

PRESIDENT'S ADVISORY  
PANEL  
ON FEDERAL TAX REFORM

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## **COVER PAGE**

Statement/Query submitted by

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## Enclosure A

### 6 Questions Regarding Determining Taxable Income:

- 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?<sup>1</sup>
- 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.<sup>1</sup>
- 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?<sup>2</sup>
- 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?<sup>3</sup>
- 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?<sup>4</sup>
- 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?<sup>5</sup>

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<sup>1</sup> **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."

<sup>2</sup> **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)).

<sup>3</sup> **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.

<sup>4</sup> **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)).

<sup>5</sup> **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.)

5 March 2005

The President's Advisory Panel on Federal Tax Reform  
1440 New York Avenue NW  
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Dear Panel Members,

I am grateful for this opportunity to have a voice in the proceedings of your Panel, and I look forward to seeing the responsiveness to be demonstrated by The Government of the United States as a result of this Panel's activities, where such responsiveness has not been forthcoming heretofore.

It is my understanding that the Panel has specifically solicited (at least in part) comments concerning matters of unnecessary complexity and burdens taxpayers face, aspects of the system that are unfair, and recommended goals the Panel should achieve in evaluating the system and options for reform. This solicitation I aim to answer herewith, in raising Two Concerns that have come to my attention in recent years.

**1. THE RESPONSIBILITY OF THE INTERNAL REVENUE SERVICE (IRS) STAFF, AS PUBLIC SERVANTS, TO ASSIST INDIVIDUALS IN APPLYING THE LAW TO THEIR TAX LIABILITIES**

There is documented evidence<sup>1</sup> that citizens of several States have sought assistance from IRS employees and officials in determining their income tax liability as defined by Law (e.g., 26 USC § 861(b) and 26 CFR § 1.861-8) by asking specific questions<sup>2</sup> concerning the applicability of specific sections of the Law (e.g., 26 USC § 861(b) and 26 CFR § 1.861-8). The responses

from IRS employees and officials have apparently ranged from no response at all, to affirmation of the applicability of these sections of the Law, to denials of the applicability of these sections of the Law, to form letters peppered with unwarranted terms like “tax fraud scheme,” “tax protestors,” and veiled threats of “enforcement actions.”

The question for which I ask you to secure and publish a meaningful and legally informed answer is: **Why cannot these questions concerning 26 USC § 861(b) and 26 CFR § 1.861-8 be answered by IRS employees consistently and in an understandable, honest, straightforward, and non-threatening manner?**

## **2. THE LAWFULNESS OF GOVERNMENT TAXES ON INDIVIDUAL CITIZENS OF THE STATES**

The Supreme Law of the Land in the United States of America (the U.S. Constitution) dictates (in Article 1, Section 2, Clause 3) that “...direct taxes shall be apportioned among the several States...” and (in Article 1, Section 9, Clause 4) that “...No capitation, or other direct tax shall be laid unless in proportion to the census or enumeration...” and (in Article 12 of the Bill of Rights (Amendment 10 to the Constitution)) that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Law, as cited above, having not been lawfully repealed, annulled, or superceded by The People, The States, or their Representatives, an explanation and accounting seems long overdue to The People from The Government and the lawfully questionable Office it has created in the I.R.S., concerning the income tax which they together presume to generally command from The People. **How, then, exactly is it (to put a finer point on the matter) that The Government,**

**through the I.R.S., so presumes to directly tax individual citizens of the several States without such tax being “apportioned among the several States” and without such tax being laid “in proportion to the census or enumeration,” when the Law of the Land, as it surely stands, plainly prohibits exactly such a form of taxation?**

A detailed and compelling answer to this question with respect to The Government’s conduct *vis-à-vis* The Law, I am sure, would be of great interest to The People, and would surely be an opportunity to increase the credibility of The Government in general, and its I.R.S. Agency in particular, the combined unaccountable and irresponsible fiscal policies of them both over the past many decades having merited them little—if anything—in the way of respectability.

I look forward to learning of the Panel’s — and ultimately The Government’s — treatment of these fundamentally important topics.

Sincerely,

Tim Wallace

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<sup>1</sup> See: <http://www.861.info>  
<http://www.taxableincome.net>  
<http://www.neo-tech.com/irs-class-action/1.html>

<sup>2</sup> I have appended this document with a copy of the Specific Questions to which I refer, as “Enclosure A.” Also enclosed are 10 copies (1 for each member of the Panel, and an extra) of a read-only mini-CD containing a video program detailing the issues concerning 26 USC § 861(b) and 26 CFR § 1.861-8, as “Enclosure B.”