

The defendant has argued that 26 U.S.C. § 6020(b)(1) obligates the Internal Revenue Service to prepare a tax return when either an individual does not file a return or to create its own contrary return when it suspects the filed return to be false. He contends that the IRS's failure to create a substitute return as a condition precedent to seeking an indictment was both a fraud upon the Court and rendered the Court devoid of jurisdiction.

Although the defendant's argument purports to be grounded in the plain language of the statute, he fails to acknowledge that every court that has addressed this issue, including this Court, has read the statute to be permissive and not to create an obligation for the IRS to create a substitute return. See, e.g., Deutsch v. Commissioner, 478 F.3d 450, 452 (2d Cir. 2007); United States v. Schiff, 919 F.2d 830, 832-33 (2d Cir. 1990) ("There is no requirement that the IRS complete a substitute return"); Selgas v. Commissioner, 475 F.3d 697, 700 (5th Cir. 2007); United States v. Stafford, 983 F.2d 25, 27 (5th Cir. 1993) ("[A]lthough [§ 6020(b)] authorizes the Secretary to file for a taxpayer, the statute does not require such a filing"); United States v. Cheek, 3 F.3d 1057, 1063 (7th Cir. 1993); Geiselman v. United States, 961 F.2d 1, 5 (1st Cir. 1992); United States v. Powell, 955 F.2d 1206, 1213 (9th Cir. 1992); In re Bergstrom, 949 F.2d 341, 343 (10th Cir. 1991); United States v. Barnett, 945 F.2d 1296, 1300 (5th Cir. 1991); United States v. Verkuilen, 690 F.2d 648, 657 (7th Cir. 1982); United States v. Tarrant, 798 F. Supp.

1292, 1302-03 (E.D. Mich. 1992) (Rosen, J.). As the IRS had no duty to create a substitute return, the defendant's argument are without merit.