

**From the desk of  
Bill Benson  
P.O. Box 550  
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**March 4, 1996**

Mrs. Margaret M. Richardson  
Commissioner of Internal Revenue  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Dear Mrs. Richardson,

Many years ago, I tried to find within the Internal Revenue Code the section which created your agency, the Internal Revenue Service, but I was unable to find it. I then decided to locate other sources of information regarding how the Internal Revenue Service was established and what I found was nothing short of amazing.

In 1972, an Internal Revenue Manual 1100 was published in both the Federal Register and Cumulative Bulletin; see 37 Fed. Reg. 20960, 1972-2 Cum. Bul. 836, a copy of which is attached for your convenience. On the very first page of this statement published in the *Bulletin*, the following admission was made:

"(3) By common parlance [sic] and understanding of the time, an office of the importance of the Office of Commissioner of Internal Revenue was a bureau. The Secretary of the Treasury in his report at the close of the calendar year 1862 stated that 'The Bureau of Internal Revenue has been organized under the Act of the last session...' Also it can be seen that Congress had intended to establish a Bureau of Internal Revenue, or thought they had, from the act of March 3, 1863, in which provision was made for the President to appoint with Senate confirmation a Deputy Commissioner of Internal Revenue 'who shall be charged with such duties in the bureau of internal revenue as may be prescribed by the Secretary of the Treasury, or as may be required by law, and who shall act as Commissioner of internal revenue in the absence of that officer, and exercise the privilege of franking all letters and documents pertaining to the office of internal revenue.' In other words, 'the office of internal revenue' was 'the bureau of internal revenue,' and the act of July 1, 1862, is the organic act of today's Internal Revenue Service."

This statement, which again appears in a similar publication appearing at 39 Fed. Reg. 11572, 1974-1 Cum. Bul. 440, as well as the current IRM 1100, essentially admits that Congress never created either the Bureau of Internal Revenue or the Internal Revenue Service. To conclude that "Congress thought it had created this agency" is an admission that even the government itself cannot even find anything which created either agency. The only office created by the act of July 1, 1862, was the Office of the Commissioner; neither the Bureau nor the Service was actually created by any of these acts.

I have no doubt that when employees of the IRS were researching its origins so that this statement could be included within IRM 1100, those employees must have performed a very thorough investigation. This obviously is the best position that your agency can develop regarding precisely how the IRS came into being. But besides the problem that these acts simply did not create either the Bureau or the IRS is

the fact that these acts were repealed by the adoption of the Revised Statutes of 1873. Therefore, it would appear that your agency has never been created by any act of Congress, and this is a serious flaw.

At the state level, it is a well acknowledged rule that a duly constituted office of state government must be created either by the state constitution itself or by some legislative act; see *Patton v. Bd. of Health*, 127 Cal. 388, 393, 59 P. 702, 704 (1899) ("One of the requisites is that the office must be created by the constitution of the state or it must be authorized by some statute"); *First Nat. Bank of Columbus v. State*, 80 Neb. 597, 114 N.W. 772, 773 (1908); *State ex rel. Peyton v. Cunningham*, 39 Mont. 197, 103 P. 497, 498 (1909); *State ex rel. Stage v. Mackie*, 82 Conn. 398, 74 A. 759, 761 (1909); *State ex rel. Key v. Bond*, 94 W.Va. 255, 118 S.E. 276, 279 (1923) ("a position is a public office when it is created by law"); *Coyne v. State*, 22 Ohio App. 462, 153 N.E. 876, 877 (1926) ("Unless the office existed there could be no officer either *de facto* or *de jure*. A *de facto* officer is one invested with an office; but if there is no office with which to invest one, there can be no officer. An office may exist only by duly constituted law"); *State v. Quinn*, 35 N.M. 62, 290 P. 786, 787 (1930); *Turner v. State*, 226 Ala. 269, 146 So. 601, 602 (1933); *Oklahoma City v. Century Indemnity Co.*, 178 Okl. 212, 62 P.2d 94, 97 (1936); *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P.2d 685, 689 (1936); *Stapleton v. Frohmiller*, 53 Ariz. 11, 85 P.2d 49, 51 (1938); *Buchholtz v. Hill*, 178 Md. 280, 13 A.2d 348, 350 (1940); *Krawiec v. Industrial Comm.*, 372 Ill. 560, 25 N.E.2d 27, 29 (1940); *People v. Rapsey*, 16 Cal.2d 636, 107 P.2d 388, 391 (1940); *Industrial Comm. v. Arizona State Highway Comm.*, 61 Ariz. 59, 145 P.2d 846, 849 (1943); *State ex rel. Brown v. Blew*, 20 Wash.2d 47, 145 P.2d 554, 556 (1944); *Martin v. Smith*, 239 Wis. 314, 1 N.W.2d 163, 172 (1941); *Taylor v. Commonwealth*, 305 Ky. 75, 202 S.W.2d 992, 994 (1947); *State ex rel. Hamblen v. Yelle*, 29 Wash.2d 68, 185 P.2d 723, 728 (1947); *Morris v. Peters*, 203 Ga. 350, 46 S.E.2d 729, 733 (1948); *Weaver v. North Bergen Tp.*, 10 N.J. Super. 96, 76 A.2d 701 (1950); *Tomaris v. State*, 71 Ariz. 147, 224 P.2d 209, 211 (1950); *Pollack v. Montoya*, 55 N.M. 390, 234 P.2d 336, 338 (1951); *Schaefer v. Superior Court in & for Santa Barbara County*, 248 P.2d 450, 453 (Cal.App. 1952); *Brusnigham v. State*, 86 Ga.App. 340, 71 S.E.2d 698, 703 (1952); *State ex rel. Mathews v. Murray*, 258 P.2d 982, 984 (Nev. 1953); *Dosker v. Andrus*, 342 Mich. 548, 70 N.W.2d 765, 767 (1955); *Hetrich v. County Comm. of Anne Arundel County*, 222 Md. 304, 159 A.2d 642, 643 (1960); *Meiland v. Cody*, 359 Mich. 78, 101 N.W.2d 336, 341 (1960); *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484, 485 (1961); *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241, 245 (1965); *Planning Bd. of Tp. of West Milford v. Tp. Council of Tp. of West Milford*, 123 N.J. Super. 135, 301 A.2d 781, 784 (1973); *Vander Linden v. Crews*, 205 N.W.2d 686, 688 (Iowa 1973); *Kirk v. Flournoy*, 36 Cal.App. 3d 553, 111 Cal. Rptr. 674, 675 (1974); *Wargo v. Industrial Comm.*, 58 Ill.2d 234, 317 N.E.2d 519, 521 (1974); *State v. Bailey*, 220 S.E.2d 432, 435 (W.Va. 1975); *Leek v. Theis*, 217 Kan. 784, 539 P.2d 304, 323 (1975); *Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill.App.3d 926, 347 N.E.2d 34, 38 (1976); and *State v. Pinckney*, 276 N.W.2d 433, 436 (Iowa 1979).

This same rule applies at the federal level; see *United States v. Germaine*, 99 U.S. 508 (1879); *Norton v. Shelby County*, 118 U.S. 425, 441, 6 S.Ct. 1121 (1886) ("there can be no officer, either *de jure* or *de facto*, if there be no office to fill"); *United States v. Mouat*, 124 U.S. 303, 8 S.Ct. 505 (1888); *United States v. Smith*, 124 U.S. 525, 8 S.Ct. 595 (1888); *Glavey v. United States*, 182 U.S. 595, 607, 21 S.Ct. 891 (1901) ("The law creates the office, prescribes its duties"); *Cochnowar v. United States*, 248 U.S. 405, 407, 39 S.Ct. 137 (1919) ("Primarily we may say that the creation of offices and the assignment of their compensation is a legislative function... And we think the delegation of such function and the extent of its delegation must have clear expression or implication"); *Burnap v. United States*, 252 U.S. 512, 516, 40 S.Ct. 374, 376 (1920); *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 46 S.Ct. 172, 173 (1926); *N.L.R.B. v. Coca-Cola Bottling Co. of Louisville*, 350 U.S. 264, 269, 76 S.Ct. 383 (1956) ("Officers'

normally means those who hold defined offices. It does not mean the boys in the back room or other agencies of invisible government, whether in politics or in the trade-union movement"); *Crowley v. Southern Ry. Co.*, 139 F. 851, 853 (5th Cir. 1905); *Adams v. Murphy*, 165 F. 304 (8th Cir. 1908); *Scully v. United States*, 193 F. 185, 187 (D.Nev. 1910) ("There can be no offices of the United States, strictly speaking, except those which are created by the Constitution itself, or by an act of Congress"); *Commissioner v. Harlan*, 80 F.2d 660, 662 (9th Cir. 1935); *Varden v. Ridings*, 20 F.Supp. 495 (E.D.Ky. 1937); *Annoni v. Blas Nadal's Heirs*, 94 F.2d 513, 515 (1st Cir. 1938); and *Pope v. Commissioner*, 138 F.2d 1006, 1009 (6th Cir. 1943).

Since I have reached the conclusion that the IRS has never been created by Congress, I am asking you to provide to me the citation of any statute which really did create the IRS. Since this is a question of profound national importance, I request that you provide an answer to me within 20 days. Failing a response within that time period, I shall conclude that you cannot find any such statute and shall act accordingly.

Your truly,

Bill Benson