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PRESIDENT'S ADVISORY
PANEL
ON FEDERAL TAX REFORM

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

Good day, Panel,

The enclosed is my individual submission to the President's Advisory Panel. As you will see, it concerns current statutes and regulations and the headaches and burdens of the current application of the federal income tax.

The six questions for determining taxable income can be found at www.861.info.

Yours in Liberty,


James R. Compton III

Headaches, unnecessary complexity, and burdens that taxpayers - both individuals and businesses - face because of the existing system.

Headaches and burdens: Over the last 2 years I have asked six questions of the IRS and Treasury Departments and have not received specific answers to the questions concerning Title 26 USC, Section 861 and it's regulations addressed below.

The Supreme Court and the Secretary of the Treasury have repeatedly stated that the federal income tax is **(and has always been) an indirect "excise" tax**. And the current income tax is geographically uniform, as an indirect tax must be. Excises, Generally speaking, are taxes imposed on certain activities or privileges.

As I understand the law, the income tax is imposed on "*income from whatever source derived*" (minus deductions). The mere receipt of income, by itself, is not (and could not be) the subject of this excise tax. It is the "*source*" which is the subject of the tax, and the amount of income received from that "*source*" is what is used to determine the amount of tax due.

The above citations coincide well with the fact that the sections of regulation for determining income (26 CFR section 1.861-8) states that it applies only to income "*from specific sources and activities.*" And the statutes and regulations under the part which "*determine[s] the sources of income for the purpose of the income tax*" all apply only to these same "*specific sources and activities,*" which are all related to foreign commerce.

Section 61 of the income tax law shows that the income tax is imposed on "income from whatever source derived" (minus allowable deductions); but the mere receipt of income, by itself, is not (and should not be) the subject of the excise tax. It is the "source" which is the subject of the tax, and the amount of income received from that

“source” is what is used to determine the amount of tax due.

But there is nothing in the **general** definition of “gross income” in Section 61 that tells who is receiving the income or where it is coming from. The bottom of Section 61 **DIRECTS** the reader to **Section 861** in Subchapter N for “income from sources within the United States” (domestic income).

These two parts of the law show that for an “item” of income (Subchapter B) to be taxable, it must be derived from a taxable “source” (Subchapter N). Subchapter B shows that most “items” of income are **not exempt from taxation by Congress**, but it is not until arriving at the convoluted regulations under Section 861 and following concerning the determination of taxable *domestic* income and taxable *foreign* income that the reader finds that the domestic incomes of residents of the United States are **EXEMPT** from federal taxation because such incomes are **NOT** shown to be taxable. The only incomes that are shown to be taxable are those of individuals engaged in **international or possessions commerce**.

In those regulations, the reader first finds out that income is required to be included as taxable “gross income” **ONLY** when that income derives from certain specific activities or types of commerce. Then this part of the law goes on to explain that while certain U.S.-source income of *foreigners*, certain *foreign* income of U.S. citizens and corporations, and certain other types of income related to international or *foreign* commerce (including commerce within federal possessions) are shown to be taxable; the purely domestic incomes of U.S. citizens living and working exclusively within the 50 states are **NOT shown to be taxable**.

This can be summarized as follows:

<i>Subchapter A</i>	<i>Subchapter B</i>	<i>Subchapter N</i>
Tax imposed on “taxable income.”	“ <u>Items</u> ” of income that <i>may</i> be taxed.	Determining the taxable “ <u>sources</u> ” of income.

In order for there to be taxable domestic income, *all* of the following must occur:

- 1) One must receive a *taxable* “item” of income (e.g., compensation, interest) (per 26 USC § 61 and following).
- 2) The “source rules” must categorize the income as domestic income (per 26 USC § 861(a) and 26 CFR §§ 1.861-2 through 1.861-7).
- 3) The income must derive from a “specific source or activity” which is *taxable* (per 26 USC § 861(b) and 26 CFR § 1.861-8 and following).

Aside from rules about specific federal possessions, international and foreign sales corporations, and certain foreign tax credits, the list of activities includes the same types of commerce which *80 years* of predecessor regulations have included:

- 1) Certain foreign income of U.S. citizens (1.861-8(f)(1)(i) above).
- 2) The domestic income of foreigners (1.861-8(f)(1)(iv) above).
- 3) Certain income related to federal possessions (1.861-8(f)(1)(vi)(E) above).

The domestic incomes of U.S. citizens earned *exclusively* from within the United States are not taxed *because they are never mentioned in the law*.

How does the Constitution back this up? Exploding the myth of the 16th Amendment means that the Constitutional limitations on Congress’s power to tax are unchanged.

What are those limitations?

I. The Constitution makes specific statements that give Congress the power to tax/regulate international and possessions commerce. These are found in **Article I, Section 8, Clauses 1 and 3**, and **Article IV, Section 3, Clause 2**. They are:

“The Congress shall have power to lay and collect taxes, duties, imposts, and

excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." [Article I, Section 8, Clause 1]

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;" [Article I, Section 8, Clause 3]

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States:" [Article IV, Section 3, Clause 2]

In other words:

- 1 Article I, Section 8, Clause 1, specifically gives Congress the power to tax.
- 2 Article I, Section 8, Clause 3, specifically put international (foreign) commerce under federal jurisdiction (control).
- 3 Article IV, Section 3, Clause 2, specifically puts possessions commerce under federal jurisdiction (control).

So, *the power to tax*, **together with** the clauses giving Congress *jurisdiction over international commerce and commerce within federal possessions*, **gives Congress the power to tax incomes** that are derived from **international and possessions commerce**.

The regulations under Title 26, Subtitle A, Chapter 1, Subchapter N, Section 861 and following **prove** that these incomes **are taxed**.

II. Congress is also specifically given the power to regulate **interstate** commerce (commerce *between* the states) in **Article I, Section 8, Clause 3**:

"To regulate commerce with foreign nations, and among the several states, and

with the Indian tribes;" [Article I, Section 8, Clause 3]

As with international and possessions commerce, *the power to tax, together with* the clause giving Congress jurisdiction over *interstate commerce*, would **appear** to give Congress the power to tax incomes that are derived from interstate commerce.

However, the **one exception** in the Constitution where Congress is specifically prohibited from taxation is found in **Article I, Section 9, Clause 5**. Congress is specifically prohibited from taxing **exports** from *any* state:

"No Tax or Duty shall be laid on Articles exported from any State."
[Article I, Section 9, Clause 5]

Carefully reading through the rest of the Constitution, the reader **does not** find where Congress is given power to *regulate intrastate commerce* (commerce that occurs *within* the 50 states). If the Constitution **does not** give Congress the power to tax a certain area, then Congress **cannot tax** that area.

Therefore, the **absence** of power to tax *intrastate commerce* **and** the restriction on taxing exports from the states makes it *impossible* for Congress to impose a tax on incomes derived from purely domestic commerce (commerce that occurs *inside OR between* the states). The incomes of most Americans are derived from *purely domestic commerce*.

The regulations under Title 26, Subtitle A, Chapter 1, Subchapter N, Section 861 and following **prove** that the these incomes are NOT taxed.