992), *cert. denied* 506 S.Ct. 1067, 113 S.Ct. 1015, 122 L.Ed.2d 162 (1993).
123. Subsequent to his ninety-day suspension and his subsequent nonreappointment, Smith unsuccessfully sued the IRS District Director for disclosing Smith's tax return information to Smith's superiors at the Illinois Department of Revenue [122].
124. *Baskin v. United States*, 96-2 U.S.T.C. (CCH) ¶ 50,424 (S.D. Tex., Civ-H-94-1811, 6/21/96), *AFF'D*, 98-1 U.S.T.C. (CCH) ¶ 50,201 (5th Cir., 96-20973, 2/17/98).
125. Don Van Natta, Jr., "600 City Employees Suspected in a Plot for Evading Taxes," *New York Times*, July 18, 1996, page B-4.
126. R. E. Kessler, "15 Cops Arrested in Tax Case," *Newsday* (Long Island, NY), July 18, 1996, p. A-6.

127. An article in the *New York Times* [125] quoted United States Attorney Mary Jo White: "That these defendants are police officers sworn to uphold the law makes the crimes charged all the more galling and offensive. . . . Those in law enforcement have a heightened duty to obey all the laws and to set an example for others, not to brazenly declare that they are somehow above the law." An article that appeared the same day in *Newsday* [126] attributed a somewhat different quotation of the same substance to Ms. White.
128. *Pisano v. McKenna*, 120 Misc.2d 536, 466 N.Y.S.2d 231 (Sup. Ct. Oneida Co. 1983).
129. *Logan v. Warren County Bd. of Education*, 549 F.Supp. 145 (S.D. Ga. 1982).
130. *Matter of Gribetz*, 223 A.D.2d 149, 646 N.Y.S.2d 279 (2d Dept. 1996).
131. L. Plevin, "Tax Indictment: Two Ex-officials in Brookhaven Accused of Evasion," *Newsday* (Long Island, NY), September 28, 1994, p. A-5.
132. Indeed, in the past, being a taxpayer has been a requirement for the holding of certain elective offices [see 133, 134].
133. *Darrow v. The People*, 8 Colo. 417, 420-21, 8 P.661, 663-64 (1885), *reh'g denied* 8 Colo. 426, 8 P. 924 (1885).
134. *Sathre v. Quickstad*, 66 N.D. 689, 268 N.W. 683, 107 A.L.R. 202 (1936).
135. One can hardly expect the assistant United States attorney so quoted to empathize with tax evaders in light of the personal tax compliance requirements specifically imposed upon all employees of the Department of Justice, including assistant United States attorneys [136].
136. 28 C.F.R. § 45.735-15 (1996).
137. *In re Sizer*, 134 S.W.2d 1085, 1188 (Mo. App. 1939).
138. *Mississippi Power Co. v. Stribling*, 191 Miss. 832, 3 So.2d 807, 810 (1941).
139. S. Stratton, "Attorney Nonfilers Still Targets in Service's 'Project Esquire'," *Tax Notes*, March 13, 1995, p. 1596.
140. D. Pines, "3 Lawyers Enter Guilty Pleas to Failing to File Tax Returns," N.Y.L.J., August 19, 1994, p. 1, col. 4.
141. Edward A. Adams, "66,000 Solo Lawyers In State Tax Probe," N.Y.L.J., December 19, 1996, p. 1, col. 5.
142. Steven Toscher, "Do the Right Thing," *Nevada Lawyer*, January 1995, p. 16.
143. J. R. Walker and K. C. Gerdes, "Colorado Lawyers Beware: The IRS Wants You!" *Colorado Lawyer* 24, p. 595 (March 1995).
144. It seems the high-profile punishment of lawyers as a public example for tax law compliance is not unique to taxation authorities in the United States. In Israel, the indictment of the head of the Israel Bar Association for tax evasion was also done in a publicity-conscious manner by the authorities [145].
145. "Going for the Jugular," *Yated Ne'Eman*, December 27, 1996, p. 6, col. 5.
146. *Hardesty v. Commissioner*, T.C. Memo 1993-225, 65 TCM (CCH) 2743.
147. *Zadan v. Commissioner*, T.C. Memo 1993-85, 65 TCM (CCH) 2059.
148. *In re Rolley*, 121 Ill.2d 222, 520 N.E.2d 302, 307, 117 Ill.Dec. 141 (1988).
149. *Committee on Professional Ethics & Conduct v. Hunzelman*, 492 N.W.2d 670 (Iowa 1992).
150. *Maryland Bar Assn., Inc. v. Agnew*, 271 Md. 543, 318 A.2d 811 (1974).
151. *State ex rel. Oklahoma Bar Assn. v. Livshee*, 870 P.2d 770, 774 (Okla. 1994).

152. J. J. Tigue and L. Lacewell, "Professional Sanctions for Tax Offenses," N.Y.L.J., January 19, 1995, p. 3.
153. C. M. Smith and G. Newman, "Consequences of Failing to File N.Y. Tax Returns," N.Y.L.J., February 28, 1996, p. 1 col. 1.
154. S. M. Stoddard and C. A. Stutsman, Jr., "Income Tax Offenses by Lawyers: An Ethical Problem," *A.B.A. Journal* 58, p. 843 (1972).
155. The tax system has grown increasingly complex despite presidential acknowledgment more than a decade ago that "[t]he system is *too complicated* [emphasis in original]" [156].
156. President Ronald W. Reagan, *The President's Tax Proposals to the Congress for Fairness, Growth and Simplicity*, p. 1 (Washington: GPO, May 1985) (SuDoc No. Pr 40.2:T19).
157. United States General Accounting Office, *Tax System: Issues in Tax Compliance Burden*, Pub. No. GAO/T-GGD-96-100 pp. 4-5 (Washington: GPO, 1996).
158. "Asides: Tax Revision (Editorials)," *Wall St. J.*, March 3, 1987, p. 32, col. 1.
159. "Tax Report: Tax-Law Complexity and Poor IRS Service Draw Fire from an IRS Official," *Wall St. J.*, February 12, 1997, p. 1, col. 5.
160. United States General Accounting Office, *Taxpayer Compliance: Analyzing the Nature of the Income Tax Gap*, Pub. No. GAO/T-GGD-97-35, p. 1 (Washington: GAO, 1997).
161. Jerome Kurtz, a former Internal Revenue commissioner, was quoted in the *Wall Street Journal* as saying, "A taxpaying public that doesn't understand the law is a taxpaying public that can't comply with the law" [158, p. 1].
162. N.Y. Tax L. § 612.
163. Mass. Gen. Laws Ann. ch. 62, §§ 2 & 3.
164. *In re Cohn*, 96 B.R. 827 (Bankr., N.D. Ill. 1988).
165. *Zenith Indus. Corp. v. Dept. of the Treasury*, 152 Mich.App. 476, ___, 394 N.W.2d 451, 453 (1986).
166. General Accounting Office, *Report to the Commissioner of Internal Revenue: Tax Administration: FedState Efforts Offer Opportunities but Program Needs Improvement*, Report No. GAO/GGD-97-16 (Washington: GPO, Oct. 1996).
167. N.Y. Tax L. § 659.
168. Ill. Rev. Stat. ch. 120, § 5-506(b).
169. K. H. Ryesky, "When Must New York Abide by a Federal Estate Tax Audit?", *New York State Bar J.*, July/August 1994, p. 32.

Direct reprint requests to:

Kenneth H. Ryesky
Attorney at Law
P.O. Box 926
East Northport, NY 11731