

February 27, 2005

PRESIDENT'S ADVISORY  
BOARD  
ON FEDERAL TAX REFORM

2005 FEB 36 P 12: 10

The President's Advisory Panel on Federal Tax Reform  
1440 New York Avenue NW  
Suite 2100  
Washington, DC 20220

**Certified Mail No. 7004 2510 0007 2554 9816**

Advisory Panel,

The most egregious aspect of the current Federal Income Tax Code, found at Title 26 USC and the companion Regulations at Title 26, Code of Federal Regulations, is the gross and intentional misapplication of the Code. For example, hundreds of Citizens have written the Secretary, Commissioner, and other high-ranking officials in the Treasury Department; as well as every Senator and Congressperson to answer the following questions:

**Regarding the determination of taxable income from sources within the United States:**

- 1) Should I use the rules found in 26 USC § 861(b) and 26 CFR § 1.861-8 (in addition to any other pertinent sections) to determine my taxable domestic income?*
- 2) If I should not use those sections to determine my taxable domestic income, please show where the law says who should or should not use those sections for that.*
- 3) If I, as a U.S. citizen, receive all of my income from working within the 50 states, do 26 USC § 861(b) and 26 CFR § 1.861-8 show my income to be taxable?*
- 4) Should I use 26 CFR § 1.861-8T(d)(2) to determine whether my "items" of income (e.g. compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?*
- 5) What is the purpose of the list of non-exempt types of income found in 26 CFR § 1.861-8T(d)(2)(iii), and why is my domestically earned income not on that list?*
- 6) What types of income (if any) are not exempted by any statute, but are nonetheless "excluded by law" (not subject to the income tax) because they are, under the Constitution, not taxable by the federal government?*

### **Reasons for questions 1 and 2:**

*The regulations at 26 CFR § 1.861-8 begin by stating that Sections 861(b) and 863(a) state in general terms "how to determine taxable income of a taxpayer from sources within the United States" after gross income from the U.S. has been determined. Section 1.861-1(a)(1) confirms that "taxable income from sources within the United States" is to be determined in accordance with the rules of 26 USC § 861(b) and 26 CFR § 1.861-8 (see also 26 CFR §§ 1.862-1(b), 1.863-1(c)). Cross-references under 26 USC § 61, as well as entries in the USC Index under the heading "Income Tax," also refer to Section 861 regarding income ("gross" and "taxable") from "sources within U.S."*

### **Reason for question 3:**

*Section 217 of the Revenue Act of 1921, predecessor of 26 USC § 861 and following, stated that income from the U.S. was taxable for foreigners, and for U.S. corporations and citizens deriving most of their income from federal possessions, but did not say the same about the domestic income of other Americans. The regulations under the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "specific sources and activities," which still relate only to certain types of international trade (see 26 CFR §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).*

### **Reason for question 4:**

*The regulations (26 CFR § 1.861-8(a)(3)) state that a "class of gross income" consists of the "items" of income listed in 26 USC § 61 (e.g. compensation, interest, rents, dividends, etc.). The regulations (26 CFR §§ 1.861-8(b)(1)) then direct the reader to "paragraph (d)(2)" of the section, which provides that such "classes of gross income" may include some income which is excluded for federal income tax purposes.*

### **Reason for question 5:**

*After defining "exempt income" to mean income which is excluded for federal income tax purposes (26 CFR § 1.861-8T(d)(2)(ii)), the regulations list several types of income which are not exempt (i.e. which are subject to tax), including the domestic income of foreigners, certain foreign income of Americans, income of certain possessions corporations, and income of international and foreign sales corporations; but the list does not include the domestic income of most Americans (26 CFR § 1.861-8T(d)(2)(iii)).*

**Reason for question 6:**

*Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute or "fundamental law" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to the types of income specifically exempted by statute, other types of income were excluded because they were, "under the Constitution, not taxable by the Federal Government" (§ 39.22(b)-1 (1956)). (This is also reflected in the current 26 CFR § 1.312-6.)*

To date, while most recipients of these questions totally ignore the request for a response, those who do either (1) refuse to answer the questions asked, (2) respond with "Canned Answers" that have nothing to do with the questions asked, or (3) threaten intimidation by prosecution for raising the questions in the first place.

I believe that any attempt to restructure the current Federal Income Tax System prior to a thorough investigation of the taxing statutes and regulations as they are currently written, is an exercise in futility. The fact that ordinary U.S. Citizens are not receiving direct answers to direct, reasonable questions about the proper application of the current tax code, has resulted in a general loss of confidence in the integrity and administration of the Federal Tax System.

In summary, if this Advisory Panel fails to examine the current Federal Tax System with the scrutiny that it deserves, the American public will not embrace nor tolerate a new plan that leaves the Citizen subject to unbridled authority that strips him of his Constitutional Rights including but not limited to Due Process of Law.

**Table of References:**

**Title 26 United States Code, Section 861 and following**

**Title 26 Code of Federal Regulations, Section 1.861-8 and following**

Respectfully,

  
Harold Smith