

PRESIDENT'S ADVISORY  
PANEL  
We The People Foundation For  
Constitutional Education, Inc.

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February 11, 2005

VIA PRIORITY MAIL

Hon. Connie Mack III, Chairman  
The President's Advisory Panel on Federal Tax Reform  
C/o Shaw Pittman LLP  
2300 N. Street NW  
Washington, D. C. 20037-1128

Dear Chairman Mack:

This letter has been sent to each member of the Panel and comes from more than 15,000 citizens representing all fifty states.

Meaningful federal tax reform must begin with the Panel's answer to the forty-three (43) questions that were respectfully submitted to President Bush and Treasury Secretary Snow in May of 2004. Copies of the May 10, 2004 letters to President Bush and Secretary Snow are enclosed with this letter. Please note that thirty-eight (38) of the questions are to be found at the end of Attachment #1 to the letter to Secretary Snow, and five (5) of the questions are located at the end of Attachment #2.

The questions focus on the obvious conflict between two interpretations of the meaning of the word "income" within 16th Amendment to the Constitution: the never-overturned interpretation provided by the U.S Supreme Court versus the interpretation asserted in self-interest by the political branches.

As the Attachments conclusively document, in 1913, just months after the adoption of the 16<sup>th</sup> Amendment, Congress stretched the meaning of the term "income" beyond the constitutional meaning and the intent of the framers of the 16<sup>th</sup> Amendment, as recorded in every official and professional document of the era: the congressional record, congressional reports, law reviews, journals of political science, newspapers of record and so forth.

In the Income Tax Act of 1913, Congress, included a non-apportioned, direct tax on the salaries, wages and compensation of ordinary Americans and instituted withholding at the source, providing the federal government's creditors with the ultimate form of lender security – the labor of its citizens.

However, in 1916, the Supreme Court brought the *ultra vires* action of Congress and the Executive branch to a screeching halt. The Supreme Court ruled in *Brushaber v. Union Pacific*, 240 U.S.1 (and the cases bundled with it), that wages are NOT income within the meaning of the 16<sup>th</sup> Amendment.

The Supreme Court's decision in *Brushaber* soundly rejected the government's interpretation of the definition of "income" within the meaning of the Constitution, and specifically limited "to whom" and "where" the income tax could apply. The *Brushaber* court explicitly concluded that the 16th Amendment gave Congress no new powers of taxation, meaning that direct taxes (such as Social

Security taxes and Subtitle A income taxes) fell outside of the meaning of the 16<sup>th</sup> Amendment and still must satisfy the fundamental requirement of apportionment.

However, Congress was loathe to give up the potential bounty from an un-apportioned, direct tax on the labor of every American, and the power and control that tax and its enforcement mechanisms brought.

The *Brushaber* decision prompted Congress to discretely and quietly revise the 1913 Act, and via Section 25 of the Federal Income Tax Act of 1916 (amended in 1917), Congress declared that the **"income" subject to the 1913 Act was not the same "income" to be taxed under the 1916 Act.** However, Congress did not go any further. What was the purpose of this change in the language, and by extension, its legal effect? Congress did not, and has yet to explain what was meant by Section 25.

Since then, Congress has looked the other way as the Executive, with the cooperation of the lesser courts, has imposed and enforced a direct tax on the salaries, wages and compensation of ordinary Americans and instituted withholding at the source.

The People have repeatedly Petitioned the government to remedy the oppression, but their repeated Petitions have been met by repeated injury.

As the final interpreter of the Constitution, we, the People believe the Supreme Court got it right – a tax on labor is a "slave tax," and is a violation of fundamental, human Rights. In short, it is unconstitutional and intolerable.

By this open letter, we humbly Petition the Panel for Redress of this Grievance. We will send a representative to Washington DC for your answer to the question, "Will the Panel provide an answer to the forty-three questions?" A simple "Yes" or "No" is all that we ask, written on the Panel's stationery and signed by the Chairman of the Panel.

Our representative will attend the first meeting of the Panel, scheduled for February 16, 2005, at the Ronald Reagan Building & International Trade Center, 1300 Pennsylvania Avenue NW, Washington, DC. He will arrive before 10 am, outside the main entrance to the building, where he will remain until one half hour past the adjournment of the meeting. For purposes of identification, our representative will be holding a placard with the words, "No Answers, No Taxes," written on one side and the words, "Obey the Constitution," written on the other side.

We urge you to carefully review and consider the implications of the research attached to this letter. Due to the efforts of organizations such as ours, millions of Americans know the truth about the income tax fraud. Millions have stopped filing and paying the tax because the government has not listened or responded to their Petitions for Redress. We respectfully ask that in your work for this panel, you rise above the politics of fear associated with addressing this problem and end the fraud. The future of the Republic and our Freedom depend on your personal commitment to uphold and defend the Constitution.

Respectfully submitted,

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Robert L. Schulz, Chairman

Encl.

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May 10, 2004

Hon. George W. Bush  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

EXPRESS MAIL RETURN RECEIPT

Hon. John Kerry  
United States Senator  
304 RUSSELL SENATE OFF BLDG  
WASHINGTON DC 20510

EXPRESS MAIL RETURN RECEIPT

Re: Petitions for Redress of Grievances

Dear President Bush and Senator Kerry:

The purpose of this letter is to respectfully invite you (or a representative) to attend a symposium to be held at the National Press Club on July 19, 2004, to address a few questions derived from the People's Petitions for Redress of Grievances relating to the Iraqi Resolution and to the federal income tax system.

The symposium and this invitation represent the appropriate next step in the People's on-going Petitions for Redress of Grievances relating to the Iraq Resolution, the Patriot Act, the Income Tax and the Federal Reserve – a Petition process that has yet to be respected by the government.

**Thus far, our repeated petitions have been answered only by repeated injury.**

On April 13, 2000, April 15, 2002 and again on November 8-12, 2002, you were served with Petitions for Redress, signed by thousands of Americans, petitions that presented our grievances and included our prayers for relief. Our grievances were each supported by evidentiary proof of unconstitutional and illegal behavior by the Executive and Legislative branches. Initially, the relief we requested was merely answers to troubling questions.

On November 14, 2002, nearly one thousand people from Massachusetts to Texas and beyond stood on the National Mall to hear from your representatives when your experts would be available to answer our questions. The event was webcast, live to thousands more People.

As was the case with the earlier delivery of our Petitions for Redress (when the leaders of the Executive and Legislative failed to respond), neither of you sent a representative to meet with the People on the Mall on November 14, 2002, nor did you respond to the Petitions.

With compelling evidence that the Executive and Legislative were acting in spite of specific Constitutional prohibitions restricting such acts, and having had their written Petitions for Redress of Grievances ignored by the Executive and Legislative, the free People took their Petition for Redress process one step further, as is their Right under the Petition clause. The People began to enforce their Rights by retaining their money.

The Right of the People to enforce their Rights by retaining their money is irrefutable: “When money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to the despised petitions or disturbing the public tranquility.”<sup>1</sup>

With our Founder’s guiding words the People have begun to retain their money from their rulers until their grievances are redressed – that is, until their questions are answered. If it were not for this fundamentally protected Right of enforcement, there would be no other practical means for a free individual or a free minority to peaceably hold the government accountable to the Constitution and, specifically, to enforce the Right of Petition for Redress, and through that Right, their other Rights.

People, as earners of salaries, wages and compensation for their labor, began to approach their public and private corporations with requests to stop withholding money from their paychecks and turning that money over to the IRS. All such requests were in writing, were respectful and cited supporting law. While some corporations agreed, the vast majority refused, without responding to the legal evidence, but saying, “The IRS told us not to stop withholding.”

The Executive, with the acquiescence of the Legislative and often with the cooperation of the lesser courts, has been responding swiftly and harshly through unwarranted, heavy-handed enforcement actions, routinely and grossly violating the People’s due process Rights. The Richard Simkanin case in the 5<sup>th</sup> Circuit and the 9<sup>th</sup> Circuit’s handling of the Phil Hart case are prime examples of such tyrannical behavior, now widespread across America.

Added to the oppressions the People are experiencing at the hands of the Executive (with acquiescence by the Legislature), as a result of the People’s Petition for Redress of grievances relating to the “income” tax, are the mounting oppressions the People are suffering as a result of the continued failure of the Executive and Legislature to respond to the People’s Petition for Redress regarding the war powers clauses of the Constitution and the Iraq Resolution.

The time has come for the People to demand an end to prosecutions against citizens and businesses for enforcing their Right to Petition for Redress and for failing to file and failing to withhold the “income” tax. Not only is the government expressly prohibited from directly taxing the labor of ordinary Americans, but the government is now using the bread taken from the mouths of these workers to (unconstitutionally) finance the application of the armed forces in hostilities overseas, without a formal declaration of war.

For the People, the situation has become intolerable. We know our Rights. We know our Rights have been endowed by our Creator, not the State. We know our Rights are Individual and Unalienable. We know the Constitution is a set of principles to govern the government. **This piece of paper, and the will of the People to defend it, are all that stand between the People and tyranny.**

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<sup>1</sup> Continental Congress To The Inhabitants of Quebec. Journals of the Continental Congress. Journals 1:105-113.

We know government is the natural enemy of Freedom and the People have a duty to protect our country from our government. We know that any Right of the People that is not enforceable by the People is not a Right.

We know we have only the Ballot and the Petition for Redress to peaceably hold our government accountable. We know the Ballot is for the majority to hold government accountable to public opinion. **We know the Petition is for the Individual and the Minority to hold government accountable to the Constitution.**

We know we must defend the Constitution or lose it.

Should the July 19 symposium be as fruitless as prior opportunities that we have presented to the Executive and Legislative branches to properly respond to our Petitions for Redress, it will be necessary for the People to test the attitude of the Judiciary by requesting a declaration that under the circumstances of our case, we have a fundamental Right to enforce our Right to Petition the government for a Redress of Grievances by retaining our money until our grievances are redressed. Furthermore, that the Right to Petition for Redress includes protection from retaliation by the government – that is, that the Executive is prohibited by Constitutional mandate from retaliating against those that would seek to exercise and enforce this -- or any fundamental Right.

If necessary, on July 20 2004, we will motion the Court for an order to temporarily and preliminarily enjoin and prohibit the Executive from taking any further retaliatory/enforcement actions against the Petitioners, and we will motion the court for an order expediting the proceeding.

Attached to and made a part hereof is a letter of even date by the undersigned. It is addressed to the Treasury Secretary Snow and Attorney General Ashcroft. The letter and its two attachments present the substance of the most damning documentary evidence to date that the government is acting *ultra vires* (i.e., without *bona fide* authority), in forcing ordinary Americans to file and pay an un-apportioned, direct tax on their salaries, wages and compensation, and in forcing American companies to withhold and turn over to the IRS a percentage of the earnings of those American citizens.

At the end of the Attachments are a few questions we want answered at the recorded, public forum on July 19 – questions aimed at settling the grievances of the People regarding the Executive branch's operation and enforcement of the "income" tax.<sup>2</sup>

Also to be answered on July 19 are the limited number of questions contained in our Petition for Redress of Grievances regarding the Iraq Resolution (copy attached).

Much of the current upheaval in America and arguably, across our planet, has been brought about by the continuing failure of the government of the United States of America to answer

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<sup>2</sup> Questions derived from the list of 537 questions contained in our Petition for Redress regarding the operation and enforcement of the federal "income" tax system. At the end of Attachment #1 are a few questions aimed at reconciling the difference between the Supreme Court's definition of taxable "income" and that utilized by the Executive branch. At the end of Attachment #2 are a few questions aimed at reconciling differences between Congressional mandates regarding taxable "income" and the current behavior of the Treasury Department and the IRS.

proper questions from the People – and thereby, be held accountable to the Constitution. People at home and abroad are finally beginning to see much of our government, as we now see it -- as an enemy of Freedom, with no credibility to its specious claims of being limited by written constitutions or in protecting, preserving and enhancing Freedom and the Divine, Natural Rights of Man.

Your attention is respectfully directed to the fact that the Petitioners, as have YOU on many occasions, pledged allegiance to this Republic. On many occasions we have, as have YOU, taken an oath to defend the United States of America from all enemies foreign and domestic.

We are duty bound; for us, these are not empty words. We have a moral, if not a legal obligation to act in defense of our Constitution. The power of a moral obligation is a binding power. We have a duty to perform -- conduct owed.

When faced with the blatant, unconstitutional and illegal behavior of government, it is the duty of the People to act -- not to hesitate or waver, or throw into doubt, their solemn determination and sworn oath to protect the Country and Constitution. We are indeed, indebted to our Creator, and to those who have come before us, for services received, and dearly paid.

**Our Petitions are prayers and supplications for Rights, not favors.** As an elected representative of the People, I urge you to reflect upon the full implications of your coming decisions. In the end, as it has been before, the Right to Petition, as the essence of the protection and exercise of all Individual Rights, will be no small matter.

I ask you to rise with – *not against* the People and perform your sworn duty. I ask you to breathe new life into the last ten words of the First Amendment. I challenge you to embrace, and bring forth the Light that *is* America, and insure that this Divine gift is not lost to fear or the base pursuits of man. Ultimately, we shall be free, or we shall not. In your hands and heart the chosen path to our future awaits.

To repeat, this letter is to be considered part of the People's Petitions for Redress of Grievances regarding the Iraq Resolution, the Patriot Act, the Income Tax and the Federal Reserve previously served upon you and other government officials.

I respectfully request, by copy of this letter to Commissioner Everson, that his copy, with attachments, be added to my individual master file at the IRS.

An early reply to this letter would be appreciated.

Respectfully yours,

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Robert L. Schulz  
Chairman

Enc.



CC: Hon. John W. Snow  
Treasury Secretary  
**Main Treasury**  
1500 Pennsylvania Ave. NW  
Washington, D.C. 20220

EXPRESS MAIL RETURN RECEIPT  
(with attachments)

Hon. John Ashcroft  
Attorney General of the United States  
U.S. Department of Justice-Main  
950 Pennsylvania Ave. NW  
Washington, DC 20530

EXPRESS MAIL RETURN RECEIPT  
(with attachments)

Mr. Mark Everson, Commissioner  
Internal Revenue Service  
1111 Constitution Ave. NW  
Washington, DC 20224

EXPRESS MAIL RETURN RECEIPT  
(with attachments)

# We The People Foundation For Constitutional Education, Inc.

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May 10, 2004

Hon. John W. Snow  
Treasury Secretary  
Main Treasury  
1500 Pennsylvania Ave. NW  
Washington, D.C. 20220

EXPRESS MAIL RETURN RECEIPT

Hon. John Ashcroft  
Attorney General of the United States  
U.S. Department of Justice-Main  
950 Pennsylvania Ave. NW  
Washington, DC 20530

EXPRESS MAIL RETURN RECEIPT

Re: Petitions for Redress of Grievances

Dear Secretary Snow and Attorney General Ashcroft:

This letter and its two attachments present the substance of the most damning documentary evidence to date that the government is acting *ultra vires* (i.e., without *bona fide* authority), in forcing ordinary Americans to file and pay an un-apportioned, direct tax on their salaries, wages and compensation, and in forcing American companies to withhold and turn over to the IRS a percentage of the earnings of those American citizens.<sup>1</sup>

At the end of each of the two Attachments are a few questions to be answered by your agencies at a recorded, public forum on July 19, 2004. Foremost, these questions are aimed at settling the grievances of the People regarding the Executive branch's operation and enforcement of the "income" tax system.<sup>2</sup>

In light of this compelling evidence, until the Executive provides answers to these questions and the questions in our Petition for Redress regarding the Iraq Resolution, I am now obliged to demand that you immediately stop all administrative, civil and criminal prosecutions

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<sup>1</sup> See also the letter to President Bush and Senator Kerry of even date, attached hereto and made a part hereof.

<sup>2</sup> Questions derived from the list of 537 questions contained in our Petition for Redress regarding the operation and enforcement of the federal "income" tax system. At the end of Attachment #1 are a few questions aimed at reconciling the difference between the Supreme Court's definition of taxable "income" and that of the Executive branch. At the end of Attachment #2 are a few questions aimed at reconciling differences between Congressional mandates regarding taxable "income" and the current behavior of the Treasury Department and the IRS.

against all ordinary American citizens at home or abroad, earning salaries, wages and compensation for their labor, who have stopped filing a Form 1040 tax return, and against American business entities who do not withhold and turnover to the IRS a percentage of those citizen's earnings.

Attachment #1 to this letter provides additional evidence in support of the People's proposition that the Executive has been deliberately and fraudulently taxing the People in a way that violates the fundamental law and Supreme Court rulings – that is, the Executive clearly lacks the fundamental authority to tax the salaries, wages and compensation of the working men and women of this country and the Executive lacks the authority to force the entities that utilize the labor of ordinary American citizens to withhold and turn over to the IRS any part of the earnings of those workers.

Attachment #2 to this letter provides exhaustively detailed documentary evidence that the Executive and Legislative branches have not only allowed the IRS to act without the required fundamental authority, they have allowed the IRS to operate in secret, in violation of the law, including open defiance of the Administrative Procedures Act, which requires the Treasury Department to publish in the Federal Register the current organizational structure of the IRS and all delegation orders that authorize the Commissioner of Internal Revenue to administer and enforce the federal income tax laws against ordinary Americans.

The Congress and the offices of the President, the Treasury Secretary, the Attorney General and the IRS Commissioner have thus far refused to honor and respect the People and the Petition Clause of the Constitution. You have failed to respond to our Petition for Redress of Grievances, in which I, and thousands of other People, have respectfully asked for answers to a series of very troubling and legitimate questions:

- questions that go to the constitutionality and legality of the current application and enforcement of the income tax system,
- questions that are the result of intelligent, rational and professional reviews of the plain language, and intent of the framers of the Tax Clauses of the Constitution and the internal revenue laws,
- questions that are the result of our review of related Supreme Court rulings,
- questions that are the result of a detailed and painstaking review of the unflattering history of the Executive's administrative and regulatory behavior, and
- questions that go to the failure of the judiciary to uphold traditional judicial doctrines in cases involving the application of the internal revenue laws.

The People have an individual, unalienable Right to freedom from a government that violates the taxing clauses of the Constitution by attempting to tax the salaries, wages and compensation of ordinary citizens, working men and women, with an un-apportioned direct tax (as the government has been doing). The People have an individual, unalienable Right to Petition the government for a Redress of this Grievance (as the People have been doing). The People have an individual, unalienable Right to enforce their Rights by retaining their money until their grievances are redressed, thus peaceably securing relief. This is what People are now doing, as part of the Petition process.

Instead of honoring and respecting the Rights of the People under the Petition Clause, officials of the Executive are now publicly asserting that they will respond to our Petition for Redress only by retaliating *with enforcement actions*. And, indeed, they are.

Our repeated Petitions are being answered only by repeated Injury, by a government that has a monopoly on the exercise of the use of force. The IRS and DOJ have retaliated against the People by launching scores of administrative, civil and criminal actions, using our Petitions as grounds for more persecutions and abuse.

Our Injury now includes an unprecedented level of cooperation between the Executive and Judiciary to deny the People their Constitutional Right to due process and to assistance of counsel. With the Constitution and the Law as their defense, the People are routinely being denied the Right to defend themselves.

Judges are not allowing the People to offer evidence in support of their legal theories. The law is the People's defense in cases involving the internal revenue laws, but judges are not allowing the People to mention the law in courtroom. The People are not allowed to refer to the evidence -- the provisions of the Constitution, the statutes and the Supreme Court rulings -- that the People are relying on in determining that the internal revenue laws did not apply to them.

This is a recipe for Constitutional disaster, especially when coupled with the People's unfamiliarity with the Judiciary's procedures and the People's inability to hire competent counsel, particularly officers of the court who are willing to take the time to fully understand the complexities of the "income" tax laws and are willing to defend those beliefs before biased and hostile judges.

The Constitution cannot defend itself against the government's infringements of its prohibitions, restrictions and guarantees. This is the burden of the People.

**At the end of both Attachment #1 and Attachment #2 are questions we hereby demand be answered on July 19, 2004, in a recorded, public forum at the National Press Club in Washington DC, beginning at 9 AM.**

The symposium and this invitation represent the appropriate next step in the People's on-going Petitions for Redress of Grievances -- a Petition process that has yet to be respected by the government and which portends unintended consequences of momentous proportions.

This demand for an end to all prosecutions and other enforcement actions is based not only upon the compelling arguments and supporting evidence contained in this letter and its attachments, but also on the evidence previously included with the Petitions for Redress.

I respectfully request, by copy of this letter to Commissioner Everson, that his copy, with attachments, be added to my individual master file at the IRS.

An early response to this letter would be appreciated.

Sincerely,

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Robert L. Schulz  
Chairman

# ATTACHMENT #1

This document, together with the research report entitled "*Constitutional Income, Do You Have Any?*" (copy attached) comprise Attachment #1 to the letter, dated May 10, 2004, from Robert L. Schulz to Treasury Secretary John Snow and Attorney General John Ashcroft.

This Attachment provides irrefutable evidence in support of the People's proposition that the Executive has been deliberately and fraudulently taxing the People's labor in a way that violates the fundamental law and Supreme Court rulings. The Executive is clearly prohibited from doing what it is doing – directly taxing the salaries, wages and compensation of the working men and women of this country and forcing the business entities that utilize the labor of ordinary American citizens to withhold and turn over to the IRS a part of the earnings of those workers.

**Central to this discussion is the Constitutional, legal definition of the word "income," determined by a thorough review and analysis of the intent of the framers and Supreme Court rulings.**

At the end of POINT FIVE there are 38 questions regarding the constitutional meaning of "income," questions the People demand be answered on July 19, 2004, in a recorded public forum at the National Press Club in Washington DC.<sup>1</sup> The questions are aimed at reconciling the difference between the Supreme Court's explicit definition of "income" and that utilized by the Executive branch in its enforcement of the so-called "income tax".

This Attachment is to be read together with Attachment #2. At the end of Attachment #2 are several other questions aimed at reconciling the significant differences between Congressional mandates regarding the taxing of "income" and the current law enforcement practices of the Department of Justice and the IRS.

## Overview

### "Income" Cannot Mean "Wages"

Hard documentary evidence from U.S. Supreme Court rulings and well-known scholarly works conclusively establish that the word "income" within the meaning of the 16<sup>th</sup> Amendment does not, and *cannot*, include the "wages" or "salaries" of ordinary American workers.

In fact, this new research conclusively proves that the word "income," when used in its Constitutional context, cannot possibly be utilized to impose ANY non-apportioned direct tax on the salaries, wages and compensation of ordinary Americans.

The precision and clarity of these historical documents, comprehensively researched here for the first time, leaves no room but to conclude that relative to taxing "incomes" our Government has known of the true Constitutional limitations of its taxing authority for decades but has continued to allow and facilitate the enforcement of income tax laws against American workers since 1916 without *bona fide* legal or Constitutional authority.

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<sup>1</sup> The 38 questions are derived from the list of 537 questions contained in our Petition for Redress regarding the operation and enforcement of the federal "income" tax system.

### The Primary Points:

#### POINT 1:

The Constitution's taxing clauses prohibit a non-apportioned, direct tax on wages and salaries.

#### POINT 2:

The Government has NO documented evidence to support its assertion that the 16<sup>th</sup> Amendment gives it the authority to tax wages or salaries. The Government *may* be able to tax **corporate** profits or gains that are DERIVED from labor, but the Government cannot directly tax labor itself.

#### POINT 3:

The People *cannot* grant any Government an authority to forcibly seize the labor of another Citizen, because the People, individually or collectively, DO NOT possess that power themselves. The Right to the fruit of one's Labor is an unalienable Right that may not be taxed. To do so is slavery.

#### POINT 4:

Although difficult to comprehend, NOWHERE in U.S. tax law does it explicitly assert that the wages or salaries of ordinary Americans are directly taxable. Although this mistaken belief is widespread and taken as "gospel" by the public, the government CANNOT and HAS NEVER produced any statute so stating, because any such statute would be void, and unconstitutional on its face. **This is why the government REFUSES TO ANSWER.**

#### POINT 5:

Despite the Due Process Right of a criminal defendant to do so, and despite the fact that one's duties and obligations under the LAW ITSELF are the only issue at trials dealing with the internal revenue laws, federal judges routinely prohibit any discussion of the Constitution or U.S. tax law in criminal tax trials. As a result, the defendants are denied the ability to defend themselves and juries are being denied the ability to examine, as factual evidence, the law the defendant has allegedly violated. As such, the questions concerning application of the law and prosecution of alleged violations of such laws are left entirely to those in power that directly benefit from those mysterious, phantom-like laws. In short, the tyranny of the judiciary has removed any "check and balance" in the enforcement of the internal revenue laws. Thousands of innocent Americans are in prison because defendants and juries have been denied their Rights.

### POINT ONE

#### THE TAXING CLAUSES OF THE CONSTITUTION PROHIBIT THE FEDERAL GOVERNMENT FROM IMPOSING AN UN-APPORTIONED DIRECT TAX ON WAGES AND SALARIES RECEIVED IN DIRECT EXCHANGE FOR LABOR

*Article 1, Section 2, Clause 3: Representatives and Direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers....*

*Article 1, Section 8, Clause 1: The Congress shall have the power to lay and collect Taxes, Duties, Imposts and Excises...but all Duties, Imposts and Excises shall be uniform throughout the United States.*

**Article 1, Section 9, Clause 4 and 5:** *No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken....No Tax or Duty shall be laid on Articles exported from any State."*

**Sixteenth Amendment:** *The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.*

## POINT TWO

### THE EXECUTIVE BRANCH'S POSITION THAT WAGES AND SALARIES EQUALS "INCOME" WITHIN THE MEANING OF THE 16<sup>TH</sup> AMENDMENT IS WHOLLY WITHOUT FOUNDATION.

The word "income" is not defined anywhere in the Constitution.

It is common knowledge that Congress cannot define the word "income." Only the Supreme Court can interpret the Constitution.

It is common knowledge that the Supreme Court has, in fact, defined the legal term "income." The high Court's repeated and consistent definition of "income" is the gain or profit derived from labor, or capital, or both.

It is common knowledge that the Court has further determined that there are different sources of taxable "income" within the meaning of the taxing clauses of the Constitution. For instance, the Court has determined that a corporation may derive "income" from labor, as that corporation utilizes labor in pursuit of profits, and that such corporate income is taxable. The Supreme Court has also determined that a person or a corporation may derive "income" from investments in stocks and bonds or real estate, and that such (passive) income is taxable.

However, there is absolutely no foundation to the position of the Executive branch (the Treasury Department, the IRS and the Department of Justice) that the Supreme Court has determined that wages and salaries EQUALS taxable "income" within the meaning of the 16<sup>th</sup> Amendment. While the Court has determined that corporate income derived from labor is taxable within the meaning of the 16<sup>th</sup> Amendment, the Court has never held that an individual's (stand alone) wages, received in direct exchange for his labor, equals income and is, therefore, taxable under the Sixteenth Amendment.

In fact, not a bit, not a whit, of American history recorded at the time of the adoption of the taxing clauses of the Constitution, including the 16<sup>th</sup> Amendment, offers a scintilla of evidence in support of the Executive's position that the government has the authority to force people to work for -- to be employed by -- the government. There is no evidence to support the Executive's position that the government has the authority to force People who work for a living to turn over to the IRS an amount of their wages, much less the authority to force companies to withhold and turn over to the IRS any amount of a worker's wage.

The Executive cannot cite a Supreme Court ruling that supports its position.

There is no evidence upon which the government can rely for its claim that the American People desired to clothe the government with the power to tax their wages and salaries. In the years

leading up to the purported ratification of the 16<sup>th</sup> Amendment, no evidence can be found in the law journals of the time, or in the journals on political economy or economics, nor in the Congressional Record, nor in any of the newspapers of record at the time, in support of the Executive's claim. Nowhere, in the recorded documents of the time did anyone come close to suggesting that with the passage of the 16<sup>th</sup> Amendment, wages and salaries would be taxed by a direct tax without apportionment.<sup>2</sup>

On the contrary, all recorded American History before and after the adoption of the taxing clauses of the Constitution, including the 16<sup>th</sup> Amendment, supports the position of the People that the Executive Branch has always been and remains prohibited by the Constitution from doing what it is currently doing – that is, forcing wage earners to turn over to the IRS a percentage of their wages, and forcing companies to withhold and turn over to the IRS a percentage of their workers' wages.<sup>3</sup>

The Supreme Court has not overruled its holding in *Brushaber* that wages of ordinary Americans are NOT income within the meaning of the 16<sup>th</sup> Amendment and are therefore NOT taxable.

In a country where government derives its just power from the consent of the People, government cannot legitimately seize power from the People. This is true, no matter how long the People may delay in challenging the government's exercise of that power.

### POINT THREE

#### ANY ARGUMENT BY EXECUTIVE BRANCH THAT THE PEOPLE HAVE THE AUTHORITY TO GRANT TO THEIR GOVERNMENT THE POWER TO TAX DIRECTLY THE WAGES OF THE PEOPLE IS WHOLLY WITHOUT FOUNDATION

There are limits to the authority and power the people can grant to their government.<sup>4</sup>

"Governments are instituted among Men, deriving their JUST powers from the consent of the governed."<sup>5</sup>

Governments cannot assume nor derive from the people powers that are UNJUST.

The People, as a collective of individuals, cannot grant power to the government that they themselves do not inherently possess as free individuals.

<sup>2</sup> It must be noted that Congress attempted to seize such power from the People in 1913 by including wages in the definition of "income" shortly after the purported ratification of the 16<sup>th</sup> Amendment. See The Federal Income Tax Act of 1913 Act, 38 Stat. at 167, B. However, in 1916, after the Supreme Court ruled in *Brushaber* that wages were not income within the meaning of the 16<sup>th</sup> Amendment, Congress was forced to amend the Income Tax Act of 1913, to remove wages from the definition of taxable income. See Section 25 of the Income Tax Act of 1916. Then, in 1917, Congress amended its Act of 1916, to outlaw the withholding of wages from the paychecks of citizens and directed the Executive Department to refund all wages withheld. All this, of course was done to bring the code into compliance with the *Brushaber*. See Attachment #2.

<sup>3</sup> See "Constitutional Income, Do You Have Any?" 2<sup>nd</sup> Edition (2001), Phil Hart, Alpine Press, Washington (copy attached).

<sup>4</sup> See definition of Unalienable Rights in Declaration of Independence.

<sup>5</sup> Id



One such limit, as determined by the United States Supreme Court, is the forceful taking of the fruits of another man's labor:

"That every man has a natural right to the fruits of his own labour, is generally admitted; and that no other person can rightfully deprive him of those fruits, and appropriate them against his will, seems to be the necessary result of this admission." THE ANTELOPE, 23 U.S. 66 (1825), 23 U.S. 66 (Wheat.), The ANTELOPE. The Vice-Consuls of Spain and Portugal, Libellants. March 18, 1825 [23 U.S. 66, 67] APPEAL from the Circuit Court of Georgia.

The inescapable conclusion from the Supreme Court's ruling in ANTELOPE follows: Individual people lack the authority to seize the fruits of another person's labor against his will. Therefore, no lawful mechanism can ever exist to permit people to clothe their government with that authority – an authority they themselves do not possess in the first place.

Ours is a government of, by and for the People. Government has no source of authority apart from the People. Therefore, the government does not possess, and indeed can never possess, the authority or just power to compel or appropriate the fruits of a citizen's labor against the will of that person.

To do otherwise, particularly while failing to respond to the abolitionists – the People who are crying out with questions against such behavior by those wielding governmental power, is the equivalent of placing the People into a condition of involuntary servitude.

#### POINT FOUR

#### **THE EXECUTIVE BRANCH'S POSITION THAT WAGES AND SALARIES ARE TAXABLE "INCOME" WITHIN THE MEANING OF THE INTERNAL REVENUE CODE IS WHOLLY WITHOUT FOUNDATION.**

Any statute that is repugnant to any provision of the Constitution is abrogated – that is, it is set aside, it is a nullity to be ignored.

This is an essential principle that is implicit under our Constitution and EXPLICIT in biblical law – the basis of the principles underlying our Constitution – for it is written:

"Because the law worketh wrath: for where no law is, there is no transgression." See Romans 4:15.

Unless and until we abandon the fundamental principle of popular sovereignty and unless and until the Constitution is further amended to give Congress the power to pass a law that authorizes the Executive Branch to force all wage earners to turn over to the IRS a percentage of their wages, and force all companies to withhold and turn over to the IRS a percentage of their workers' wages, any such law, if one existed, would be unconstitutional on its face.

In fact, notwithstanding the assertions, intimidation and brutality of the IRS and the DOJ, and the complicity of the lesser courts, Congress has yet to pass such a law.<sup>6</sup> If Congress had passed such a law it would be unconstitutional ON ITS FACE.

While Congress may impose a tax on corporations that profit or gain income that is derived from the labor of individuals, Congress is prohibited from imposing an un-apportioned direct tax on an ordinary American's wages or salary.

Today, under the circumstances the People find themselves in, any reasonable person would conclude the Internal Revenue Code is unconstitutional as applied and enforced, if not on its face.

#### POINT FIVE

### **WHOLLY WITHOUT FOUNDATION IS THE JUDICIAL BRANCH'S POSITION THAT IT CAN PROHIBIT A CORPORATION OR AN INDIVIDUAL FROM CITING THE CONSTITUTION IN FRONT OF A JURY IF THE CORPORATE OR INDIVIDUAL DEFENDANT IS CHARGED WITH VIOLATING SUBTITLE A OR C OF THE INTERNAL REVENUE CODE.**

Every defendant in a civil or criminal trial is allowed to defend himself and to offer evidence in support of his legal arguments, unless there is absolutely no merit to his argument in law or in fact, AND no reasonable argument can be made for an extension of the law AND the defendant's intent is merely to delay or harass.

Today, in America, thousands of workers and company officials are comprehending the Constitution and the statutes and coming to the conclusion that the government does not have the authority to do what it is doing – that is, forcing ordinary American workers to file an “income” tax return and pay an “income” tax on their wages and salaries and forcing companies to withhold and turn over to the IRS a percentage of the workers' wages.

For decades, especially since the end of World War II, thousands of wage earning Americans and company officials have written their elected representatives and to the IRS, requesting answers to their legitimate questions relating to what the People argue is the illegal enforcement and operation of the income tax system.

The People have never received responsive answers to their legitimate questions. Many then act on their good faith beliefs by stopping their practice of voluntarily withholding and voluntarily filing and paying a tax based on a percentage of wages.

In response, the IRS and the DOJ have now publicly announced that the policy of the Executive Branch is to respond with enforcement actions to the People's Petitions for Redress of Grievances regarding the legality of the operation of the income tax system.

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<sup>6</sup> As noted in footnote 2 above, in 1913, Congress “misconstrued” the new 16<sup>th</sup> Amendment, by passing a law authorizing Congress to impose a direct tax without apportionment on the wages of all Americans, but in 1916, following the Supreme Court's decision in *Brushaber*, Congress was forced to change the meaning of taxable “income” and to pay back all “income” withheld in the form of a percentage of the wages of ordinary Americans. See Attachment #2.

By enforcement actions, the IRS and the DOJ mean preventing those who have acted on their convictions from presenting exculpatory information to the grand jury, getting judges to direct guilty verdicts, severely restricting the defendant's ability to defend himself and to otherwise fail to uphold traditional judicial doctrines and Supreme Court rulings.

The current case of Texas small businessman Richard Simkanin and the recent 9<sup>th</sup> circuit case involving Idaho citizen Phil Hart are the latest examples of what the government means by "enforcement actions" in cases involving those who question the legality of the operation of the income tax system.

Simkanin's legal defense was his theory, his proposition, his good-faith belief that neither the taxing clauses of the Constitution, nor the statutes authorized the government to force his company's wage earners to pay to the government a percentage of their wages and salaries AND neither the taxing clauses of the Constitution, nor the statutes authorized the government to force him to withhold and turnover to the IRS a percentage of his workers wages and salaries. By repeatedly denying him and his attorney his Right to submit material facts in support of his legal theory, as Judge McBryde did by preventing Simkanin from placing in the record and before the jury the FACTS regarding the language and the Supreme Court's interpretation of the language of the taxing clauses of the Constitution, and the language of the Internal Revenue Code, the court denied Simkanin his 5th Amendment Right to Due Process and his Sixth Amendment Right to a fair trial, an impartial jury and assistance of counsel.

Judge McBryde directed a guilty verdict. First, when the jury asked him for the law that Simkanin violated McBryde responded by paraphrasing a mere penalty statute ( 26 USC Section 7202) -- a statute to be applied to someone if that person breaks a law or commits a crime. McBryde did not properly respond to the jury by citing a law that Simkanin had violated. He did not answer the jury's question. Then, when the jury told McBryde the jury had no evidence before them of a law that Simkanin had violated and asked McBryde if they had to wade through all 7,000 pages of the Internal Revenue Code to find the law that Simkanin broke, McBryde instructed the jury that they did not have to concern themselves with that fact because the court knew there was a law that Simkanin had violated. As a result, the jury became a trier on NEITHER the facts nor the law.

Simkanin's defense rested on his good faith, exhaustive effort to find what the internal revenue laws required of him as an individual tax payer and as the owner of a company. Yet, during his trial he was not allowed to discuss the results of his multi-year investigation. The law he is alleged to have violated by allowing his workers to receive all of their earning and by ending his habit of filing a personal tax return does not appear anywhere on his indictment, or in the entire record of his trial, or in the instructions to the jury. Not even the jury, when they asked to see it, was allowed to see the law.

In effect, McBryde denied Simkanin the ability to defend himself. The law was the controversy before the court. The law was Simkanin's defense. The law purportedly requiring Simkanin's company to withhold was NEVER identified either in the indictment or during the trial. Later, when, on its own, the jury asked to see the law, the Judge said, in effect, "Trust me, its there, you don't need to concern yourself with that fact."

### QUESTIONS REGARDING THE MEANING OF "INCOME"

The following 38 questions are derived from the list of 537 questions contained in our Petition for Redress regarding the operation and enforcement of the federal "income" tax system.

1. Admit or deny that the "gross income" mentioned in Section 6012 of the Internal Revenue Code is the "gross income" as set forth at Section 61(a) of the Internal Revenue Code.
2. Admit or deny that Section 61(a) of the Internal Revenue Code defines "gross income" as "all income" from whatever source derived, but does not define "income."
3. Admit or deny that in *Eisner v. Macomber*, 252 U.S. 189, 206 (1920), the United States Supreme Court held that Congress cannot by any definition it may adopt conclude what "income" is, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.
4. Admit or deny that the definition of income as it appears in Section 61(a) is based upon the 16th Amendment and that the word is used in its constitutional sense.
5. Admit or deny that the United States Supreme Court has defined the term "income" for purposes of all income tax legislation as: The gain derived from capital, from labor or from both combined, provided it include profit gained through a sale or conversion of capital assets.
6. Admit or deny that the United States Supreme Court defined "income" to mean the following:

**"... Whatever difficulty there may be about a precise scientific definition of 'income,' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities."**

"This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation..."  
***Flint v. Stone Tracy Co.***, 220 U.S. 107, 55 L.Ed. 389, 31 Sup.Ct.Rep. 342, Ann. Cas."

7. Admit or deny that in the absence of gain, there is no "income."
8. Admit or deny that there is a difference between gross receipts and gross income.
9. Admit or deny that the United States Supreme Court recognizes that one's labor constitutes property.
10. Admit or deny that the United States Supreme Court stated in *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (concurring opinion of Justice Fields) (1883), that:

"It has been well said that, 'The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable.'"

11. Admit or deny that the United States Supreme Court recognizes that contracts of employment constitute property.

12. Admit or deny that the United States Supreme Court stated in *Coppage v. Kansas*, 236 U.S. 1, 14 (1914) that:

"The principle is fundamental and vital. Included in the right of personal liberty and the right of private property--partaking of the nature of each--is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property."

13. Admit or deny that the United States Supreme Court recognizes that a contract for labor is a contract for the sale of property.

14. Admit or deny that the United States Supreme Court has stated in *Adair v. United States*, 208 U.S. 161, 172 (1908) that:

"In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment (5th Amendment). Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor."

15. Admit or deny that the leading authority on the terms "direct" and "indirect" taxation at the time of the ratification of the Constitution and at the time of the debates of the Sixteenth Amendment was Adam Smith, author of *Wealth of Nations*.

In the 1909 congressional debates over the Sixteenth Amendment, Adam Smith was quoted far more than any other authority and was always quoted with approval. Adam Smith was quoted 18 times, Albert Gallatin four times and Jacques Turgot, three times. There were numerous other political economists quoted, but these three dominated the debate. Just as Adam Smith greatly influenced the framers of the Constitution, he was also the respected and undisputed authority on taxation among those members of Congress who debated the Sixteenth Amendment.

"There is every reason to believe that the framers of the Constitution followed the usage of Adam Smith, who eleven years before the convention met had refuted the Physiocratic doctrine as to the incidence of taxes. Albert Gallatin, writing in 1796, stated emphatically his belief that the distinction in the minds of the framers of the Constitution was that of Adam Smith. Gallatin was born and bred a Frenchman, and would have been as likely as any American of the time to accept the Physiocratic view; and in the absence of any evidence to the contrary the testimony of such an authority as Gallatin should be considered conclusive in any question of finance." Max West, *The Income Tax and National Revenues*, 8 *The Journal of Political Economy* 433, 435 (1900).

"If the term 'direct taxes' had been used for the first time in the Constitution, and we could not, therefore, trace its source, much might be left to doubt and to surmise. A large majority of the Constitutional Convention were scholars, 35 of its members were college graduates, and the eight leaders of the great debate were all college men. Were they likely to use terms they did not understand? Had they never seen the term direct tax before; and, if so, where? In the books that were in every man's hand. Many had studied Turgot in the original or in translations of particular passages, and they knew his clear definition of 'Les impôts directs.' Turgot today is still the great work put in the hands of French students of the science of finance and government. Every member of that Convention was familiar with the handbook of statesmen of that age - Adam Smith's *Wealth of Nations*... Macaulay tells us that Pitt studied only one work on political economy, which guided him through his whole brilliant career in the financial administration of the British Empire, and that was Smith's *Wealth of Nations*. If we had only these two works, known to almost every educated man in those days, could we refuse to follow their definitions and explanations in the absence of any other evidence?" Opening argument of Appellant at 7-8, *Pollock v. Farmers' Loan and Trust Co.*, 158 U.S. 601 (1895).

"Mr. CUMMINS. I had referred to the fact that at the time of the Constitutional Convention, so far as I can now recall, this term had been mentioned by but two economic writers - one, Adam Smith, in the *Wealth of Nations*, and the other a French writer by the name of Turgot. Their general idea was that a direct tax was a tax upon property or [gross] revenue and an indirect tax was a tax upon consumption or expense." 44 Cong. Rec. 3972(1909).

16. Admit or deny that taxes on wages and salaries when paid by the recipient are Capitation Taxes, a species of direct taxes.

When these writers, Smith and Turgot, used the word "revenue" it was gross revenue to which they were referring. In the Supreme Court's Decision for the *Hylton Case*, 3 U.S. (3 Dall.) 171 (1796), the following quote from Adam Smith's *Wealth of Nations* was used authoritatively:

"The impossibility of taxing people in proportion to their revenue, by any capitation, seems to have given occasion to the invention of taxes upon consumable commodities; the State, not knowing how to tax directly and proportionally the revenue of its subjects, endeavors to tax it indirectly by taxing their expense, which it is supposed, in most cases, will be nearly in proportion to their revenue. Their expense is taxed by taxing the consumable commodities upon which it is laid out." Adam Smith, *Wealth of Nations*, Book V, 541 (Prometheus Books, Amherst, New York, 1991) (1776).

If we back up two paragraphs from the paragraph of Adam Smith's *Wealth of Nations* quoted authoritatively by the Supreme Court in the *Hylton Case*, we read:

"Capitation taxes, so far as they are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes." *id.* at 540.

In Book V of Adam Smith's *Wealth of Nations*, Smith has a four-page section entitled, "Taxes upon the Wages of Labour." Five times in this section Smith states that a tax on wages is a direct tax. And as we saw above, Smith says it is a species of a capitation tax. *id.* at 534-38.

Turgot agreed. In Turgot's work, *Plan d'un mémoire sur les impositions*, 1764, he wrote:

"The tax which the proprietor pays immediately on his revenue is called direct tax. The tax which is not assessed directly on the revenue of the proprietor, but which falls on the cost of production of the revenue, or on the expenditure of the revenue, is called indirect tax." *Teachings of Political Economists defining Direct and Indirect Taxes*, at 3, by Max West, *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 629 (1894).

Gallatin agreed too. Albert Gallatin, in his *Sketch of the Finances of the United States*, wrote:

"The most generally received opinion, however, is, that by direct taxes in the Constitution, those are meant which are raised on the capital or revenue of the people; by indirect, such as are raised on their expense.

"The taxes which it is intended should fall indifferently upon every different species of revenue are capitation taxes...These must be paid indifferently from whatever revenue the contributors may possess." *Rehearing Brief of Appellant at 112, Pollock v. Farmers' Loan and Trust Co.*, 158 U.S. 601 (1895).

17. Admit or deny that labor is property.

In the case of *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746 (1883), Supreme Court Justice Field wrote in his concurring opinion at page 757:

"It has been well said that, 'The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable.'"

18. Admit or deny that a tax on property is a direct tax.

To speak of a poll tax (or other direct tax on a natural person) as a tax on property requires resort to the legal theory that a freeman is owner of himself and his labor force in a sense analogous to a master's ownership of his slave." Prof. Isaac A. Loos, Allen Ripley Foote, *The Division Between State and Local Taxation*, *Second International Conference, International Tax Association*, 203, 206 (1909).

"Direct taxes are those that are levied 'upon the very person who it is supposed as a general thing will bear their burden.' The general property, the income tax, the poll tax, may be classed as direct taxes for the reason that when a person pays one of these taxes, he is likely to bear the burden himself and is not likely to shift it to another." Israel Freeman, *Constitutionality of Federal Corporation Tax Law*, 72 *Central Law Journal* 59 (1911).

19. Admit or deny that the executive branch of government must follow the intent of the legislative branch which must itself conform to the intent of the Constitution.

"One of the most readily available extrinsic aids to the interpretation of statutes is the action of the legislature on amendments which are proposed to be made during the course of consideration in the legislature. Both the state and federal courts will refer to proposed changes in a bill in order to interpret the statute as finally enacted. The journals of the legislature are the usual source for this information. Generally the rejection of an amendment indicates that the legislature does not intend the bill to include the provisions embodied in the rejected amendment." Sutherland on Statutory Construction, sec. 48.18 (5th Edition).

"It is plain, then, that Congress had this question presented to its attention in a most precise form. It had the issue clearly drawn. The first alternative was rejected. All difficulties of construction vanish if we are willing to give to the words, deliberately adopted, their natural meaning." U.S. v. Pfitsch, 256 U.S. 547, 552 (1921).

20. Admit or deny that the Senate considered and rejected including un-apportioned direct taxation within the authority of the Sixteenth Amendment.

The evidence that direct taxes are without the authority of the Sixteenth Amendment is overwhelmingly compelling. The Senate voted on the Sixteenth Amendment (S.J.R. #40) at 1 o'clock on July 5, 1909. Senator Aldrich had earlier tried to ram it through the Senate on Saturday, July 3rd, a holiday weekend, for an immediate vote without debate when only 52 senators were present. A few senators protested and the vote was set for the following Monday. During the debate on July 3rd, several amendments were proposed to S.J.R. #40 that came up for a vote at the appointed hour of 1 PM Monday, July 5, 1909.

There also was an amendment by Senator McLaurin of Mississippi. After a long discussion by him about direct taxes, Senator McLaurin proposed this amendment to S.J.R. #40 as follows:

"The SECRETARY. Amend the joint resolution by striking out all after line 7 and inserting the following: The words 'and direct taxes' in clause 3, section 2, Article I, and the words 'or other direct,' in clause 4, section 9, Article I. of the Constitution of the United States are hereby stricken out." 44 Cong. Rec. 4109 (1909).

The Senate rejected this, as this amendment failed by voice vote. Had it passed, it would have provided authority for a species of income tax that was inherently a direct tax to be levied without apportionment.

Lastly there was an amendment by Senator Bristow of Kansas to replace S.J.R. #40 with S.J.R. #39. S.J.R. #39 read:

"The Congress shall have the power to lay and collect direct taxes on incomes without apportionment among the several States according to population." id. at 4120-1.



This substitute amendment also included a provision to elect senators by popular vote. After some debate this was also rejected by voice vote. The election of Senators by popular vote was soon thereafter approved by the 17th Amendment. Therefore this instant amendment failed because of the direct tax provision.

21. Admit or deny that in the Brushaber Case, 240 U.S. 1 (1916), both Brushaber and the government argued that the Sixteenth Amendment provided for an exception to the apportionment rule such that a direct tax could be collected without apportionment.

This issue was presented squarely to the Supreme Court in the following cases: *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916); *Tyee Realty Co. v. Anderson*, 240 U.S. 115 (1916); *Thorne v. Anderson*, October term 1915, No.394 (24,613); *Dodge v. Osborn*, 240 U.S. 118 (1916); and *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916). Mr. Brushaber, Tyee Realty Co. and Mr. Thorne all had the same attorney, a Mr. Julian Davies from New York City of the law firm Davies, Tolles, Glenn and Schurick. Mr. Davies asserted in his brief in each of these cases as follows:

"The effect of the Sixteenth Amendment was merely to waive the requirement of apportionment among the States, in its application to a general and uniform tax upon incomes from whatever source derived...

"The evident purpose of this amendment was not to abandon the former policy of safeguarding the several sections of the Union against disproportionate taxation, but merely to substitute an apportionment according to incomes 'from whatever source derived,' in lieu of a per capita apportionment." Br. for appellant at 9-11, *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916).

In other words, according to Brushaber, the income tax was still a direct tax. Only the criteria for apportionment changed. Apportionment was now alleged to be based on incomes instead of the per capita apportionment originally required by the Constitution. In its amicus curae brief, the government argued a similar position:

"(b) Apportionment being restricted to direct taxes only (*Flint v. Stone Tracy Co.*, supra 152), the Sixteenth Amendment, in removing that restriction, recognized any tax upon income 'from whatever source derived' as a direct tax, and as such subject to the apportionment rule unless specially exempted." Br. for the United States at 11-12, *Brushaber v. Union Pac. R.R. Co.*, supra.

22. Admit or deny that the Supreme Court rejected arguments that the Sixteenth Amendment provided authority for an un-apportioned direct tax within the several States.

The Supreme Court stated in its opinion in the Brushaber Case:

"[t]he contention that the Amendment treats a tax on income as a direct tax, although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, is also wholly without foundation..." *Brushaber v. Union Pac. R.R. Co.*, supra at 18.

Buttressing the conclusion that the Sixteenth Amendment does not provide authority for an unapportioned direct tax on the labor of an American Citizen living and working in the several States, we go to Harvard Law Review's commentary on the Brushaber Case:

"In *Brushaber v. Union Pac. R.R. Co.*, Mr. Chief Justice White, upholding the income tax imposed by the Tariff Act of 1913, construed the Amendment as a declaration that an income tax is 'indirect,' rather than as making an exception to the rule that direct taxes must be apportioned." *The Income Tax and the Sixteenth Amendment*, 29 *Harvard Law Review* 536 (1915-6).

Cornell Law Quarterly simplifies what this Court said in *Brushaber*:

"The contention of the appellant was as follows:

(1) The Sixteenth Amendment provided for a new kind of a direct tax, a tax on incomes from whatever source derived.

The court, through Chief Justice White, held that the tax [in *Brushaber*] was constitutional. The major proposition of the appellant's argument is not true. Hence, the conclusion does not follow. The sixteenth amendment [sic] does not permit a direct tax, (in fact as it will later be shown, the court does not think that the amendment treated the tax as a direct tax at all), carrying with it the distinguishing characteristic of a hitherto unrecognized uniformity.

The amendment, the court said, judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the *Pollock* case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong." Ramon Siaca, *The Federal Income Tax Law of 1913: Construction of the Sixteenth Amendment*, 1 *Cornell Law Quarterly* 298, 299 and 301 (1916).

Said another way, the theory upon which the *Pollock* Case was decided was overturned by the Sixteenth Amendment. See also *Constitutional Law: Income Tax: Sixteenth Amendment*, 4 *California Law Review* 333, 335-6 (1915-6), and *Washington Notes, The Income Tax Decision*, 24 *The Journal of Political Economy* 299, 300 (1916).

In 1916, the *New York Times* wrote of the *Brushaber* Case:

"The basic error of those who attacked the constitutionality of the tax, Chief Justice White holds... was in regarding the Sixteenth Amendment as empowering the United States to levy a direct tax without apportionment among the States according to population. In substance, the court holds that the Sixteenth Amendment did not empower the Federal Government to levy a new tax...

We are of the opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation: that is, a power to levy an income tax which, although direct should not be subject to the regulation of apportionment applicable to all other direct taxes." *Income Tax Upheld In Broad Decision*, *N.Y. Times*, p. 5, January 25, 1916.

"The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source or another. So the amendment made it possible to bring investment income within the scope of a general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income. The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax." Congressional Record – House, March 27, 1943, page 2580.

23. Admit or deny that there is no evidence that can be found anywhere upon which the government can rely in claiming that Congress intended to use the Sixteenth Amendment to create an exception to the apportionment rule whereby a direct tax could be levied without apportionment.

An exhaustive review of the Congressional Record during the time of the debates on the Sixteenth Amendment reveals no credible evidence that the members of Congress were contemplating a direct tax on the wages and salaries of the American People. An exhaustive review of other congressional documents during the ratification process yields no evidence that Congress contemplated using the Sixteenth Amendment as a vehicle to place an un-apportioned direct tax on the wages and salaries of the American People.

An exhaustive review of law journal articles of the time produced no articles that indicated Congress or the American People were contemplating a non-apportioned direct tax on the wages and salaries of the American People. No evidence was found in the journals on political economy and economics. Nor was any such evidence discovered in an exhaustive search of New York Times articles, which are all cataloged in yearbooks as the New York Times is a newspaper of record.

As there is no evidence that can be found anywhere indicating that the American People sought to place an un-apportioned direct tax on their wages and salaries, we can conclude that the American People never consented to the very tax that the Commissioner is attempting to collect in the instant case.

The entire weight of the evidence as to the purpose of the Sixteenth Amendment indicates that its objective was to place income taxes on net income from unincorporated business and investment into the classification of indirect taxes. Pollock was overturned by the Sixteenth Amendment. No more and no less. The purpose of the Sixteenth Amendment was to shift the tax burden off of consumption and onto incomes from the accumulated wealth of the country such as to bring tax relief to wage earners.

24. Admit or deny that the purpose of the Sixteenth Amendment was to bring tax relief to wage earners.

As there is no evidence that can be found anywhere indicating that the American People sought to place an un-apportioned direct tax on their wages and salaries, we can conclude that the American People never consented to the very tax that the Commissioner is attempting to collect in the instant case.

The entire weight of the evidence as to the purpose of the Sixteenth Amendment indicates that its objective was to place income taxes on net income from unincorporated business and investment into the classification of indirect taxes. Pollock was overturned by the Sixteenth Amendment. No more and no less. The purpose of the Sixteenth Amendment was to shift the tax burden off of consumption and onto incomes from the accumulated wealth of the country such as to bring tax relief to wage earners.

25. Admit or deny that the 16<sup>th</sup> Amendment created no new classification of taxes under the Constitution, and we are therefore still left only with direct and indirect taxes.
26. Admit or deny that the 16<sup>th</sup> Amendment provides taxation authority only for income taxes that are inherently indirect and that such taxes must be levied according to the constitutional rule of uniformity.
27. Admit or deny that the 16<sup>th</sup> Amendment does not provide an exception to the constitutional rule of apportionment for direct taxes.
28. Admit or deny that any tax on wages and salaries is inherently a direct tax outside the scope of the 16<sup>th</sup> Amendment, and therefore, EVEN IF wages & salaries were constitutionally valid subjects for direct taxation, that a tax upon such subjects would be required to be apportioned among the several States according to population.
29. Admit or deny that taxes on wages and salaries are direct taxes and must be apportioned among the several States.
30. Admit or deny that the current tax on the wages of ordinary Americans is an un-apportioned direct tax.
31. Admit or deny that the Supreme Court, in *Brushaber v Union Pac. R.R. Co.*, 240 U.S. 1 (1916), rejected the idea that the 16<sup>th</sup> Amendment granted to government the power to impose an un-apportioned direct tax, such as the current tax on wages.
32. Admit or deny that the Supreme Court, in *Brushaber v Union Pac. R.R. Co.*, 240 U.S. 1 (1916), ruled that any contention that the 16<sup>th</sup> Amendment treats a tax on income as a direct tax is wholly without foundation.
33. Admit or deny that generically an income tax has been classed as an excise by the Supreme Court in *Brushaber v Union Pac. R.R. Co.*, 240 U.S. 1 (1916).
34. Admit or deny that the Supreme Court, in *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916), ruled that 16<sup>th</sup> Amendment did not confer a new power of taxation, as would be a power to impose an un-apportioned direct tax on the wages of ordinary Americans, it merely prohibited the complete and plenary power to tax income derived from labor or capital from being taken out of the category of un-apportioned indirect taxation to which it inherently belonged.
35. Admit or deny that an income tax on the severable net income from business or accumulated wealth is an indirect tax and a tax on the earned income from wages and salaries is a direct tax, and that the government is wholly without power to collect the latter from ordinary American citizens without apportionment.

36. Admit or deny that the Senate, in voting on the 16<sup>th</sup> Amendment resolution, unambiguously expressed the intent of Congress to reject the idea of an un-apportioned direct tax on wages by repeatedly rejecting the opportunity to bring direct taxes within the scope of the 16<sup>th</sup> Amendment, and that it is well settled by the Supreme Court that if Congress has directly spoken to the precise question at issue, the intent of Congress is clear and that ends the matter.

37. Admit or deny that one more than one half of the federal Appeals courts have ruled that the current tax on wages of ordinary Americans is an un-apportioned direct tax while the remaining Appeals courts have ruled the same tax to be an un-apportioned indirect tax.

38. Admit or deny that the income tax of the 16<sup>th</sup> Amendment is a tax that diminishes the income that flows from the source, leaving the source of the income undiminished.

## ATTACHMENT #2

This document, together with the CD-ROM attached hereto, is Attachment #2 to the letter, dated May 10, 2004, from Robert L. Schulz to Treasury Secretary John Snow and Attorney General John Ashcroft.

The CD-ROM, attached to and made a part hereof, contains the full text of this document beginning with "Analysis of the Federal Income Tax Laws" on page 5, PLUS all the Statutes At Large, CFR regulations, Treasury Delegation Orders, court rulings and other documentary evidence referred to in this document.

All the information on the CD-ROM, with the exception of the Summary and the questions at the end, are the result of research by a highly qualified, licensed tax professional, who wishes to remain anonymous.

This Attachment provides irrefutable evidence in support of the People's proposition that the Executive has been deliberately and fraudulently taxing the People in a way that violates the fundamental law and Supreme Court rulings. The Executive is clearly prohibited from doing what it is doing – taxing the salaries, wages and compensation of the working men and women of this country and forcing the business entities that utilize the labor of ordinary American citizens to withhold and turn over to the IRS a part of the earnings of those workers.

After the SUMMARY at the end of this document, there are five questions **that the People demand be answered on July 19, 2004 in a recorded public forum at the National Press Club in Washington, DC**. The questions are aimed at reconciling differences between Congressional mandates regarding the taxation of "income" and the current law enforcement practices of the Justice Department and the IRS.

The five questions are derived from the list of 537 questions contained in our Petition for Redress regarding the operation and enforcement of the federal "income" tax system.

This Attachment is to be read together with Attachment #1. At the end of Attachment #1 are 38 questions aimed at reconciling the difference between the Supreme Court's explicit legal definition of the term "income" and that utilized by the Executive branch in its enforcement of the so-called "income tax".

### Overview of "Analysis of the Federal Income Tax Laws"

Attachment #2 is a profound, exhaustive compendium of new legal research that may well portend the end of the individual "income" tax system as we know it because it lays to rest, ANY claim the Government has made asserting there is a *bona fide* legal authority for taxing the wages and salaries of ordinary Americans. The compendium's key research claims are extensively documented with full citations and backed with **annotated photocopies** of original

historical legal documents from the National Archives and other sources.

The research is a detailed examination of the authority to tax “incomes” from several frameworks, each leading to the inescapable, irrefutable conclusion that the federal government DOES NOT possess ANY legal authority -- statutory or Constitutional -- to tax the wages or salaries of American workers.

The research report is organized into several major segments that are outlined in the “Overview” immediately below. Each segment, taken alone or with the others, leads to a single conclusion: The income tax laws of the U.S. do not apply to ordinary Americans.

Central to this research are new revelations about revisions that were made to the Income Tax Law immediately following the January, 1916 Supreme Court *Brushaber* decision.

According to the report, in 1913, just months after the purported ratification of the 16<sup>th</sup> Amendment, Congress attempted to stretch the meaning of the legal term “income” beyond the meaning and intent of the framers of the 16<sup>th</sup> Amendment, as recorded in EVERY official and professional document of the era: congressional record, congressional reports, law reviews, journals of political science, newspapers of record and so forth.

**In the Income Tax Act of 1913, Congress surreptitiously, by stealth and without authority, included an un-apportioned, direct tax on the salaries, wages and compensation of ordinary Americans and instituted withholding at the source.**

However, in 1916, the Supreme Court brought the devilish action of Congress and the Executive branch to a screeching halt. The Supreme Court ruled in *Brushaber* (and the cases bundled with it), that wages are NOT income within the meaning of the 16<sup>th</sup> Amendment.

As the research documents, Congress was then forced to amend the Income Tax Act, to remove salaries, wages and compensation from the definition of taxable income, to outlaw the withholding of wages from the paychecks of citizens and to direct the Executive Department to refund all wages withheld. All this, of course was done to bring the law into compliance with *Brushaber*.

What the research also shows, however, was the dark side of the government – the reluctance of Congress to give up the tax potential of an un-apportioned, direct tax on labor (and the power and control that tax-money brings), and Congress’ willingness to deliberately obfuscate the law in order to perpetuate a fraud on the American people.

Clearly, as Phil Hart’s research demonstrates so well, the Supreme Court’s decision in *Brushaber* substantially affected the government’s interpretation of the definition of “income” within the meaning of the fundamental law, and “to whom” and “where” the income tax could apply. The *Brushaber* Court specifically concluded that the 16th Amendment gave Congress no new powers of taxation, meaning direct taxes fell outside of the meaning of the 16<sup>th</sup> Amendment and still had

to satisfy the fundamental criteria of apportionment.

As the research clearly proves, the *Brushaber* decision prompted Congress to revise the 1913 Act, and via Section 25 of the Federal Income Tax Act of 1916 (amended in 1917), Congress declared that the **"income" subject to the 1913 Act was not the same "income" to be taxed under the 1916 Act**. However, Congress did not go any further. What was the purpose of this change in the language, and by extension, its legal effect?

**CONGRESS PURPOSELY AND DECEITFULLY DID NOT EXPLAIN WHAT WAS MEANT BY SECTION 25.**

One theory of the meaning of Section 25 of the 1916 Act is based on LOCATION, that Section 25 removed the application of the un-apportioned direct "income" tax on salaries, wages and compensation of ordinary Americans living and working at home, leaving the application of the un-apportioned direct "income" tax on salaries, wages and compensation of non-resident aliens and American citizens living and working abroad.

This, it is argued by anonymous, is the reason that not a single federal income tax act since 1916 has ever mentioned the imposition of an un-apportioned direct "income" tax on the salaries, wages and compensation of citizens "at home," although the same acts repeatedly mention citizens abroad and particularly those in the insular possessions.

Evidence of this solely external, "locational" application of the un-apportioned direct "income tax" on salaries, wages and compensation is demonstrated by the report in several ways. First, the research shows the IRS Commissioner has been delegated via Treasury Delegation Orders (TDO), published in the Federal Register, authority to administer an un-apportioned direct tax on salaries, wages and compensation only in the area **external to the boundaries of the 50 states of the Union**. If the Commissioner has been delegated authority to administer an un-apportioned direct tax on salaries, wages and compensation in the area internal to the boundaries of the 50 states of the Union, that authority has **not been published in the Federal Register** and is a secret, so it could not concern American citizens "at home," without violating their due process Rights.

Further, while federal income tax returns are allegedly required to be filed at IRS service centers, the Administrative Procedures Act demands that any part of an agency's field structure that affects the domestic American public must be published in the Federal Register. The absence of publication in the Federal Register of these extremely important parts of the IRS field structure further indicates that the service centers do not legally affect the domestic American public and can, therefore, **be ignored by the ordinary American wage earner living and working at home**.

But perhaps the most compelling proof of the "locational" application of the federal income tax, according to the research report, is derived from analysis of the IRS' compliance with the Paperwork Reduction Act. The federal "income" tax is purportedly imposed via Section 1 of the



IRC. But the "information collection request" applicable to the Subtitle A income tax is NOT as one would expect -- Form 1040, but rather Form 2555, entitled "Foreign Earned Income." Further as shown by the OMB control number assigned to 26 C.F.R. § 1.6091-3, the specific tax return required to be filed at service centers is Form 1040NR. And a "TIN" can only be obtained by a non-resident alien, according to Form W-7.

Another theory of the meaning of Section 25 of the 1916 Act is that Congress was forced by *Brushaber* to classify people, distinguishing between aliens and citizens, imposing no un-apportioned direct tax on the salaries, wages and compensation of American citizens, no matter where they live and work, but authorizing an un-apportioned direct tax on the salaries, wages and compensation on resident aliens working here and on employees of the federal government who voluntarily agreed to labor for the government.

Countering the "location" theory and in support of this "classification" theory is the argument that the fundamental law prohibits the imposition of an un-apportioned tax directly on the salaries, wages and compensation of American citizens, no matter where they may be living and working, and **there is no Supreme Court ruling that an un-apportioned tax can be imposed directly on the salaries, wages and compensation of American citizens living and working abroad.**

This new research cohesively documents a decades-long paper trail of federal legislation, administrative regulations and orders, and court documents that disturbingly, never make reference to the tax liability of Americans living and working within the boundaries of the several states of the Union.

Additional topics in the Attachment address the disquieting lack of statutorily required publication of documents that establish the jurisdiction of the IRS, that document the structure and location of the IRS organization and its operations, and that formally delegate legal authority from the Secretary of Treasury to the IRS Commissioner to collect a tax on the salaries, wages and compensation of ordinary Americans.

The Administrative Procedure Act requires the IRS, Social Security Administration and Department of Treasury to publish in the Federal Register the details of their organizational structure and delegated authority regarding the collection of any tax on the salaries, wages and compensation of ordinary Americans, living and working at home. The APA requires publication of all legal matters that are of "general applicability and legal effect." This new research proves **the IRS, SSA and Treasury have routinely ignored these explicit legal requirements, meaning the People are not compelled to comply with attempts by the Executive to tax their salaries, wages and compensation.**

The research contains a full chronology of Treasury Delegation Orders, Tax Acts and assorted documents that show IRS and Treasury have NO authority to enforce the income tax laws in the fifty states against ordinary Americans. The research also establishes how the IRS has blatantly evaded the Congressional mandates of the Paperwork Reduction Act which provides the legal

cross-reference "links" between official U.S. Government forms, (such as Form 1040) and the regulations which require their use by law.

The research includes historical key word "indexes" from the Federal Register, IRS Cumulative Bulletins, and private code publishers like West Publishing all showing virtually NO legal references to American "citizens" with regard to the U.S. Internal Revenue laws.

The research contains a decade worth of Form 1040 Instruction booklets, each one failing to provide any specific instruction that requires reporting domestic wages as "gross income".

Also included are copies of several IRS mandatory disclosures under the Privacy Act that not surprisingly, detail only a single Criminal Investigative Division (CID) system of criminal records relating to "Failure to File" returns. This system of records is maintained by (quoting), "System location: The central files for this system are maintained at the **Office of the Assistant Commissioner (International)**, 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20024."

**In short, this research compendium contains never before examined legal documents that irrefutably establish that the texts of the Revenue Acts authored by the U.S. Congress (the Statutes At Large) were changed in 1916 to specifically EXCLUDE the taxing of wages and salaries of ordinary American citizens in order to comply with the Supreme Court's holding in *Brushaber*.**

**Additionally, this research documents IRS's open refusal (*or inability*), to file in the Federal Register any number of statutorily required legal documents formally establishing its legal authority (such as Treasury Delegation Orders), and its refusal (*or inability*) to comply with the statutory requirements of the Administrative Practices Act and the Paperwork Reduction Act. This evidence indicates beyond refutation, that the IRS does NOT possess ANY legal authority to enforce any direct tax on wages (*including Social Security taxes*), against ordinary, working Americans.**

**"ANALYSIS OF THE FEDERAL INCOME TAX LAWS"  
(A new body of research by an anonymous, licensed, tax professional)**

As Justice Story said, "it is \* \* \* a general rule in the interpretation of all statutes, levying taxes or duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters, not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the

statutes expressly and clearly import."<sup>1</sup> For further authority regarding this rule of statutory construction, please see the following linked cases: *Gould v. Gould*, 245 U.S. 151 (1917); *Crocker v. Malley*, 249 U.S. 223 (1919); *United States v. Field*, 255 U.S. 257 (1921); *Smietanka v. First Trust & Sav. Bank*, 257 U.S. 602 (1922); *United States v. Merriam*, 263 U.S. 179 (1923); *Bowers v. New York & Albany Lighterage Co.*, 273 U.S. 346 (1927); *Reinecke v. Northern Trust Co.*, 278 U.S. 339 (1929); *Miller v. Standard Nut Margarine Co. of Florida*, 284 U.S. 498 (1932); *Old Colony R. Co. v. Commissioner*, 284 U.S. 552 (1932); and *White v. Aronson*, 302 U.S. 16 (1937).<sup>2</sup> American citizens like me clearly have the benefit of this rule.

The requirement to file a federal income tax return is the subject of 26 U.S.C. § 6091, which provides in pertinent part as follows:

"a) General rule" When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

"(b) Tax returns" In the case of returns of tax required under authority of part II of this subchapter—

(1) Persons other than corporations (A) General rule Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary—(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or (ii) at a service

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<sup>1</sup> *United States v. Wigglesworth*, Fed. Cas. No. 16,690 (Cir.Ct. D. Mass. 1842).

<sup>2</sup> See also *Houston Street Corp. v. Commissioner*, 84 F.2d 821, 822 (5th Cir. 1936); *Higley v. Commissioner*, 69 F.2d 160, 162-63 (8th Cir. 1934); *Long v. Rasmussen*, 281 F. 236, 238 (D.Mon. 1922); *Botta v. Scanlon*, 288 F.2d 504 (2nd Cir. 1961); *Shelton v. Gill*, 202 F.2d 503, 506 (4th Cir. 1953); *Adler v. Nicholas*, 166 F.2d 674, 678 (10th Cir. 1948); *Stuart v. Chinese Chamber of Commerce of Phoenix*, 168 F.2d 709, 712 (9th Cir. 1948); *State of Ohio v. Harris*, 229 F. 892, 898 (6th Cir. 1916); *Best v. City of Birmingham*, 16 Ala.App. 353, 78 So. 100, 102 (1918); *In re Kite's Estate*, 194 Iowa 129, 187 N.W. 585, 587 (1922); *Commonwealth v. P. Lorillard Co.*, 129 Va. 74, 105 S.E. 683, 685 (1921); *In re Green's Estate*, 178 N.Y.S. 353, 356 (1919); *Commonwealth v. Provident Trust Co. of Philadelphia*, 319 Pa. 385, 180 A. 16, 18 (1935); *People ex rel Pickerill v. New York Cent. R. Co.*, 391 Ill. 377, 63 N.E.2d 405, 410 (1945); *State v. Gay*, 40 So.2d 225, 229 (Fla. 1949); *City of Miami v. Schonfeld*, 132 So.2d 767, 768 (Fla.App. 1961); *Motor Cargo, Inc. v. Div. of Tax Appeals*, 10 N.J. 580, 92 A.2d 774, 777 (1952); *Pittsburgh Milk Co. v. City of Pittsburgh*, 360 Pa. 360, 62 A.2d 49, 51 (1948); *A.P. Green Fire Brick Co. v. Missouri State Tax Comm.*, 277 S.W.2d 544, 545 (Mo. 1955); *Swartz v. Berg*, 411 P.2d 736, 738 (Mon. 1966); *Calvert v. Humble Oil & Refining Co.*, 381 S.W.2d 229, 232 (Tex.App. 1964); *City of Richmond v. Valentine*, 203 Va. 642, 125 S.E.2d 854, 858 (1962); *C.D. Utility Corp. v. Maxwell*, 189 So.2d 643, 646 (Fla.App. 1966); *Newport Gas Light Co. v. Norberg*, 338 A.2d 536, 538 (R.I. 1975); *Barten v. Turkey Creek Watershed Joint Dist. #32*, 200 Kan. 489, 438 P.2d 732, 743 (1968); *In re Carolina Tel. & Telegraph Co.*, 1 N.C.App. 133, 160 S.E.2d 128, 132 (1968); *Calvert v. Wilson Communications, Inc.*, 443 S.W.2d 419, 421 (Tex.App. 1969); *Dennis Devel. Co., Inc. v. Dept. of Revenue*, 122 Ariz. 465, 595 P.2d 1010, 1013 (1979); *Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth N.B. & T. Co.*, 229 Kan. 511, 625 P.2d 494, 496 (1981); *In re Estate of Morrow*, 390 Pa. 422, 135 A.2d 913 (1957); *In re Estate of Nolan*, 390 Pa. 426, 135 A.2d 914 (1957); *People v. Chapman*, 370 Ill. 430, 19 N.E.2d 351, 355 (1939); *Lake Worth Towers, Inc. v. Gerstung*, 262 So.2d 1 (Fla. 1972); *Graves v. McDonough*, 264 Ala. 407, 88 So.2d 371 (1956); and *Union Twist Drill Co. v. Harvey*, 37 A.2d 389 (Ver. 1944). The taxation of property not subject to tax is a taking without due process of law; see *Welsh v. Kosydar*, 37 Ohio App.2d 115, 308 N.E.2d 462 (1973), and *State ex rel. Kansas City Power & Light Co. v. Smith*, 111 S.W.2d 513 (Mo. 1938). See also §66.01, *Sutherland on Statutory Construction* (5th Ed.).

center serving the internal revenue district referred to in clause (i),"as the Secretary may by regulations designate."

Examination of this statute reveals that it depends for its implementation upon the promulgation of regulations, and the relevant cases have so held. See *United States v. Citron*, 221 F.Supp. 454, 456 (S.D.N.Y. 1963); *United States v. Gorman*, 393 F.2d 209, 213-214 (7th Cir. 1968); *United States v. Ramantanin*, 452 F.2d 670, 671 (4th Cir. 1971); *United States v. Gilkey*, 362 F.Supp. 1069, 1071 (E.D.Pa. 1973); *United States v. Lawhon*, 499 F.2d 352, 355 (5th Cir. 1974); *United States v. Calhoun*, 566 F.2d 969, 973 (5th Cir. 1978); *United States v. Clinton*, 574 F.2d 464, 465 (9th Cir. 1978); *United States v. Quimby*, 636 F.2d 86, 90 (5th Cir. 1981); *United States v. Rice*, 659 F.2d 524, 526 (5th Cir. 1981); *United States v. Grabinski*, 727 F.2d 681, 684 (8th Cir. 1984); *United States v. Garman*, 748 F.2d 218, 219 (4th Cir. 1984); *United States v. Griffin*, 814 F.2d 806, 810 (1st Cir. 1987); and *United States v. Dawes*, 874 F.2d 746, 750 (10th Cir. 1989).

The regulations implementing this section of the current 1986 Internal Revenue Code (sometimes "IRC") are linked here. In reviewing these regulations and considering the above principle of statutory construction, it appears that citizens are mentioned only in 26 C.F.R. § 1.6091-3. In fact, it is only § 1.6091-3 which specifically identifies any parties required to file federal income tax returns<sup>3</sup> and they are as follows:

- "(a) Income tax returns on which all, or a portion, of the tax is to be paid in foreign currency. See Secs. 301.6316-1 to 301.6316-6 inclusive, and Secs. 301.6316-8 and 301.6316-9 of this chapter (Regulations on Procedure and Administration).
- "(b) Income tax returns of an individual citizen of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States. A taxpayer's principal place of abode will be considered to be outside the United States if his legal residence is outside the United States or if his return bears a foreign address."
- "(c) Income tax returns of an individual citizen of a possession of the United States (whether or not a citizen of the United States) who has no legal residence or principal place of business in any internal revenue district in the United States."
- "(d) Except in the case of any departing alien return under section 6851 and Sec. 1.6851-2, the income tax return of any nonresident alien (other than one treated as a resident under section 6013 (g) or (h))."
- "(e) The income tax return of an estate or trust the fiduciary of which is outside the United States and has no legal residence or principal place of business in any internal revenue district in the United States."
- "(f) Income tax returns of foreign corporations."
- "(g) The return by a withholding agent of the income tax required to be withheld at source under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, as provided in Sec. 1.1461-2."
- "(h) Income tax

<sup>3</sup> It should be noted that regulations § 1.6091-4, regarding exceptional cases, § 20.6091-1, regarding decedents, and § 25.6091-1, regarding gift tax returns also identify "citizens". These sections are irrelevant to me.

returns of persons who claim the benefits of section 911 (relating to earned income from sources without the United States)."(i) Income tax returns of corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations) except in the case of consolidated returns filed pursuant to the regulations under section 1502."(j) Income tax returns of persons who claim the benefits of section 931 (relating to income from sources within possessions of the United States)."(k) Income tax returns of persons who claim the benefits of section 933 (relating to income from sources within Puerto Rico)."(l) Income tax returns of corporations which claim the benefits of section 941 (relating to the special deduction for China Trade Act corporations)."

The regulations which implement § 6091 specifically mention American citizens abroad, but do not mention in any way an American citizen "at home." The only citizens required via 26 C.F.R. § 1.6091-3 to file federal income tax returns are citizens outside the United States.

Further, the absence of any mention of citizens "at home" in § 1.6091-3 also appears to be a feature of the Internal Revenue Code as well. The major provisions of the federal income tax are contained in subtitles A and C of the IRC. In this file, please find references to every section of subtitles A and C appearing in the 1998 edition of the 1986 Internal Revenue Code that mentions "citizen" as well as short excerpts of each section. Remarkably, there are no sections of the Internal Revenue Code that even mention a "citizen at home."<sup>4</sup>

Prior income tax acts have specifically mentioned and imposed taxes on "citizens at home." In 1894, the U.S. Congress adopted an income tax act. See "An Act To reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894, 28 Stat. 509, ch. 349. Section 27 of this act, 28 Stat. at 553, read as follows:

"That \* \* \* there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing

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<sup>4</sup> It should be noted that 26 U.S.C. § 7701(a)(14) describes a taxpayer as any person subject to any internal revenue tax. However, the term "internal revenue tax" does not occur in the Internal Revenue Code until subtitle E, regarding alcohol, tobacco and firearms taxes. Interestingly, when one examines the regulations concerning § 7701, the word "citizen" in regards to an American citizen only occurs in the context of a citizen abroad; see § 1.7701(l)-3(f)(1)(iii) [foreign personal holding company(s)]; § 301.7701(b)-1(d)(2) [Non-application to citizens]; § 301.7701(d)-1 [regarding determinations as to whether a citizen is a resident of Guam or a territory or possession of the United States]; § 301.7701(b)(7) [concerning tax treaties with foreign countries]; and § 301.7701-7 [regarding foreign trusts].

therein \* \* \* a tax of two per centum \* \* \* and a like tax shall be levied, collected and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States."

But, this act was found unconstitutional in the case of *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, aff. reh., 158 U.S. 601 (1895).

After ratification of the 16th Amendment, Congress adopted a federal income tax act on October 3, 1913. See "An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes," 38 Stat. 114, ch. 16. The individual income tax was imposed in § II(A) (38 Stat. at 166):

"A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income \* \* \* ."

Examination of both the 1894 and 1913 acts clearly reveals that Congress knew about the above principle of law regarding statutory construction and complied with it. Review of these two acts demonstrates that there can be no question that "citizens at home" were subject to the tax.

On September 8, 1916, Congress adopted another federal income tax act. See "An Act To increase the revenue, and for other purposes," 39 Stat. 756, ch. 463. The individual income tax in this act was imposed by § 1:

"Sec. 1. (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income \* \* \* ."

While the 1913 Act specifically imposed the tax on the income of "every citizen, whether at home or abroad", the 1916 Act imposed the tax on "every individual," a subtle difference in an act with profound differences. The 1916 Act, in § 24 (39 Stat. at 776), plainly repealed the 1913 Act. On October 3, 1917, Congress passed an act which amended the 1916 Act. See "An Act To provide revenue to defray war expenses, and for other purposes", 40 Stat. 300, ch. 63.

On February 24, 1919, the Revenue Act of 1918 was adopted by Congress. See "An Act To provide revenue, and for other purposes", 40 Stat. 1057, ch. 18. This Act was different from the 1916 Act in that it imposed a tax which was merely in lieu of the tax imposed by the 1916 Act. This is shown by the plain language of § 210 (40 Stat. at 1062):

"Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of Section 1 of the

Revenue Act of 1916 and by Section 1 of the Revenue Act of 1917, there shall be levied, collected and paid for each taxable year upon the net income of every individual a normal tax at the following rates:"

The Revenue Act of 1921 was adopted by Congress on November 23, 1921. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," 42 Stat. 227, ch. 136. This act closely followed the pattern of the Revenue Act of 1918 in that it also imposed a tax in lieu of the 1918 tax. In § 210 of this act (42 Stat. at 233), the section imposing the tax read as follows:

"Sec. 210. That, in lieu of the tax imposed by section 210 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* ."

The Revenue Act of 1924 was adopted by Congress on June 2, 1924. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," 43 Stat. 253, ch. 234. Like its predecessors, this act imposed a tax in lieu of the previous tax. Section 210 (43 Stat. at 264) read as follows:

"Sec. 210. (a) In lieu of the tax imposed by Section 210 of the Revenue Act of 1921, there shall be levied, collected, and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax \* \* \* ."

Two years later, Congress enacted the Revenue Act of 1926. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," 44 Stat. 9, ch. 27. Section 210 of this act read almost identically as the former acts imposing the tax:

"Sec. 210. (a) In lieu of the tax imposed by section 210 of the Revenue Act of 1924, there shall be levied, collected and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax \* \* \* ."

Again, two years later, Congress enacted another act named the Revenue Act of 1928. See "An Act To reduce and equalize taxation, provide revenue, and for other purposes," 45 Stat. 791, ch. 852. By this time, Congress had been enacting similar legislation for 15 years, and it changed the format of the income tax acts. The format of this act was decidedly different from the previous acts, and this format was ultimately used for the 1939 Internal Revenue Code. In this new format, the tax became imposed in § 11:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* ."

It must be noted that while the "in lieu of" feature of the tax appeared directly in the section imposing the tax in the prior acts, this § 11 made no reference to the same, although the act itself did.

Congress moved the "in lieu of" feature from the section imposing the tax and placed it in § 63 (45 Stat. at 810) of the act:

"Sec. 63. Taxes in Lieu of Taxes Under 1926 Act. The taxes imposed by this title shall be in lieu of the corresponding taxes imposed by Title II of the Revenue Act of 1926, in accordance with the following table:

"Taxes under this Title	Taxes under 1926 Act
Secs. 11 and 211 ....	in lieu of ... sec. 210
Sec. 12 .....	in lieu of ... sec. 211"

Congress did not enact after 1928 another major tax law for four years; on June 6, 1932, it did enact, however, the Revenue Act of 1932. See "An Act To provide revenue, equalize taxation, and for other purposes," 47 Stat. 169, ch. 209. This act was patterned upon its predecessor, the 1928 Act, and it thus had a § 11 which imposed the tax, and a § 63 providing the "in lieu of" feature:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the entire net income of every individual a normal tax \* \* \* .

""Sec. 63. Taxes In Lieu of Taxes Under 1928 Act. The taxes imposed by this title shall be in lieu of the corresponding taxes imposed by the sections of the Revenue Act of 1928 bearing the same numbers."

Two years later, Congress enacted the Revenue Act of 1934. See "An Act To provide revenue, equalize taxation, and for other purposes," 48 Stat. 680, ch. 277. Like the 1928 and 1932 Acts, this act contained a § 11 as well as a § 63:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* .""Sec. 63. Taxes In Lieu of Taxes Under 1932 Act. The taxes imposed by this title shall be in lieu of the corresponding taxes imposed by the Revenue Act of 1932."

The next major income tax act of Congress was the Revenue Act of 1936. See "An Act To provide revenue, equalize taxation, and for other purposes," 49 Stat. 1648, ch. 690. Here, Congress continued the same scheme first established in 1928, with §§ 11 and 63:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* .

""Sec. 63. Taxes In Lieu of Taxes Under 1934 Act. The taxes imposed by this title and Title IA shall be in lieu of the taxes imposed by Titles I and IA of the Revenue Act of 1934, as amended."

Finally, on May 28, 1938, Congress enacted the Revenue Act of 1938. See "An Act To provide revenue, equalize taxation, and for other purposes," 52 Stat. 447, ch. 289. This act followed the format of the similar income tax acts adopted in 1928, 1932, 1934, and 1936, and it established



much of the format for the 1939 Internal Revenue Code. Here again, there was a § 11 and a § 63:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* ."

"Sec. 63. Taxes In Lieu of Taxes Under 1936 Act. The taxes imposed by this title and Title IA shall be in lieu of the taxes imposed by Titles I and IA of the Revenue Act of 1936, as amended."

On December 31, 1938, there was in existence a federal income tax, which was imposed by the Revenue Act of 1938. But, this act simply imposed a tax which was in lieu of the 1936 tax, which tax was in lieu of the 1934 tax, which was in lieu of the 1932 tax, which was in lieu of the 1928 tax, which was in lieu of the 1926 tax, which was in lieu of the 1924 tax, which was in lieu of the 1921 tax, which was in lieu of the 1918 tax, which was in lieu of the 1916 tax. At that time, many other taxes were scattered throughout various Congressional tax acts, and there appeared to Congress a need to consolidate these laws into one act. This was the purpose for enacting the 1939 Internal Revenue Code.

On February 10, 1939, the 1939 Internal Revenue Code was approved and became law. The preface to this Code made it clear that it simply codified the existing tax acts into one law:

"The internal revenue title, which comprises all of the Code except the preliminary sections relating to its enactment, is intended to contain all the United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes the occasion of which may arise after the enactment of the Code. These statutes are codified without substantive change and with only such change of form as is required by arrangement and consolidation. The title contains no provision, except for effective date, not derived from a law approved prior to January 3, 1939."

In essence, those various internal revenue laws then in force and effect on January 2, 1939, were placed into this one act, which created the 1939 IRC. Section 4 of the enacting clause of this Code provided that any prior law codified in this act was thereby repealed; but § 4 did not repeal any law not so codified. Most of the income tax provisions in the 1939 IRC were derived from the 1938 Revenue Act, and § 11 of the 1938 Revenue Act became § 11 in the 1939 Code. But while §§ 11 through 62 of the 1938 Act were incorporated into the 1939 Code, § 63, which provided the "in lieu of" feature, was not, and therefore was not repealed. Thus, the 1939 Code was nothing more than an incorporation of the 1938 Act into its provisions, and the un-repealed § 63 in the 1938 Act operated to make the 1939 Code's income tax laws an act which was in lieu of the 1936 tax.

The 1954 Internal Revenue Code, 68A Stat., was a rearrangement of the provisions of the 1939 Internal Revenue Code combined with some other changes. See Detailed Discussions of the Technical Provisions of the Bill by the House and Senate, 1954 U.S.C.A.N.S., pp. 4145 and 4793, as well as Table II, 68A Stat. at 952. The 1986 Internal Revenue Code is just simply the renamed 1954 Internal Revenue Code. See 100 Stat. 2085, at 2095. Today, the 1986 Code is merely a replacement

or substitute for the 1954 Code, which was a replacement or substitute for the 1939 Code, which was the codification of the 1938 Revenue Act. The 1938 tax was one which was in lieu of the 1936 tax, which was in lieu of the 1934 tax, which was in lieu of the 1932 tax, which was in lieu of the 1928 tax, which was in lieu of the 1926 tax, which was in lieu of the 1924 tax, which was in lieu of the 1921 tax, which was in lieu of the 1918 tax, which was in lieu of the 1916 tax. Thus today, the tax scheme imposed by the Revenue Act of 1916, as amended, still exists.<sup>5</sup>

While it was in effect, the 1913 Act imposed a method of collection "at the source" of the income known as "withholding." Section II (E), 38 Stat. at 170, was broad and provided as follows:

"All persons, firms, co-partnerships companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United

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<sup>5</sup> A fundamental rule of statutory construction is that acts *in pari materia* are to be read and construed together. "[A]ll acts *in pari materia* are to be taken together, as if they were one law." See *United States v. Stewart*, 311 U.S. 60, 64 (1940), *Sanford's Estate v. Commissioner of Internal Revenue*, 308 U.S. 39, 44 (1939) and *Harrington v. United States*, 78 U.S. 356, 365 (1877). This is particularly true of the federal revenue laws. While there are many such acts, all of them are regarded as parts of one system of taxation, and construction of any one act may be assisted by review of other acts in this "system." See *United States v. Collier*, Fed.Cas.No. 14,833 (Cir. Ct. S.D.N.Y. 1855). A prior tax act, even one which has been repealed, still is to be considered as explanatory of later acts. See *Southern Ry. Co. v. McNeill*, 155 F. 756, 769 (Cir. Ct. E.D.N.C. 1907).

States Government authorized to receive the same; and they are each hereby made personally liable for such tax."

To implement this income tax withholding provision, Treasury Decision 1887 was promulgated on October 25, 1913 and it subjected to withholding at the source and taxed the interest income of citizens, both at home and abroad. On October 31, 1913, Treasury Decision 1890 was adopted and it subjected to withholding "all income derived from fixed annual periodical rent of realty or personalty, interest \* \* \*, salaries, royalties, taxable annuities, and other fixed annual periodical income \* \* \* ."

The "tax imposed" section of the 1913 Act was very broad and specifically imposed a tax on the income of citizens at home. The Supreme Court has acknowledged that the 1913 income tax act was intended to tax all. See *Smietanka v. First Trust & Sav. Bank*, 257 U.S. 602, 606 (1922).

But after the decision in *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1 (1916), the scheme of taxation began to change dramatically, especially considering the fact that the 16th Amendment conferred no new powers of taxation. See *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916). One important result of the decision in *Brushaber* was the promulgation of Treasury Decision 2313.

While there were major differences between the 1913 Act and the 1916 and 1917 Acts, those differences did not relate to the statutory definition of "income." The definition of "income" in the 1913 Act, 38 Stat. at 167, was as follows:

"B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever \* \* \* ."

The 1916 Act, 39 Stat. at 757, defined this term as follows:

"SEC. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever \* \* \* ."

The only difference regarding the definition of "income" between these two acts was that the word

"lawful" before "business" appearing in the 1913 Act was omitted from the 1916 Act.

But the 1916 Act, as amended by the 1917 Act, was far more limited in its scope than the 1913 Act. For example, § 9 of the 1916 Act, 39 Stat. at 765, provided a feature not contained in the 1913 Act:

"(g) \* \* \* The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same."

Via §§ 1205 and 1208 of the 1917 Act, 40 Stat. at 335, withholding was limited to non-resident aliens and foreign firms:

"SEC. 1205. (1) That subdivisions (b), (c), (f), and (g) of section nine of such Act of September eighth, nineteen hundred and sixteen, are hereby amended to read as follows:"(b) All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, other than income derived from dividends on capital stock, or from the net earnings of a corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall make return thereof on or before March first of each year and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, partnership, association, or insurance company, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title."

But what dramatically changed the tax scheme was § 25 of the 1916 Act, 39 Stat. at 777, which provided:

"Sec. 25. That income on which has been assessed the tax imposed by Section II of the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October third, nineteen hundred and thirteen, shall not be considered as income within the meaning of this title: Provided,

That this section shall not conflict with that portion of section 10, of this title, under which a taxpayer has fixed its own fiscal year."

This § 25 plainly stated that there were monumental differences between the tax scheme of the 1913 Act and that of the 1916 and 1917 Acts.

While the 1916 Act went into effect in October, 1916, its withholding provisions regarding citizens were rendered nugatory via § 1212 of the 1917 Act, 40 Stat. at 338:

"SEC. 1212. That any amount heretofore withheld by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen, on account of the tax imposed upon the income of any individual, a citizen or resident of the United States, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, shall be released and paid over to such individual, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act."

To implement § 1212, Treasury Decision 2635 was promulgated on January 24, 1918, and it directed the refunding of all taxes for citizens and residents withheld during the year 1917.<sup>6</sup>

These statutory changes in this tax scheme also caused changes in the applicable tax regulations. When the 1913 Act became effective, Regulations 33 were adopted by the Commissioner of Internal Revenue to implement that act. There was no provision in that set of income tax regulations, which mentioned in any way some type of income "fundamentally exempt" from tax by the Constitution. But after the dramatic change from the 1913 tax scheme to that of the 1916 and 1917 Acts, such a provision started appearing in these income tax regulations:

Regulations 45 (1918), Art. 71  
 Regulations 45 (1920), Art. 71  
 Regulations 62, Art. 71  
 Regulations 65, Art. 71  
 Regulations 69, Art. 71  
 Regulations 74, Art. 81  
 Regulations 77, Art. 81  
 Regulations 86, Art. 22(b)-1  
 Regulations 94, Art. 22(b)-1  
 Regulations 101, Art. 22(b)-1  
 Regulations 103, Art. 19.22(b)-1  
 26 C.F.R. § 1.312-6

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<sup>6</sup> It must be remembered that during 1917, World War I was raging, creating great war expenditures for the federal government.

See also *Jack Cole Co. v. MacFarland*, 337 S.W.2d 453, 455-56 (Tenn. 1960)("Realizing and receiving income or earnings is not a privilege that can be taxed").

Some important conclusions arise as a direct result of analysis of these changes between the 1913 Act's tax scheme and that of the 1916 and 1917 Acts. Clearly, the 1913 Act imposed an income tax on the domestic income of Americans at home. That act subjected to withholding at the source all periodic income, which was taxed, including interest, dividends, wages and salaries. The 1913 Act encompassed the income "from all sources" of citizens and resident aliens, and the income of non-resident aliens from domestic sources.

But, § 25 of the 1916 Act announced a dramatic change in this scheme. It is clear that the differences between the 1913 Act and the 1916 Act, as amended, did not relate to the statutory definition of "income", leaving only one possibility: the difference between the 1913 and 1916 income tax acts related to the taxpayers whose income was taxed.

The phrase, "non-residents, whether citizens or aliens," was used in the 1866 income tax act (14 Stat. 98, at 138), and obviously means citizens and aliens outside this country. It was decided long ago that the domestic income of non-resident aliens and foreign firms could be taxed; see *Michigan Central Railroad Co. v. Slack*, 100 U.S. 595 (1880); *United States v. Erie Railway Company*, 106 U.S. 327 (1882); and *DeGanay v. Lederer*, 250 U.S. 376 (1919). Further, citizens residing abroad can also be subjected to tax; see *Cook v. Tait*, 265 U.S. 47 (1924). However, it must be noted that there are "differences between things domestic and things foreign, and their use, [which] are apparent on the face of things, and are expressly manifested by the text of the Constitution". See *Billings v. United States*, 232 U.S. 261, 283 (1914).

Does the present federal income tax appear to be one imposed only on "non-residents, whether citizens or aliens"?

The above mentioned tax acts are linked here:

Revenue Act of 1913	(1913 Act in PDF)
Revenue Act of 1916	(1916 Act in PDF)
Revenue Act of 1917	(1917 Act in PDF)
Revenue Act of 1918	(1918 Act in PDF)
Revenue Act of 1921	(1921 Act in PDF)
Revenue Act of 1924	(1924 Act in PDF)
Revenue Act of 1926	(1926 Act in PDF)
Revenue Act of 1928	(1928 Act in PDF)
Revenue Act of 1932	(1932 Act in PDF)
Revenue Act of 1934	(1934 Act in PDF)
Revenue Act of 1936	(1936 Act in PDF)
Revenue Act of 1938	(1938 Act in PDF)
1939 I.R. Code	1939 I.R.C. (PDF)
1954 I.R. Code	1954 I.R.C. (PDF)

The linked tax acts in the above left column are accurate text reproductions of the actual acts appearing in the U.S. Statutes at Large. Each text act is searchable. Further, PDF files of all these same acts are also linked above in the right column.

Review of these various income tax acts adopted after the 1913 act fails to reveal any statutory provision plainly and expressly stating that American citizens domiciled at home have their domestic income taxed (these acts clearly mention citizens in the insular possessions). Yet to comply with the rule of statutory construction mentioned above requires such a provision: "[T]he citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid".<sup>7</sup>

The absence of any express statutory provision imposing an income tax on the domestic income of American citizens domiciled "at home" also manifests itself in other ways. Commencing in 1919, the Bureau of Internal Revenue (sometimes "BIR") started publishing the Cumulative Bulletin, which contains a wide variety of information regarding federal income taxes. This publication is printed by professionals employed by the government, who certainly know the importance and value of indexes. Below are certain pages from the index of every volume of the Cumulative Bulletin from 1919 through 1953:

1 C.B. 313	VI-2 C.B. 411	XV-1 C.B. 528	1944 C.B. 1100
2 C.B. 324	VII-1 C.B. 369	XV-2 C.B. 586	1945 C.B. 663
3 C.B. 376	VII-2 C.B. 427	1937-1 C.B. 556	1946-1 C.B. 351
4 C.B. 420	VIII-1 C.B. 338	1937-2 C.B. 650	1946-2 C.B. 303
5 C.B. 317	VIII-2 C.B. 450	1938-1 C.B. 615	1947-1 C.B. 224
I-1 C.B. 482	IX-1 C.B. 416	1938-2 C.B. 521	1947-2 C.B. 365
I-2 C.B. 363	IX-2 C.B. 466	1939-1 C.B. 435	1948-1 C.B. 358
II-1 C.B. 350	X-1 C.B. 536	1939-2 C.B. 639	1948-2 C.B. 328
II-2 C.B. 388	X-2 C.B. 472	1940-1 C.B. 326	1949-1 C.B. 303
III-1 C.B. 543	XI-1 C.B. 386	1940-2 C.B. 604	1949-2 C.B. 305
III-1 C.B. 551	XI-2 C.B. 581	1941-1 C.B. 579	1950-1 C.B. 297
III-2 C.B. 455	XII-1 C.B. 492	1941-2 C.B. 529	1950-2 C.B. 597
IV-1 C.B. 418	XII-2 C.B. 509	1942-1 C.B. 411	1951-1 C.B. 280
IV-2 C.B. 344	XIII-1 C.B. 557	1942-2 C.B. 737	1951-2 C.B. 656
V-1 C.B. 457	XIII-2 C.B. 620	1943 C.B. 1383	1952-1 C.B. 267
V-2 C.B. 299	XIV-1 C.B. 568	1943 C.B. 1387	1952-2 C.B. 380
VI-1 C.B. 363	XIV-2 C.B. 608	1944 C.B. 1095	1953-1 C.B. 536
		1953-2 C.B. 538	

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<sup>7</sup> See *Spreckels Sugar Refining Co. v. McClain*, 192 U.S. 397, 416 (1904).

Examination of these pages from the Cumulative Bulletin demonstrates that often, citizens are not even mentioned in these indexes, but when they are, it is in the context of "citizens abroad." Did the professional, government- employed compilers of these indexes miss something?

This same deficiency also appears in the volumes of the Cumulative Bulletin published after adoption of the 1954 IRC. The following links contain some pages from the indexes of the Cumulative Bulletin published after 1953:

1954 - 1 C.B. 407	1966 - 2 C.B. 1294	1971 - 2 C.B. 589	1975 - 2 C.B. 619
1954 - 2 C.B. 746	1967 - 2 C.B. 708	1971 - 2 C.B. 595	1975 - 2 C.B. 625
1955 - 1 C.B. 735	1967 - 2 C.B. 722	1972 - 1 C.B. 789	1976 - 1 C.B. 595
1955 - 2 C.B. 1030	1968 - 2 C.B. 979	1972 - 1 C.B. 796	1977 - 1 C.B. 602
1956 - 1 C.B. 1063	1968 - 2 C.B. 986	1972 - 2 C.B. 910	1977 - 1 C.B. 607
1956 - 2 C.B. 1452	1969 - 1 C.B. 474	1972 - 2 C.B. 917	1978 - 2 C.B. 579
1957 - 2 C.B. 1153	1969 - 1 C.B. 480	1973 - 2 C.B. 519	1979 - 1 C.B. 637
1958 - 2 C.B. 1191	1969 - 2 C.B. 326	1973 - 2 C.B. 528	1979 - 1 C.B. 642
1959 - 2 C.B. 1012	1970 - 1 C.B. 528	1974 - 2 C.B. 528	1979 - 2 C.B. 615
1960 - 2 C.B. 1050	1970 - 2 C.B. 660	1975 - 1 C.B. 763	1980 - 1 C.B. 728
1962 - 2 C.B. 559	1970 - 2 C.B. 661	1975 - 1 C.B. 770	1980 - 1 C.B. 733
1964 - 2 C.B. 1043	1971 - 1 C.B. 777	1975 - 1 C.B. 777	1985 - 1 C.B. 679

Review of the above pages from the indexes for the Cumulative Bulletin is very revealing. The Bulletin is prepared and printed by expert publishers and they obviously intend to reference everything of importance in the indexes. If the tax acts specifically mentioned "citizens at home," certainly these professional index preparers would reference such. The absence of such references indicates an absence of such provisions in the tax laws.

But further, this same pattern is also evident in the income tax publications of private publishers. It cannot be doubted that West Publishing Company is probably the premier publisher of American law books, including those related to the federal income tax. The following links contain pages from the indicated indexes:

- 1986 CFR Index
- 1987 CFR Index
- 1988 CFR Index
- 1989 CFR Index
- 1990 CFR Index
- 1991 CFR Index
- 1992 CFR Index
- 1993 CFR Index
- 1994 CFR Index
- 1995 CFR Index



Prentice-Hall, Inc., is another prominent law book publisher, yet it also appears unable to find statutory references to citizens other than those abroad:

P-H 1985 Index for 1954 Code  
P-H 1988 Index for 1986 Code

Why can't these private publishers of federal income tax materials find statutory references to citizens other than those abroad?

Another very important index appears in the Form 1040 instruction booklet. The indexes for these publications do make reference to citizens, but only for those living abroad; see indexes of the Form 1040 instruction booklets for 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, and 2003.

In summary, examination of the various revenue acts adopted after the Revenue Acts of 1916 and 1917 reveals an absence of statutory provisions regarding the domestic income of American citizens domiciled at home. But in addition to this lack of such provision[s] in the statutes, the above also demonstrates that even professionals who publish this type of material constantly and have been doing so for decades do not find such provisions either. What is the reason for this deficiency? Is it § 25 of the 1916 Act?

It must also be noted that frequently the IRS itself as well as various public officials make statements descriptive of the federal income tax system: "our tax system is based upon voluntary compliance." The term "voluntary" in reference to taxation means that if a party pays without objection a tax, which he does not owe, he cannot recover it. See Treasury Decision 3445.

The above analysis of the prior income tax statutes and other materials reveals a complete absence of any provision of such laws imposing an income tax on the domestic income of a citizen living "at home". These materials further demonstrate that this tax, in reference to citizens, is imposed on citizens living and working abroad, and most particularly those in the insular possessions. The natural question to ask is whether the U.S. Department of the Treasury (at times herein "Treasury") and the Internal Revenue Service ("IRS") agree that such is the application of this tax. Close examination of the activities of these two federal agencies demonstrates that both do.

## **AUTHORITY OF THE COMMISSIONER OF INTERNAL REVENUE**

### **I. Summary of the Administrative Procedure Act ("A.P.A.").**

During the late 19th century, the Treasury Department determined that, as a practical matter, publishing information such as its organizational structure was beneficial for the American public

and necessary for the conduct of its business. As early as 1877, it adopted Treasury Decision 3285 which described the various special agency districts; see also Treasury Decision 12761 adopted in 1892, and Treasury Decision 48659, adopted in 1936. Similarly, it found the publication of delegation orders helpful. In 1897, it adopted Treasury Decision 18094, which described the various duties assigned by the Treasury Secretary to his assistants. See also Treasury Decision 18787 adopted in 1898. Of course, there were many more such delegations of authority not mentioned here.

By 1896, Congress was concerned about the practice of making oral delegations of authority and assignments of duties by some federal agencies, and thus required, via a section from an appropriations act, 29 Stat. 140, 179, ch. 252, that such orders must be written. Pursuant to this statutory command, the Treasury Department adopted Treasury Decisions 21723 and 21746, requiring Treasury officials to make assignments and delegations only by means of written orders.

By the early 20th century, delegations of authority from a department secretary not only were written, but were also frequently published in some official agency periodical. For example, Congress delegated enforcement powers for the 1917 Trading With the Enemy Act to the President, who delegated some of this authority to the Treasury Secretary. The Secretary in turn sub-delegated some of these powers to others; see Treasury Decision 37423. Other examples of written and duly published delegation orders concern the enforcement of the customs laws, which has always been delegated to the Commissioner of Customs; see Treasury Decision 49047, Treasury Decision 49818 (4 Fed. Reg. 1251), and Treasury Decision 50192 (5 Fed. Reg. 2573).

Prior to 1935, obtaining agency regulations or information about an agency required review of agency publications or contact with the agency itself. To centralize publication of all the regulations and other information regarding federal agencies, in 1935 Congress adopted the Federal Register Act; see the Act of July 26, 1935, 49 Stat. 500, ch. 417 (presently codified at 44 U.S.C. §§ 1501, et seq.). This law created an official daily publication named the Federal Register where certain specified information would be published and consequently made available to the public. This act required "(1) all Presidential proclamations and Executive orders, except such as have no general applicability and legal effect or are effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof; [and] (2) such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect" to be published in the Federal Register. The act defined "document" as including agency regulations. The effect of this act was to establish the Federal Register as the official, central source for the publication of the various regulations adopted by federal agencies, rather than the scattered publications of those agencies. Pursuant to the authority conveyed to him, on December 31, 1936, the President adopted the first set of regulations to implement that act. These regulations primarily required federal agencies to publish their regulations in the Federal Register.

On June 19, 1937, Congress amended the Federal Register Act so as to require federal agencies to codify their rules of "general applicability and legal effect"; see 50 Stat. 304, ch. 369. This act thus created the Code of Federal Regulations ("C.F.R."), which codifies the various regulations adopted by federal agencies. On November 10, 1937, the Administrative Committee of the Federal Register issued regulations to implement this statutory command, and agencies were

required to complete the codification of their rules by July 1, 1938. As shown by the 1938 C.F.R. Index, the regulations adopted by the Bureau of Internal Revenue were codified in Title 26 of the C.F.R., and those of the Treasury Department appeared in Title 31.

But the establishment of the Federal Register where all agency regulations would be published was only the beginning. At that time in the late 1930s, federal agencies did not adopt their regulations or procedural rules (which govern controversies with those agencies) in any meaningful fashion, and the process was, at best, bureaucratic and haphazard. Realizing a need to establish uniform administrative procedures, federal officials started in 1939 devising an administrative procedures law.

In 1940 after extensive investigation of the *de facto* rule making process of federal agencies, the U.S. Attorney General published a report entitled Administrative Procedure in Government Agencies. This report was the result of a study of all federal agencies made by officials and employees of the Department of Justice and it contained several recommendations regarding administrative procedure for those agencies. The Report concluded that federal agencies should publish in the Federal Register "seven forms of vital administrative information": (1) the organizational structure of each agency, (2) each agency's statements of general policy, (3) statutory interpretations of the laws each agency administered, (4) substantive regulations of each agency, (5) the practice and procedural rules of each agency, and finally, (6) agency forms and (7) instructions.

It must be noted that by 1940, a manual entitled the United States Government Manual was already being published which described in summary fashion the structure of every federal agency; see the 1939 United States Government Manual. The Attorney General's Report argued for the need to require federal agencies to publish more detailed statements of their organizational structure in the Federal Register:

"1. Agency organization.—Few Federal agencies issue comprehensive or usable statements of their own internal organization—their principle offices, officers, and agents, their divisions and subdivisions; or their duties, functions, authority, and places of business. The United States Government Manual is not sufficiently detailed to fill this gap. Yet without such information, simply compiled and readily at hand, the individual is met at the threshold by the troublesome problem of discovering whom to see or where to go—a problem sometimes difficult to solve without irksome correspondence or unproductive personal consultations," Report, at 26.

By 1945, a bill proposing uniform administrative procedure was pending before Congress and several Congressional reports regarding that bill were published. As to the pending bill's requirement that federal agencies would be required to publish in the Federal Register their organizational structure and delegation orders, Senate Report No. 752 stated regarding this feature of the bill:

"(a) Rules.—Every agency is required to publish in the Federal Register its (1) organization, (2) places of doing business with the public, (3) methods of rule

*making and adjudication including the rules of practice relating thereto, and (4) such substantive rules as it may frame for the guidance of the public. No person is in any manner to be required to resort to organization or procedure not so published.* "Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies to state their organization and procedure in the form of rules is essential for the information of the public. The publication must be kept up to date. The enumerated classes of informational rules must be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. The effect of any one of the first three classifications of required rule making is that agencies must also publish their internal delegations of authority. The section forbids secrecy of rules binding or applicable to the public, or of delegations of authority."

House Report No. 1980 was similar in nature regarding the precise information agencies must incorporate in their "informational" rules:

"Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies to state their organization and procedures in the form of rules is essential for the information of the public. The publication must be kept up to date. The enumerated classes of informational rules must also be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. Under (1) only final delegations of authority to dispose of cases or matters must be published; the delegation of other functions would be shown in (2) in stating the general course and method by which each of an agency's functions are channeled and determined. Also, under (2), an agency is required to state all the stages, steps, courses, and alternatives for each of the types of functions it is authorized to perform. The section forbids secrecy of rules binding upon or applicable to the public, or of delegations of authority."

In June, 1946, Congress adopted the A.P.A. See Act of June 11, 1946, 60 Stat. 237, ch. 324. An important definition in this act was the following contained in § 2:

"(c) Rule and rule making.—'Rule' means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency \* \* \*."

Section 3 of the act commanded that the following types of agency "rules" be published in the Federal Register:

"(a) Rules. Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2)

statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published."

Further, the act established a certain method whereby agencies were to publish in the Federal Register proposed and final agency rules and were to accord public comments and hearings in reference to the promulgation of regulations. Section 9 of the act provided as follows:

"No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law."

See this brief for a discussion of the decisional authority regarding the A.P.A.

Promptly after adoption of this law, the Administrative Committee of the Federal Register issued regulations to implement it; see the Federal Register for September 7, 1946, 11 Fed. Reg. 9833. These regulations defined the word "document" as including "rules", and of course "rules" were defined in the A.P.A. as including statements of an agency's organization and delegations of authority ("channeling" of functions). All such rules were required to be published in the Federal Register and codified in the C.F.R. Section 2.5(a)(2) of these Federal Register regulations further described in a general fashion the various items to be published in the Federal Register as including "[e]very document \* \* \* conferring \* \* \* authority," clearly making delegation orders subject to publication therein. See also the revised Federal Register regulations published at 13 Fed. Reg. 5929, and 37 Fed. Reg. 23602.

Presently, the A.P.A. (codified at 5 U.S.C. § 552) provides as follows:

"(a) Each agency shall make available to the public information as follows: (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public — (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) each

amendment, revision, or repeal of the foregoing." Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published."

Via 5 U.S.C. § 551, a "rule" is defined to mean "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency \* \* \*".

The current regulations implementing these Federal Register publication requirements are codified at 1 C.F.R. Part 1. In 1 C.F.R. § 1.1, a "document" is defined as "any Presidential proclamation or Executive order, and any rule, regulation, order, certificate, code of fair competition, license, notice, or similar instrument issued, prescribed, or promulgated by an agency." A "[d]ocument having general applicability and legal effect" is also defined by these same regulations as "any document issued under proper authority prescribing a penalty or course of conduct, conferring a right, privilege, authority, or immunity, or imposing an obligation, and relevant or applicable to the general public, members of a class, or persons in a locality, as distinguished from named individuals or organizations." Certainly, delegation orders confer authority from one public official to another, and thus classify as "documents of general applicability." Via 1 C.F.R. § 5.2, "[e]ach document having general applicability and legal effect" must be published in the Federal Register. Pursuant to § 5.9, these documents are categorized into 4 specific groups: (1) Presidential documents, (2) new agency regulations, (3) proposed rules, and finally (4) "notices," which consist of "miscellaneous documents applicable to the public." These various documents are published in this order in the daily edition of the Federal Register. Section 8.1 of these current Federal Register regulations concerns publication of the C.F.R., which is to "contain each Federal regulation of general applicability and legal effect."

Thus pursuant to the A.P.A. and its implementing regulations, all agency rules must be published in the Federal Register. These rules are not only the substantive kind, which implement laws, but also the type which describe an agency's organization and those which at least summarize its delegation orders. These rules describing an agency's organization and delegations of authority must be codified in separate parts of an agency's regulations published in the C.F.R., just as substantive and procedural rules are also separately codified in the C.F.R.

The practice of various federal agencies demonstrates that they are fully aware that statements of organization and delegation orders are rules requiring formal promulgation and publication in the Federal Register. For example, the Department of Agriculture on March 9, 2000, published at 65 Fed. Reg. 12427 amendments to its delegation of authority rules. On January 29, 1997 (62 Fed. Reg. 4169), and March 21, 2002 (67 Fed. Reg. 13216), the F.C.C. published similar rules. On March 20, 1995 (60 Fed. Reg. 14622), so did the S.E.C., as did the F.D.A. on June 8, 2001 (66 Fed. Reg. 30992). The Department of Transportation on January 4, 2000 (65 Fed. Reg. 220), July 3, 2000 (65 Fed. Reg. 41014), and December 28, 2001 (66 Fed. Reg. 67117), also adopted similar "final rules." It must be noted that each of the above was published in the "rules and regulations" section of the daily Federal Register rather than the "notices" section.

Today, a wide variety of federal agencies easily comply with these mandates of the A.P.A. regarding publication in the Federal Register and codification in the C.F.R. of their statements of organization and delegation orders. For example, the Federal Communications Commission publishes a very detailed "statement[ ] of the general course and method by which its functions are channeled and determined", as does the Department of Transportation. The U.S. Department of Agriculture publishes 141 pages in the C.F.R. just for its delegation orders; see also Inspector General, U.S.D.A. The similar statements of the Food and Drug Administration, Securities and Exchange Commission, and Immigration and Naturalization Service demonstrate that these agencies are acutely aware of these statutory requirements. See also the similar publications of Amtrack, the Commodities Futures Trading Commission, the Consumer Product Safety Commission, Customs, the Environmental Protection Agency, the Federal Emergency Management Agency, the Federal Energy Regulatory Commission, the U.S. Forest Service, the Food Safety Inspection Service, the Federal Transit Administration, the Federal Trade Commission, NASA, the National Highway Traffic Safety Administration, the Nuclear Regulatory Commission, the National Transportation Safety Board, the Peace Corps, the Grain Inspection (Packers and Stockyards Administration), the Small Business Administration, and the Water Resources Council.

How has the Social Security Administration ("S.S.A.") complied with the A.P.A.?

## II. A.P.A. Compliance by the S.S.A.

Via the Social Security Independence and Program Improvements Act of 1994, 108 Stat. 1464, the S.S.A. was converted into an independent establishment. As a new federal organization created by Congress, the S.S.A. is subject to the A.P.A., and thus required to publish in the Federal Register statements of its organization and the "channeling" of its functions. Soon after its establishment as an independent agency, the S.S.A. commenced publication of statements of its organization in the Federal Register; see links to such statements posted here.

Review of these statements published in the Federal Register reveals that none were published in the "rules and regulations" section of the daily Federal Register editions; instead, all were published in the "notices" section thereof. The Office of the Federal Register provides a Document Drafting Handbook to federal agencies for the purpose of informing them of the various items to be published in the Federal Register. This manual describes as follows the type of documents which are published in the "notices" section of the Federal Register:

"3.1 What types of documents go in the notices category? "Use the notices category to provide information of public interest. "This category contains documents that do not have regulatory text, do not impose requirements with general applicability and legal effect, and do not affect a rulemaking proceeding. Some notices are required to be published by law."

Apparently, documents which do not have general applicability are published in the daily Federal Register's "notices" section, which has included every one of the above mentioned

statements of the organization of the S.S.A. These various statements of the organization of the S.S.A. have not been codified in the C.F.R. Instead, the S.S.A. includes only a small and non-specific description of its organization at 20 C.F.R. § 422.1. This description of the S.S.A. has been in the C.F.R. since 1967, revised only in an unimportant manner in 1997; see 62 Fed. Reg. 38456.

But further, the S.S.A. declares in the United States Government Manual that it has at least "1292 field offices." While the A.P.A. requires organizational statements of an agency's field structure to be published in the Federal Register, no description, location or other identification of these field offices has been published therein since the 1995 creation of the S.S.A. as an independent agency.<sup>8</sup>

But how have the Department of the Treasury and IRS complied with the A.P.A.?

### III. A.P.A. Compliance by Treasury and IRS.

The 1946 A.P.A. clearly defined a "rule" subject to publication in the Federal Register as including statements of each agency's organization and procedures. Section 3 of that act further described rules as "descriptions of [each agency's] central and field organization" as well as each agency's "statement[ ] of the general course and method by which its functions are channeled and determined". Via § 1, ¶ b of the 1937 Federal Register regulations, a "document" was defined as including a "rule," and as required by § 2 of those same regulations, all such rules were subject to codification in the C.F.R. Further, § 5 of the 1937 regulations defined a document of "general applicability and legal effect" subject to codification as one "conferring rights, privileges, authority, or immunities, or imposing obligations." Even then, a document "conferring \* \* \* authority" was construed by some agencies as including delegation orders; see Treasury Decision 49818 (4 Fed. Reg. 1251), and Treasury Decision 50192 (5 Fed. Reg. 2573).

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<sup>8</sup> Congress possesses tremendous power over aliens in this country; see *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Harisiades v. Shaughnessy*, 342 U.S. 580, 586-87 (1952); and *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953). "Congress \* \* \* does not lose its hold on [an alien] until the last hour" before naturalization; see *United States v. Kusche*, 56 F.Supp. 200, 222 (E.D.N.Y. 1944). The relevant law regarding the issuance of social security numbers to specifically identified individuals appears to apply chiefly to aliens; see 42 U.S.C. § 405.



After adoption of the A.P.A. in 1946, regulations were promulgated for its implementation. Like the previous 1937 regulations, those 1946 regulations in § 2.1(i) defined a "document" as including a "rule". In § 2.1(j), a "document subject to codification" was defined as "any regulatory document which has general applicability and legal effect and which is in force and effect and relied upon by the issuing agency as authority for, or invoked or used in the discharge of, any of its functions or activities." Section 2.5(a)(2) of these regulations specifically compelled publication in the Federal Register of every "document prescribing a penalty or a course of conduct, conferring a right, privilege, authority or immunity, or imposing an obligation, and relevant or applicable to the general public." It cannot be doubted that via the 1946 Federal Register regulations, rules which were statements of an agency's organization, and rules specifying the "method[s] by which its functions are channeled", were not only subject to publication in the Federal Register, but were also subject to codification in the C.F.R.

Treasury was acutely aware of these publication requirements of the A.P.A. when it became law. On September 7, 1946, the regulations for the A.P.A. were published and became effective. Internal Treasury documents dated September 9, 1946, disclose its knowledge that these matters, and specifically delegation orders were required to be published in the Federal Register. On September 11, 1946, the Treasury Department complied with these new mandates of the A.P.A. by publishing its statements of organization and delegations of authority; see 11 Fed. Reg. 177A.

The above rule published at 11 Fed. Reg. 177A was 96 pages long and it described the organizational structure of the Treasury Department and its several bureaus and agencies. It was later codified in the C.F.R., with those parts relating to the Bureau of Internal Revenue being codified at 26 C.F.R. Part 600, and those relating to the Treasury Department being codified at 31 C.F.R. Part 1; see 1946 C.F.R. Index, 1947 C.F.R. Index for the Bureau, and the 1947 C.F.R. Index for the Treasury.

However, both the BIR and Treasury quickly decided to discontinue codifying their rules of organizational structure and of the "channeling" of their functions (assuming, of course, that the "channeling" of their functions was encompassed within their organizational statements—there were no separate statements of delegations as required by the A.P.A.). In October, 1948, the Bureau published a statement in the Federal Register, 13 Fed. Reg. 7710, which declared that "[c]odification of Part 600, except § 600.1 (b) is discontinued. Future amendments to the statement of organization of the Bureau of Internal Revenue will appear in the Notices section of the FEDERAL REGISTER." By the end of that year, the Treasury did the same. On December 30, 1948, it published in 13 Fed. Reg. 9328, the following:

"1. The statements respecting the organization of the Office of the Secretary, and Bureaus, Divisions, and Offices performing chiefly staff and service functions, appearing under Subpart A of Part 1, with the exception of § 1.26, are hereby withdrawn from the codified portion of the FEDERAL REGISTER. Any amendments to or new material with respect to these statements will appear hereafter in the Notices section of the FEDERAL REGISTER."

Excerpts from the 1949 supplement for 26 C.F.R. demonstrate that the Bureau did in fact eliminate its organizational statement from 26 C.F.R. Part 600. Similar excerpts from the 1949 supplement for 31 C.F.R. show that Treasury also dispensed with its organizational statement. However, Customs did not. The Treasury never again published a full and complete statement of its organization, although it did publish short statements such as this one on January 4, 1950.

The reason for the withdrawal of codification of these very important rules might be based upon a provision in the document published at 13 Fed. Reg. 7710. The BIR prefaced its decision to cease codification of Part 600 by making this editorial comment: "In order to conform Parts 600 and 601 of Title 26 to the scope and style of the Code of Federal Regulations, 1949 Edition, as prescribed by the Regulations of the Administrative Committee of the Federal Register approved by the President effective October 12, 1948 (13 F.R. 5929), the following editorial changes are made \* \*: Codification of Part 600 \* \* \* is discontinued". But nothing in those regulations authorized dispensing with the codification of that agency's statement of organization or the related statement of the "channeling" of the agency's functions.

Section 3(a) of the 1946 A.P.A. identified three (3) separate types of rules, the first two of which were "(1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests", and "(2) statements of the general course and method by which its functions are channeled and determined". Encompassed within class (2) were rules describing agency delegation orders, or the "channeling" of functions. These types of rules were required to be published in the Federal Register and separately codified in the C.F.R.

Section 1.41 of the 1948 Federal Register regulations established 4 different categories of documents which were to be published in the daily edition of the Federal Register: (1) Presidential documents; (2) final rules; (3) proposed rules; and (4) notices. Section 1.45 thereof specified that descriptions of agency organization required via § 3(a)(1) of the A.P.A. were to be published in the notices section of the Federal Register. These rules describing the organization of an agency would then become the basis, via § 3.6 of these 1948 regulations, for that which would be published in the "United States Government Organization Manual." However, nothing in these regulations dispensed with the requirement to codify these types of rules, and further, it certainly could not be contended that rules specified in A.P.A. § 3(a)(2) were the same as those specified in § 3(a)(1), to which § 1.45 solely applied.

Thus the contention of both the Bureau and Treasury that these 1948 regulations mandated discontinuance of codification of these statutorily defined rules was simply a carefully designed ruse. But, it is also possible that the true meaning of the failure to codify these very important rules was that, while in appearance they might be rules, in reality they were not because they were not "documents subject to codification".

Even though the BIR (and later the IRS) ceased codification of its organizational statement, for a number of years thereafter IRS organizational statements were published in the Federal Register. Below are identified each of these subsequent organizational statements:

A. 21 Fed. Reg. 10418: This statement was effective December 1, 1956, and constituted the first I.R.M. 1100. This statement was also published in 1957-1 Cum. Bul. 679, and was a total of 38 pages in length. Two pages are provided here for the purpose of illustration.

B. 26 Fed. Reg. 6372: This I.R.M. 1100 was effective July 10, 1961; it was also published in 1961-2 Cum. Bul. 483, and was a total of 61 pages therein. One page is provided here.

C. 30 Fed. Reg. 9368: This I.R.M. 1100 was dated July 22, 1965; it was also published in 1965-2 Cum. Bul. 863 and was a total of 91 pages therein. One page is provided here.

D. 32 Fed. Reg. 727: This I.R.M. 1100 was published in the Federal Register in January, 1967; it was also published in 1967-1 Cum. Bul. 435 and was a total of 93 pages therein. One page is provided here.

E. 34 Fed. Reg. 1657: This I.R.M. 1100 was dated January 23, 1969; it was also published in 1969-1 Cum. Bul. 403 and was a total 43 pages therein. One page is provided here.

F. 35 Fed. Reg. 2417: This I.R.M. 1100 was dated January 20, 1970; it was also published in 1970-1 Cum. Bul. 442 and was a total of 60 pages therein. One page is provided here.

G. 36 Fed. Reg. 849: This I.R.M. 1100 was dated January 11, 1971; it was also published in 1971-1 Cum. Bul. 698 and was a total of 61 pages therein. Two pages are provided here.

H. 37 Fed. Reg. 20960: This I.R.M. 1100 was dated September 27, 1972; it was also published in 1972-2 Cum. Bul. 836 and was a total of 61 pages therein. One page is provided here.

I. 39 Fed. Reg. 11572: This I.R.M. 1100 was dated March 25, 1974; it was also published in 1974-1 Cum. Bul. 440 and was a total of 61 pages therein. One page is provided here.

The last full and complete organizational statement of the IRS was the one published in March of 1974, and no further such statements were published.

The A.P.A. requires any amendments to these required statements to also be published in the Federal Register. In the November 15, 1978 issue of the Federal Register, 43 Fed. Reg. 53029, amendments were made to the 26 C.F.R. Part 601 procedural rules, and therein it was noted that changes had in fact been made to the organizational structure of the IRS: "This document contains amendments to the statement of procedural rules (26 CFR Part 601). The amendments are necessary to conform the statement of procedural rules to the changes made by the reorganization of the Internal Revenue Service and the Office of Chief Counsel effective on July 2, 1978." Yet while there appears to have been a thorough reorganization of the IRS, which would require some publication thereof in the Federal Register, no amendment to the 1974 organizational statement was published.

While the full organizational structure of the IRS was not published in the Federal Register after 1974, short descriptions thereof later were. After an apparently substantial restructuring of the IRS in 1985, Treasury published T.D.O. 150-01, which set forth the entire organizational structure of the IRS in a mere 3 pages. Even this very brief description was amended again in 1995 by a revised T.D.O. 150-01. Today, however, it clearly appears that T.D.O. 150-01 has been repealed, yet nothing has been published in the Federal Register which describes the current organizational structure of the IRS or its delegations of authority. Consequently, nothing is codified in this respect in the C.F.R.

#### IV. The Authority Delegated to the Commissioner of Internal Revenue.

The office of the Commissioner of Internal Revenue was created by an act of Congress in 1862. This act, 12 Stat. 432, charged the Commissioner with the duty of assessing and collecting internal revenue taxes. See also Act of Dec. 24, 1872, 17 Stat. 401. Subsequently via § 321 of the 1873 Revised Statutes, the Commissioner was again charged with the general superintendence of the internal revenue laws, the assessment of such taxes, and their collection. This pattern of providing the Commissioner with express statutory authority to assess and collect these taxes was continued into § 3901 of the 1939 IRC.

In 1949, Congress enacted a law authorizing the President to reorganize the executive departments; see 63 Stat. 203, ch. 226, codified at 5 U.S.C. § 901, et seq. Pursuant to this authority, the President promulgated Reorganization Plan No. 26 of 1950 (64 Stat. 1280, 15 Fed. Reg. 4935), which restructured the entire Treasury Department in the following manner:

"[T]here are hereby transferred to the Secretary of the Treasury all functions of all other officers of the Department of the Treasury and all functions of all agencies and employees of such Department."

While the 1939 IRC and many prior tax acts had given express statutory authority to administer the federal tax laws to a variety of officials and agents, this Plan divested that statutory authority from all of them and vested it in the hands of the Secretary of the Treasury, including the authority of the Commissioner granted by § 3901 of the 1939 IRC.

In August, 1954, the Internal Revenue Code of 1954 was adopted. In § 7802 of that Code, for the first time in 92 years, the Commissioner was not given any statutory duties regarding the assessment or collection of federal taxes: "The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary."

Is it possible that determining the authority of the Commissioner may likewise indicate precisely how the federal income tax is applied?

The answer to this question is governed by the A.P.A. as discussed above. The A.P.A. requires federal agencies to publish in the Federal Register "(2) statements of the general course and method by which its functions are channeled and determined," which, according to the two Congressional reports mentioned above, include delegation orders. See also this manual published

by the Office of the Federal Register; and *Pinkus v. Reilly*, 157 F.Supp. 548 (D.N.J. 1957). Generally, the organizational structure of an agency as well as its delegations of authority which affect the American public are required to be published in the Federal Register. Both the U.S. Treasury and the IRS recognize that these types of rules must be published in the Federal Register; see 31 C.F.R. § 1.3(a), and 26 C.F.R. § 601.702(a). These types of rules are also subject to codification in the C.F.R. if the same are "documents subject to codification" or are documents of "general applicability and legal effect."

Unlike its parent, the Treasury Department, the Customs Service has since 1949 published its organizational structure and delegation orders in the Federal Register and codified them in Title 19 of the C.F.R. Even today, it frequently updates its statements by means of duly published rules in the Federal Register; see 60 Fed. Reg. 50011, 60 Fed. Reg. 52627, 60 Fed. Reg. 67055, 61 Fed. Reg. 43428, 61 Fed. Reg. 49058, 61 Fed. Reg. 51363, 62 Fed. Reg. 6721, 62 Fed. Reg. 37131, 63 Fed. Reg. 12994, 63 Fed. Reg. 24746, 63 Fed. Reg. 40823, 64 Fed. Reg. 7501, 64 Fed. Reg. 13673, 65 Fed. Reg. 21138, 65 Fed. Reg. 31262, 67 Fed. Reg. 71510, 68 Fed. Reg. 1172, and 68 Fed. Reg. 3381. The Customs Service is now the Bureau of Customs and Border Protection; see 68 Fed. Reg. 42587. The Bureau of Alcohol, Tobacco and Firearms also publishes these rules.

Since the Commissioner has no statutory authority to enforce the federal income tax laws under the 1954 and 1986 Internal Revenue Codes, examination of the various delegation orders which have been published in the Federal Register and issued by the Secretary of the Treasury will reveal the authority which has actually been delegated to the Commissioner. This task of locating these delegation orders was made more difficult by Treasury's unilateral decision in 1948 to cease codification of these important rules as the result of its meritless construction of the 1948 Federal Register regulations.

To locate Treasury Department delegation orders ("T.D.O.s"), the annual indexes of the Federal Register must be utilized and these indexes appear below. The below tabular list contains PDF images of the complete Treasury Department section of each annual Federal Register index. But further and for another purpose, the below tabular list also includes PDF images of other pages from these annual indexes regarding other federal agencies. A simple review of these pages demonstrates that all federal agencies have always been acutely aware of the requirement that delegation orders affecting the public must be published in the Federal Register.

1946 FedReg Index	1947 FedReg Index	1948 FedReg Index
1949 FedReg Index	1950 FedReg Index	1951 FedReg Index
1952 FedReg Index	1953 FedReg Index	1954 FedReg Index
1955 FedReg Index	1956 FedReg Index	1957 FedReg Index
1958 FedReg Index	1959 FedReg Index	1960 FedReg Index
1961 FedReg Index	1962 FedReg Index	1963 FedReg Index
1964 FedReg Index	1965 FedReg Index	1966 FedReg Index
1967 FedReg Index	1968 FedReg Index	1969 FedReg Index
1970 FedReg Index	1971 FedReg Index	1972 FedReg Index
1973 FedReg Index	1974 FedReg Index	1975 FedReg Index
1976 FedReg Index	1977 FedReg Index	1978 FedReg Index

1979 FedReg Index	1980 FedReg Index	1981 FedReg Index
1982 FedReg Index	1983 FedReg Index	1984 FedReg Index
1985 FedReg Index	1986 FedReg Index	1987 FedReg Index
1988 FedReg Index	1989 FedReg Index	1990 FedReg Index
1991 FedReg Index	1992 FedReg Index	1993 FedReg Index
1994 FedReg Index	1995 FedReg Index	1996 FedReg Index
1997 FedReg Index	1998 FedReg Index	1999 FedReg Index
2000 FedReg Index	2001 FedReg Index	2002 FedReg Index

There are many examples of authority granted by the Treasury Secretary to others, which allow them to administer and enforce the federal tax laws. For instance, T.D.O. 221 dated June 6, 1972 (37 Fed. Reg. 11696) created the Bureau of Alcohol, Tobacco and Firearms ("BATF"). Among other administration and enforcement functions transferred to the BATF via this order were the following:

"(a) Chapters 51, 52 and 53 of the Internal Revenue Code of 1954 and sections 7652 and 7653 of such Code insofar as they relate to the commodities subject to tax under such chapters;

"(b) Chapters 61 to 80, inclusive, of the Internal Revenue Code of 1954, insofar as they relate to the activities administered and enforced with respect to chapters 51, 52 and 53."

See also T.D.O. 221-1 (37 Fed. Reg. 13485) and T.D.O. 221-2 (37 Fed. Reg. 20730). About two and a half years later, the Secretary issued T.D.O. 221-3 (40 Fed. Reg. 1084) which delegated to the BATF the authority to administer and enforce "chapter 35 and chapter 40 and 61 through 80, inclusive, of the Internal Revenue Code of 1954 insofar as they relate to activities administered and enforced with respect to chapter 35." Chapter 35 deals with wagering taxes and chapter 40 concerns occupational taxes related to wagering. A year and a half later, T.D.O. 221-3 (Rev. 1) (41 Fed. Reg. 10079) was issued. The only real, detectable distinction between the former and latter orders was the inclusion of the following phrase in the latter:

"The Commissioner may call upon the Director [of the BATF] for assistance when it is necessary to exercise any of the enforcement authority described in section 7608 of the Internal Revenue Code."

But, on January 14, 1977, the Secretary transferred back to the IRS the enforcement duties relating to the wagering tax by T.D.O. 221-3 (Rev. 2) (42 Fed. Reg. 3725).<sup>9</sup>

Other examples of delegations of authority published in the Federal Register are Treasury Directive 15-42 and its various revisions, published in 1991, 1995 and 1999. That which is important

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<sup>9</sup> It is clear via §§ 2197 and 3174 of the 1939 IRC, and § 5065 of the 1954 and 1986 Internal Revenue Codes that the federal alcohol taxes apply within the boundaries of the United States. However, there is no similar provision for the federal income tax. See also R.S. § 3448.

regarding the above identified orders and directives is that they constituted actual delegations of authority and they were also published in the Federal Register. For a number of other similar and relevant items, see this list.

To determine what actual authority has been delegated by the Secretary of the Treasury to the Commissioner of Internal Revenue requires review of all of the published delegation orders. This list identifies each of these T.D.O.s and a copy of each T.D.O. is linked from this list.

Analysis of these T.D.O.s reveals a very interesting fact. It must be remembered that the 1954 IRC was adopted in August, 1954 and § 7802 withheld delegating any statutory authority to the Commissioner. After this date, the first T.D.O. delegating any tax enforcement authority from the Secretary to the Commissioner was T.D.O. 150-42, which authorized the Commissioner to "provide for the administration of the United States internal revenue laws in the Panama Canal Zone, Puerto Rico, and the Virgin Islands."

The next substantive delegation of authority from the Secretary to the Commissioner was issued in 1986 via T.D.O. 150-01. This particular order "collapsed" all of the older T.D.O.s relating to the boundaries of the various internal revenue districts. For example, T.D.O.s 150-6 through 150-22 concerned several internal revenue districts. These and other T.D.O.s were incorporated into this single T.D.O. clearly intended to be the T.D.O. containing that which related to the "field structure" of the IRS. But, this T.D.O. also contained a delegation of authority from the Secretary to the Commissioner: "6. U.S. Territories and Insular Possessions. The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other authorized areas of the world." See also § 3 of T.D.O. 150-01, revised in 1995.

Review of the published authority delegated to the Commissioner regarding administration and enforcement of the federal income tax laws demonstrates that such authority, in a broad sense, encompasses solely the external boundaries of this country. Such being the case, those subject to the requirement to file federal income tax returns are those described in 26 C.F.R. §1.6091-3, which, in reference to citizens, concerns citizens living abroad.

### THE SERVICE CENTERS

Via § 3650 of the 1939 IRC, the President was given statutory authority to create internal revenue districts, an authority he delegated to the Treasury Secretary by Executive Order 10289. There is no authority granted to the Commissioner, either via statute or executive order that authorizes him to create such districts, or even other offices having larger geographical areas. Nonetheless, the Commissioner and his officials were the parties who created the regional service centers. The below are the various documents that created these places where "submittals" are made:

IR Mimeograph #55-116, dated October 4, 1955 Manual Supp. 11G-9, dated March 24,  
1960 Manual Supp. 11G-19, dated December 6, 1961 Manual Supp. 11G-26, dated January 14,

1963Manual Supp. 11G-31, dated January 2, 1964Manual Supp. 11G-32, dated February 20,  
1964Manual Supp. 11G-42, dated June 10, 1965Manual Supp. 11G-66, dated July 23, 1971

Although 5 U.S.C. § 552 (A) requires a federal agency to publish in the Federal Register "descriptions of its central and field organization" as well as the places where the public is required to "make submittals," these service centers and their geographical areas (which are apparently part of the IRS "field structure") have not been published in the Federal Register. From the attached list, it is known that in 1986 a complete reorganization of the IRS was undertaken. Review of T.D.O. 150-01 reveals that it concerned most of the field organization of the IRS, and T.D.O. 150-02 related to the organization of the national office of the IRS. However, neither of these T.D.O.s mentioned anything about the service centers and the geographical areas they covered. It appears, therefore, that these service centers may have been the subject of some other secret T.D.O. which was not published in the Federal Register.

But not only has there been a failure to publish in the Federal Register any T.D.O. regarding that very important part of the IRS field organization, its service centers, there has also been a more recent development similar in nature. In the last several years, the IRS has been undergoing a substantial reorganization of its entire organizational structure. Prior to March, 2001, T.D.O. 150-01 was obviously repealed and T.D.O. 150-02 was amended. The repeal of T.D.O. 150-01 and the amendment of T.D.O. 150-02 is shown by this page obtained from the web site of the Treasury Department, where there are posted the currently valid T.D.O.s. It must be noted that the new T.D.O. 150-02 has not been published in the Federal Register.

### **BUREAU OF INTERNAL REVENUE AND ITS CHANGE TO INTERNAL REVENUE SERVICE**

Before 1953, the agency which apparently collected the federal income tax was the Bureau of Internal Revenue. In June, 1953, Internal Revenue Commissioner T. Coleman Andrews suggested in a memo that the name of the Bureau be changed to the Internal Revenue Service. Surely changing the name of the tax collection agency would have some impact upon the domestic American public, if that agency legally affected the public. However, any T.D.O. which actually changed the name of the BIR to Internal Revenue Service clearly was not published in the Federal Register. Matters which are not published in the Federal Register do not affect the public.

### **ANALYSIS OF IRS COMPLIANCE WITH THE PAPERWORK REDUCTION ACT**

In 1980, Congress adopted the Paperwork Reduction Act ("P.R.A."), which was substantially amended in 1995; see this brief which explains the origins of this act, its meaning and application. In summary, this law mandates that all collections of information by federal agencies (agency forms as well as regulations that require the submission of information to the various agencies) were subject to the P.R.A. clearance and approval process controlled by the Office of Management and Budget ("OMB"). Via this act, an agency cannot collect information unless the various forms and similar agency regulations used to collect information display an OMB control number. Because of the



Public Protection Clause of the P.R.A., agencies have an incentive to make sure that all forms and related regulations bear and display OMB control numbers. (For regulations implementing the P.R.A., see 5 C.F.R. Part 1320).

As noted at the start of this letter, the requirement to file federal tax returns is governed by 26 U.S.C. § 6091. But, that section of the Code completely depends upon regulations for its implementation. Consequently in reference to the federal income tax, that section of the Code is implemented via 26 C.F.R. §§ 1.6091-1, 1.6091-2, 1.6091-3 and 1.6091-4. For the estate tax, § 6091 is implemented by 26 C.F.R. §§ 20.6091-1 and 20.6091-2. For the gift tax, this section is implemented via 26 C.F.R. §§ 25.6091-1 and 25.6091-2. The filing of employment tax returns is governed by 26 C.F.R. § 31.6091-1. See also 26 C.F.R. §§ 40.6091-1, 41.6091-1, 44.6091-1, 53.6091-1, 53.6091-2, 55.6091-1, 55.6091-2, 156.6091-1, 156.6091-2, and 301.6091-1. Obviously, these various regulations which appear to require the filing of tax returns are clearly subject to the P.R.A.

When the P.R.A. went into effect, the IRS did secure OMB control numbers for most if not all of its tax forms. But on March 31, 1983, the OMB issued regulations for the P.R.A. which required federal agencies to also obtain OMB approval for agency regulations that collected information; see 48 Fed. Reg. 13666. By March, 1985, the IRS obtained approval for its regulations that collected information. Via Treasury Decision 8011 (50 Fed. Reg. 10222, 1985-1 C.B. 397), 26 C.F.R. Part 602 was adopted and it presented via a tabular list the various control numbers which had been assigned to the federal income tax regulations that were collections of information.

Review of the assignment of OMB control numbers displayed in this Part 602 is very revealing. For example, 26 C.F.R. § 20.6091-1 (estate tax) was assigned control number "1545-0015," which is the number for estate tax Form 706. Number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2 (gift tax); this is the number for gift tax Form 709. Number 1545-0028 was assigned to 26 C.F.R. §§ 31.6091-1 (employment tax), which is the number for employment tax Form 940, and number 1545-0029 was assigned to 26 C.F.R. §§ 31.6091-1(a), which is the number for employment tax Form 941. Number 1545-0143 was assigned to 26 C.F.R. §§ 41.6091-1, which is the number on Form 2290, and number 1545-0235 was assigned to 26 C.F.R. §§ 44.6091-1, which is the number appearing on wagering tax Form 730

. Clearly, the IRS knows that any regulations implementing § 6091 require the assignment of control numbers.

What about the assignment of control numbers for the income tax regulations which implement § 6091? Again review of Treasury Decision 8011 shows that the IRS is aware that such regulations must have control numbers because at least one of these regulations does have a number. Only 26 C.F.R. § 1.6091-3 ("International") displays a control number, which is 1545-0089; this is the same number for Form 1040 NR. Interestingly, for a number of years 26 C.F.R. § 1.1-1 (relating to the "tax imposed" section of the Code) was assigned control number 1545-0067, which is the number on Form 2555, entitled "Foreign Earned Income."

It cannot be claimed that the assignment of a control number to only § 1.6091-3 was a mistake committed in the early days of compliance with the P.R.A. On March 4, 1991, amended Treasury Decision 8011 was published at 56 Fed. Reg. 8912, 1991-1 C.B. 266, and the same assignments of control numbers as appeared in the 1985 Treasury Decision 8011 were again published here. This Treasury Decision is published in the C.F.R. as 26 C.F.R. Part 602, and it has remained essentially the same since 1985, with minor revisions not important here; see 1987 Part 602, 1988 Part 602, 1989 Part 602, 1990 Part 602, 1991 Part 602, 1992 Part 602, 1993 Part 602, 1994 Part 602, 1995 Part 602, 1996 Part 602, 1997 Part 602, 1998 Part 602, 1999 Part 602, 2000 Part 602, 2001 Part 602, 2002 Part 602, and 2003 Part 602. Please also see this searchable Part 602.

The process for obtaining OMB control numbers by federal agencies is fairly simple. An agency desiring to obtain a control number for a collection of information submits Form 83-1 (also known in the past as Standard Form 83). The instructions for this form require each agency to submit with the form a "supporting statement" which is to "identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information." The supporting statement must also include information regarding the "burden" imposed upon the public as a result of the "collection of information."

The Forms 83-1 submitted to OMB by IRS to obtain a control number for Form 706 and its corresponding regulations provide an excellent example of how control numbers are assigned to both forms and applicable regulations for those forms. On August 9, 1995, IRS employee Lois Holland submitted a Form 83-1 regarding IRS Form 706. In item 12 of the attached Supporting Statement, the continued assignment of OMB control number 1545-0015 to 26 C.F.R. § 20-6091-1 was sought. See also Forms 83-1 for Form 706 submitted in 1998 and 2001. On September 15, 1995, IRS employee Dale Morgan sought an OMB number for Form 709. As a result, number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2. See also similar forms submitted in 1998 and 2001.

On November 26, 1996, IRS employee Martha Brinson submitted a Form 83-1 to the OMB to obtain control number 1545-0235 for wagering tax Form 730. Item 12 of that application concerned the estimated burden of the collection of this information. It stated as follows: "The following regulations impose no additional burden. Please continue to assign OMB No. 1545-0235 to these regulations: \* \* \* 44.6091-1 \* \* \* We have reviewed the above regulations and have determined that the reporting requirements contained in them are entirely reflected on the form. The justification appearing in item 1 of the supporting statement applies both to the regulations and to the form." The similar Forms 83-1 for 1999 and 2002 contained identical language.

On November 21, 1994, IRS employee Lois Holland submitted a Form 83-1 regarding IRS Form 940. In the attached Supporting Statement, item 13 ("Estimated Burden of Information Collection") set forth estimates of the burden resulting from collecting the information required by Form 940. This same part of the Supporting Statement stated: "The following regulations impose no additional burden. Please continue to assign OMB number 1545-0028 to these regulations: \* \* \* 31.6091-1 \* \* \*." Please also see Form 83-1 for Form 940 submitted in 1997 and 2003.

The Forms 83-1 submitted to obtain control numbers for IRS Form 1040 NR also provide excellent examples of the method of assigning control numbers for not only the form itself, but also any applicable and relevant regulations. On September 2, 1994, Ms. Holland submitted to OMB a Form 83-1 for this Form 1040 NR. In the Supporting Statement for this form, the following request to continue to assign the same control number for Form 1040 NR to certain identified tax regulations was made: "Please continue to assign OMB number 1545-0089 to these previously approved regulations. \* \* \* 1.6091-3." See also Forms 83-1 for Form 1040 NR submitted in 1987, 1997, 2000 and 2003.

It is therefore clear that the IRS is obtaining control numbers for most tax regulations simply by asking for that assignment of control numbers via the Supporting Statement attached to Form 83-1. This appears clear from the Federal Register publication of all notices seeking OMB control numbers for the year 2002. Certainly vast numbers of tax regulations are not assigned control numbers by means of the submission of Forms 83-1 to acquire these numbers independently; most numbers for tax regulations are assigned solely because of their association with a specific tax form.

The Forms 83-1 regarding Form 2555 also demonstrate this consistent method of obtaining control numbers for regulations simply via the Supporting Statement. On August 6, 1992, Lois Holland submitted Form 83-1 to obtain a control number for Form 2555. As above, the Supporting Statement in item 13 set forth several specific regulations and requested that OMB "continue to assign OMB number 1545-0067 to these previously approved regulations." See also similar forms submitted in 1993, 1996, and 1999. Please notice that this form is not a mandatory form, and hence it did not seek the assignment of a control number to any regulations under IRC § 6091.

What about the Forms 83-1 for Form 1040? What do these forms reveal? On September 16, 1998, a Form 83-1 seeking OMB control number 1545-0074 for Form 1040 was submitted to OMB. As shown by the applicable pages of the Supporting Statement, a list of relevant tax regulations appeared therein, and item 12 ("Burden Estimation") sought the continued assignment of control number 1545-0074 to these regulations: "We are asking for continued approval of these regulations that are associated with Form 1040. Please continue to assign OMB number 1545-0074 to these regulations:". Thereafter follows a 3 page list of applicable regulations, BUT NONE WAS A REGULATION BASED UPON IRC § 6091. See also July 18, 1985, Form SF 83 seeking OMB control number 1545-0074 for Form 1040; June 23, 1986, Form SF 83 seeking the same number; and September 27, 1996 Form SF 83. IT IS ASTOUNDING THAT NO IRC § 6091 REGULATIONS "ARE ASSOCIATED WITH FORM 1040."

But based upon the statutory and regulatory history of the federal income tax, these otherwise odd features, which manifest themselves in the operation of the P.R.A. are entirely appropriate. While the 1913 income tax act appears to have subjected everyone to withholding, via §§ 1205 and 1208 of the 1917 Act, 40 Stat. at 335, withholding was limited to non-resident aliens and foreign firms. Also, Treasury Decision 2313 announced that Form 1040 was to be filed by non-residents or their agents. Considering these facts (and others), it seems quite logical that Form 1040 NR would be the mandatory return to file.

## CRIMINAL INVESTIGATION RECORDS

The following are links to the published IRS Privacy Act Systems of Records for the years indicated:

1995 PA Systems  
1997 PA Systems  
2001 PA Systems

A curious student may search these official publications for the purpose of locating any system of records concerning the "failure to file required returns". The only such system of records is the following:

"Treasury/IRS 49.007 "System name: Overseas Compliance Projects System—  
Treasury/IRS. "System location: The central files for this system are maintained at the Office of the Assistant Commissioner (International), 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Riyadh, Saudi Arabia; (5) Nassau, Bahamas; (6) London, England; (7) Mexico City, Mexico; (8) Ottawa, Canada; (9) Paris, France; (10) Rome, Italy; (11) Sao Paulo, Brazil; (12) Singapore and (13) Tokyo, Japan.

"Inquiries concerning this system of records maintained by the foreign posts should be addressed to the Assistant Commissioner (International).

"Categories of individuals covered by the system: United States Citizens, Resident Aliens, Nonresident Aliens.

"Categories of records in the system: Documents and factual data relating to: (1) Personal expenditures or investments not commensurate with known income and assets; (2) receipt of significant unreported income; (3) improper deduction of significant capital or personal living expenses; (4) failure to file required returns or pay tax due; (5) omission of assets or improper deduction or exclusion of items from state and gift tax returns.

"Authority for maintenance of the system: 5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802."

It appears, based upon the above information, that the only IRS office which can lawfully maintain records regarding a federal income tax criminal investigation is the office of the "Assistant Commissioner (International)", whose investigative jurisdiction extends only to "non-residents, whether citizens or aliens."

## SUMMARY

The Federal Income Tax Act of 1913 contained a sweeping, all-inclusive definition of "income" (footnote the definition), it being the clear intention of Congress at the time to apply the "income tax" to all American citizens living at home or abroad. However, the Supreme Court's decision in *Brushaber* substantially affected the government's interpretation of the definition of "income" within the meaning of the fundamental law, and "to whom" and "where" the income tax could apply. The *Brushaber* Court specifically concluded that the 16th Amendment gave Congress no new powers of taxation. The *Brushaber* decision prompted Congress to revise the 1913 Act, and via Section 25 of the Federal Income Tax Act of 1916, Amended 1917, declared that the "income" subject to the 1913 Act was not the same "income" to be taxed under the 1916 Act. But, what was the purpose of this change in the language, and by extension, the legal effect of the 1916 Act? UNFORTUNATELY, CONGRESS DID NOT EXPLAIN WHAT WAS MEANT BY SECTION 25.

One theory of the meaning of § 25 of the 1916 Act is based on location, that Section 25 removed the application of the un-apportioned direct "income" tax on salaries, wages and compensation of ordinary Americans living and working at home, leaving the application of the un-apportioned direct "income" tax on salaries, wages and compensation of non-resident aliens and American citizens living and working abroad.<sup>10</sup> This, it is argued is the reason that not a single federal income tax act since 1916 has ever mentioned the imposition of an un-apportioned direct "income" tax on the salaries, wages and compensation of citizens "at home," although the same acts repeatedly mention citizens abroad and particularly those in the insular possessions.

Evidence of this solely external, "locational" application of the un-apportioned direct "income tax" on salaries, wages and compensation is demonstrated in several ways. First, the IRS Commissioner has been delegated via T.D.O.s published in the Federal Register authority to administer an un-apportioned direct tax on salaries, wages and compensation only in the area external to the boundaries of the 50 states of the Union. If the Commissioner has been delegated authority to administer an un-apportioned direct tax on salaries, wages and compensation in the area internal to the boundaries of the 50 states of the Union, that authority has not been published in the Federal Register and is a secret, so it could not concern American citizens "at home," without violating their due process Rights.

Further, federal income tax returns are allegedly required to be filed at IRS service centers. But the Administrative Procedures Act demands that any part of an agency's field structure which affects the domestic American public must be published in the Federal Register.

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<sup>10</sup> Section 4 of the 1939 Internal Revenue Code was not incorporated within the 1954 Internal Revenue Code.

The absence of publication in the Federal Register of these extremely important parts of the IRS field structure further indicates that the service centers do not legally affect the domestic American public and can, therefore, be ignored by the ordinary American wage earner living and working at home.

But perhaps the most compelling proof of the "locational" application of the federal income tax in the manner noted above is derived from analysis of the IRS' compliance with the Paperwork Reduction Act. The federal income tax is imposed via § 1 of the IRC. But the "information collection request" applicable to this section is Form 2555, entitled "Foreign Earned Income." Further as shown by the OMB control number assigned to 26 C.F.R. § 1.6091-3, the specific tax return required to be filed at service centers is Form 1040NR. And a "TIN" can only be obtained by a non-resident alien; see Form W-7.

Another theory of the meaning of Section 25 of the 1916 Act is that it is based on classifications of people, distinguishing between aliens and citizens, imposing no un-apportioned direct tax on the salaries, wages and compensation of American citizens, no matter where they live and work, but authorizing an un-apportioned direct tax on the salaries, wages and compensation on resident aliens working here and on employees of the federal government who voluntarily agreed to labor for the government.

Countering the "location" theory and in support of the "classification" theory is the argument that the fundamental law prohibits the imposition of an un-apportioned tax directly on the salaries, wages and compensation of American citizens, no matter where they may be living and working, and there is no Supreme Court ruling that an un-apportioned tax can be imposed directly on the salaries, wages and compensation of American citizens living and working abroad.

Most Americans believe that today, the tax scheme of the 1913 act is still in effect, but the truth of the matter is that it is not. In fact, the present tax scheme is the exact opposite of the 1913 tax scheme, created by the 1916 act amended by the Act of 1917.

## QUESTIONS

1. Admit or deny that the government is violating the Supreme Court's clear, unambiguous mandate to not impose the income tax on the salaries, wages and compensation of working Americans.

2. Admit or deny the government is violating the law (APA and PRA) by not using the required information collections with lawfully assigned OMB control numbers, and by not publishing the legally required TDOs, organization structure, and other IRS operating procedures that directly effect the public.

3. Admit or deny that no delegation order has been published in the Federal Register that authorizes the Commissioner of Internal Revenue to administer and enforce an un-apportioned direct tax on the salaries, wages and compensation of ordinary Americans living and working at home in the United States of America (defined so as to include all of the 50 States in this American Union).

4. Admit or deny that the current organizational structure of the Internal Revenue Service has not been published in the Federal Register.

5. Admit or deny that the Right of due process protects from prosecution, under Subtitle A and C of the Internal Revenue Code, all ordinary Americans earning salaries, wages and compensation at home or abroad who do not file a Form 1040 tax return, and employers who do not withhold and turnover to the IRS a percentage of their earnings – that is, in every case of doubt, statutes are to be construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import.

**This cover letter submitted by Drew R. Steele, Individual, March 2, 2005**

**page 1 of 4.**

This cover letter is being filed on behalf of WeThePeople as per the guidelines published at [www.taxreformpanel.gov](http://www.taxreformpanel.gov) for submission to the panel by March 18<sup>th</sup>, 2005, 5:00 P.M.

A handwritten signature in black ink that reads "Drew R. Steele". The signature is written in a cursive style with a large initial 'D' and 'S'.

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

Please consider reforming the system to use common and clear English words and terminology so that at a minimum, the lay person can without dispute easily understand what the relevant laws are, what their corresponding codes mean, and to whom any of the laws and or codes apply and do not apply. For example, the system of specific laws and codes that clearly identify who is required to have taxes withheld, as well as who is required to file for taxes withheld can and should be easily accomplished with a relative few paragraphs instead of the ever-increasing volumes of complex and often vague lingo comprising the current system.

**2. Aspects of the tax system that are unfair:**

These aspects are difficult to sufficiently summarize quickly, but a few examples: the unfair nature in which the current tax system first began as a result of questionable legislative activity – to include but not limited to the 14<sup>th</sup> and 16<sup>th</sup> amendments to the Constitution; the unfair nature in which the system has evolved to present-day form via additional deceptive legislative, executive and judicial activity; the unfair nature by which the system has been enforced during the intervening years through the collective force of the the Federal U.S. Government;

Please consider reforming the system to be in compliance with the taxing authority and limitations clearly established by the original Constitution of the united States, 1789; doing so will eliminate most if not all of the unfair aspects of the current system.

**3. Specific examples of how the tax code distorts important business or personal decisions.**

My personal decisions largely revolve around my daily need to support myself as well collateral efforts to help support family, friends and community. A significant component enabling my success in this endeavor is the property I receive as compensation for my labor- also commonly and interchangeably referred to as pay, money and income. My efforts in this endeavor are significantly distorted by the current system since it effectively sanctions the systematic theft of upwards to 40% of my pay, per year; this system in turn has at it's disposal full aid and force of the Federal U.S. Government – funded by myself and other people similarly taxed, for penalizing and prosecuting me in the event I do not adhere to what this system defines as ***required voluntary compliance***. As a **specific example** of how this system distorts my personal decisions, any variant of the 1040 Tax Form I may file requires me to forfeit my 5<sup>th</sup> Amendment right, yearly, by requiring a signature – under penalty of law for perjury, to attest to a condition which I honestly cannot easily nor adequately confirm or deny.

**4. Goals that the Panel should try to achieve as it evaluates the existing tax system and recommends options for reform:**

A goal the panel should try to achieve is genuine consideration of and answer to the question – ***why do we have the present income tax system given that it is separate from the tax system established by the constitution to the united States, 1789?***

If it turns out that the panel's consensus in genuinely considering answer to this question relates to the notion that the present system exists to legitimately fund government activity, then the panel should consider achieving the goal of reforming of the existing system as suggested in # 2 above – ***aspects of the system that are unfair,***