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The Federal Income Tax of 1913 is an *Indirect* Tax

In response to the *Pollock* ruling, politically *progressive* elements within the federal government at the time (1896) sought for almost twenty years (until 1913) an amendment to the Constitution in order to attempt to overcome or overrule the *Pollock* decision reasoning. Ultimately, in 1913, as a result of those efforts, the Sixteenth Amendment to the Constitution was certified ratified as adopted. It read:

> "The Congress shall have 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."

When reading this Amendment for the purpose of discerning its true legal effects, it is very important to note two things:

first: the Amendment does not actually contain the word "direct" in describing the tax authorized thereunder, as is plainly done in Article I, Section 2, clause 3, and Article I, Section 9, clause 4, where the power to tax *directly* is both authorized and *limited* in constitutional operation; and

second: this Amendment does not contain any *enabling enforcement clause* authorizing the U.S. Congress to write any new tax law (or any law at all, for that matter) under authority of the Amendment alone, rather than under authority of Article I, Section 8, clause 1, where all of the federal taxing powers granted are both specifically granted in limited form (through either the *uniformity* required of all *indirect* taxation, or the *apportionment* of the tax to the several states required of all *direct* taxation), and made enforceable with law from an authorized Congress that is plainly authorized by the Constitution to write enforcement provisions into law under the *Necessary and Proper* enforcement powers granted with respect to the enforcement of the federal powers granted by the original Articles of the Constitution. (But **NOT** any future Amendments to the Constitution, where each new Amendment must have its own enabling enforcement clause (enacted as

a part of the Amendment) to allow the U.S. Congress to legislate new law with respect to the enforcement of the new power granted by the Amendment.

All the other Amendments to the U.S. Constitution, where new enforceable powers are intended to be created for Congress to exercise and enforce, contain a separate *enabling enforcement clause* as part of the specific language of the adopted Amendment. This is of course done to provide the required specific constitutional authority for the U.S. Congress to write law with respect and applicability to the administration and enforcement of the newly granted power(s) under the Amendment. The 16th Amendment has no enforcement clause, therefore it cannot be the legal basis or foundation to any claim of any additional taxing powers under properly authorized law, that can be legislatively enacted or enforced into existence under the 16th Amendment and outside of, or beyond the scope of the taxing powers granted under Article I, Section 8.

Soon after the ratification of the 16th Amendment, Congress passed the *Underwood-Simmons Tariff Act of Oct. 3, 1913*, laying the current federal personal income tax, imposing a tax on net *taxable* income, "*from whatever source derived*", but also very carefully crafting NO direct *liability* for the payment of the tax, but rather, relying on a scheme of ***indirect*** "*collection at the source*", by third party tax collectors who ***shift*** **the burden of the tax** by acting under an authorized legal capacity to collect federal tax from subject transactions involving certain, clearly identified *persons,* in much the same way that the stores are bound by state law to collect and pay a sales tax to the State Treasuries (state government) on their retail sales in the stores**.**

The income tax law enacted under the Tariff Act was challenged almost right away, in the *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1, 36 S.Ct. 236 (1916) and *Stanton v. Baltic Mining Co,* 240 US 103 (1916) cases, requiring the Court to newly determine the impact of the Sixteenth Amendment on the constitutional federal taxing authority and powers.

The United States, as a plaintiff in today's courts *erroneously* argues this *Brushaber* decision in support of its erroneous contention that the federal personal income tax is an *unapportioned direct* tax under the 16th Amendment (rather than a *uniform indirect* tax under Article I, Section

Exhibit K

Underwood-Simmons Tariff Act of Oct. 3, 1913

{Please note that within this legislation, at Subsection H, it is stated that the United States is defined within this Section (II), as being the **territorial** United States, and **not** the fifty states. BECAUSE THE INCOME TAX IS A **TARIFF** THAT IS LAID **ONLY** IN THE **FOREIGN** JURISDICITON, which includes the territories, but not the fifty states}

SECTION II.

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, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000.

...

neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the

8), it is now absolutely necessary, for legal *due* process to be provided in the court, and in the interest of real justice, for the courts to take judicial notice of the true nature of the federal personal income tax as decided by the Supreme Court in its controlling decisions in 1916.

In considering in 1916, the government's argument that the income tax legislation being tested by the Court in the *Brushaber v. Union Pacific R.R. Co* case enacted a *direct* unapportioned tax on income derived from all earnings in America, rather than from just those earnings derived from activities that are lawfully made subject to the payment of some *impost, duty or excise* tax, - where "*income*" was used as the ***measure*** of the tax and **was not the alleged basis** for the tax itself as a new *subject-matter jurisdiction* of the court to take, beyond the granted and enforceable *impost, duty or excise* taxation *subject-matter jurisdictions* that already existed, pre-date the existence of the 16th Amendment, - the U.S. Supreme Court plainly held:

> "…it clearly results that the proposition and the contentions under it, **if acceded to, would cause one provision of the Constitution to destroy another**; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment **into irreconcilable conflict** with the general requirement that all direct taxes be apportioned. ... This result … **would create radical and destructive changes in our constitutional system** and **multiply confusion**." *Brushaber v. Union Pac. R.R*., 240 U.S. 1, 12

Clearly, the High Court rejected the argued contention that the (then) new income tax is a direct tax without apportionment, pointing out, that interpretation and application of the Amendment would have the effect of using one provision of the Constitution to destroy another, which "*would create radical and destructive changes in our constitutional system*". This of course, was unacceptable to the Court, both then and now, as it clearly does not constitute a proper application and use of the law. The clear and unequivocal ruling of the Court in the *Brushaber* holding is that the Sixteenth Amendment granted no new powers of taxation to Congress to exercise:

> "It is clear on the face of this text that **it does not purport to confer power to levy income taxes in a generic sense — an authority already possessed** and never questioned — or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived." *Brushaber*, supra, at 17-8

Exhibit A

U.S. Supreme Court

BRUSHABER v. UNION PACIFIC R. CO., 240 U.S. 1 (1916)

240 U.S. 1
FRANK R. BRUSHABER, Appt.,
v.
UNION PACIFIC RAILROAD COMPANY.
No. 140.

Argued October 14 and 15, 1915.
Decided January 24, 1916.

[240 U.S. 1, 2] Messrs. Julien T. Davies, Brainard Tolles, Garrard Glenn, and Martin A. Schenck for appellant.

Mr. Henry W. Clark for appellee.

[240 U.S. 1, 5] Solicitor General Davis, Assistant Attorney General Wallace, and Attorney General Gregory for the United States.

[240 U.S. 1, 9]

Mr. Chief Justic e White delivered the opinion of the court:

As a stockholder of the Union Pacific Railroad Company, the appellant filed his bill to enjoin the corporation from complying with the **income tax provisions of the TARIFF act of October 3, 1913** (II., chap. 16, 38 Stat. at L. 166). Because of constitutional questions duly arising the case is here on direct appeal from a decree sustaining a motion to dismiss because no ground for relief was stated. **(emphasis added)**

The right to prevent the corporation from returning and paying the tax was based upon many averments as to the repugnancy of the statute to the Constitution of the United States, of the peculiar relation of the corporation to the stockholders, ...

[240 U.S. 1, 21]
....

2. The act provides for collecting the tax at the source; that is, makes it the duty of corporations, etc., to retain and pay the sum of the tax on interest due on bonds and mortgages, unless the owner to whom the interest is payable gives a notice that he claims an exemption. This duty cast upon corporations, because of the cost to which they are subjected, is asserted to be repugnant to due process of law as a taking of their property without compensation, and we recapitulate various contentions as to discrimination against corporations and against individuals, [240 U.S. 1, 22] predicated on provisions of the act dealing with the subject.**(emphasis added)**

(a) Corporations indebted upon coupon and registered bonds are discriminated against, since corporations not so indebted are relieved of any labor or expense involved in deducting and paying the taxes of individuals on the income derived from bonds.

Nor did the Court recognize a third and new class of taxes, a direct tax not requiring apportionment:

> "The various propositions are so intermingled as to cause it to be difficult to classify them. We are of 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. **And the far-reaching effect of this erroneous assumption will be made clear** by generalizing the many contentions advanced in argument to support it, . . ." *Brushaber*, supra, at 10-11

The effect of the Sixteenth Amendment was **not** to permit a direct income tax, **nor** to grant Congress any additional or new powers of taxation through the adoption of the Amendment. If that conclusion can be in any doubt from the difficulties experienced by some in understanding these early opinions, the point is reiterated in the next case the Court decided in 1916, *Stanton v. Baltic Mining Co*., 240 U.S. 103 (1916), where the Supreme Court held:

> ". . . The provisions of the Sixteenth Amendment **conferred no new power of taxation** but simply **prohibited** the previous complete and plenary power of income taxation possessed by Congress from the beginning **from being taken out of the category of indirect taxation to which it inherently belonged** . . ." *Stanton v. Baltic Mining Co*., 240 U.S. 103, pg. 112."

The basis for the ruling of course is the understanding that it is not legitimate to use one provision of the Constitution, the newly adopted 16th Amendment, to destroy two, pre-existing un-repealed and unamended Article 1 provisions prohibiting direct federal taxation of the people (unless laid in proportion to the census and apportioned to the States for collection) in order to effect a direct non-apportioned income tax under the 16th Amendment. It is supported by later decisions.

> "The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..." *Peck v. Lowe*, 247 U.S. 165 (1918);

> "[T]he settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income." *Taft v. Bowers*, 278 US 470, 481 (1929).

> "...the proposition and the contentions under [the 16th Amendment]...would cause one provision of the Constitution to destroy another; That is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned; This result, **instead of simplifying the situation and making clear the limitations of the taxing power, which obviously the Amendment must have intended to accomplish**, would create radical and destructive changes in our constitutional system and multiply confusion.
> ...
> Moreover in addition the Conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but **on the contrary** recognized the fact that **taxation on income** was in its nature an [Article I] **excise** entitled to be enforced as such unless and until it was concluded that to enforce it would **amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent**, in which case the **duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise** would not apply to it.
> ....
> the Amendment demonstrates **that no such purpose was intended** and **on the contrary** shows that it was drawn with **the object of maintaining the limitations of the Constitution and harmonizing their operation**.
> ....
> the [16th] Amendment contains nothing repudiating or challenging the ruling in the Pollock Case that the word *direct* had a broader significance since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution -- a condition **which clearly demonstrates that the purpose was not to change the existing interpretation** except to the extent necessary to accomplish the result intended, that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and **thereby to take an income tax out of the class of excises, duties and imposts** and place it [erroneously] in the class of direct taxes." *Brushaber vs. Union Pacific R.R. Co.,* 240 US 1 (1916)

Additionally, the Court was clearly able to identify that the legislation being tested in the *Brushaber* case provided for the indirect collection of the tax by third parties, "*at the source*",

through a legislatively created, and statutorily defined duty, laid on a federal tax collector who is defined in the law, with the duty to "*retain and pay the sum*" of the tax:

> **"*2.*** The act provides for **collecting the tax at the source;** that is, makes it the **duty of corporations,** etc., **to retain and pay the sum of the tax ...** unless the owner to whom the interest is payable gives a notice that he claims an exemption. This duty cast upon corporations, because of the cost to which they are subjected, is asserted to be repugnant to due process of law as a taking of their property without compensation…**"** *Brushaber v. Union Pacific R.R. Co*., 240 U.S. 1, 21

The tested legislation (the provisions of the Underwood Simmons Tariff Act legislation) in this case, **as we will plainly see**, did not tax the American People, or their *income*, in a direct manor. But rather thelegislation compelled certain parties participating in certain *subject* transactions, to perform as federal tax collectors in the transaction, and withhold money as tax from the payments made to statutorily defined *subject* "*persons*", who are made subject to the withholding of money as tax from their payments by the very clear and specific provisions of the controlling statutes. Then, those federal tax collectors are required by law to pay over to the U.S. Treasury those collected "*income*" tax funds, because as federal tax collectors, they are **made liable in the statutes** under Title 26 (U.S.C.) IRC Section 1461, for the payment to the Treasury of the collected tax[1]. In just the same way that a store is made liable as the *tax collector* for the payment of the sales tax that it has collected from its customers (at the store(s)). The tax collectors cannot themselves keep the money that they have collected at the store from other *persons* as tax, so there is always a statute in the law that makes the *tax-collector* the responsible *person* in the law for the payment of the tax, -as the party made ***liable* by statute** for the payment of the imposed (and now collected) tax.

[1] *See* Title 26 U.S.C. Section 1461 Liability for Withheld Tax

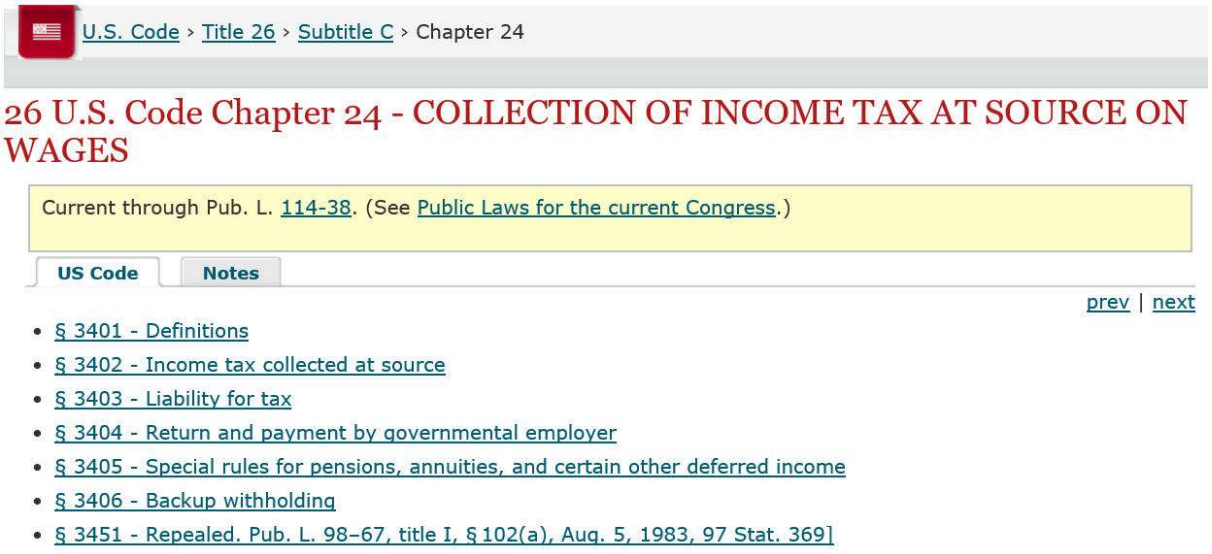
collection of the tax at the source

So, does the liability for the payment of a state's sales tax ever reach the general population by statute, or does the statutory obligation to pay tax to the state treasury end with the store – as the *tax-collector* ? Suppose I told you I can prove that the federal personal income tax is legislated and enacted under exactly the same limited scheme of *indirect* taxation by *collection of the tax at the source*. Would you believe your own eyes?

Again then, from the controlling *Brushaber* decision in 1916:

> **"*2.*** The act provides for **collecting the tax at the source;** that is, makes it the **duty of corporations,** etc., **to retain and pay the sum of the tax ...** unless the owner to whom the interest is payable gives a notice that he claims an exemption ..." *Brushaber v. Union Pacific R.R. Co*., 240 U.S. 1, 21

And, believe it or not, the scheme of "*collection of the tax at the source*" also appears 31 years later in the Subtitle C code of Title 26, implementing in Chapter 24 the withholding of income tax as part of the 1945 *employment* tax laws.



§ 3402. Income tax collected at source

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax

…

(n) Employees incurring no income tax liability

Notwithstanding any other provision of this section, **an employer shall NOT be required to deduct and withhold ANY tax under this chapter upon a payment of wages to an employee** if there is in effect with respect to such payment a withholding exemption certificate (in such form and containing such other information as the Secretary may prescribe) furnished to the employer by the employee **certifying that the employee** -

(1) incurred no liability for income tax imposed under subtitle A for his preceding taxable year, and

(2) anticipates that **he will incur no liability for income tax imposed under subtitle A** for his current taxable year.

The Secretary shall by regulations provide for the coordination of the provisions of this subsection with the provisions of **subsection (f)**. ...

And the very next code section, Title 26 U.S.C. Section 3403 plainly and clearly states:

26 U.S.C. § 3403. Liability for tax

The **employer shall be liable for the payment of the tax** required to be deducted and withheld under this chapter ["Subtitle C – Employment Taxes; Chapter 24 – Collection of Income Tax at Source on Wages"], and shall not be liable to any person for the amount of any such payment.

(emphasis and [bracketed material] added)

As you can see for yourself, even under the *Employment Tax* law statutes of Subtitle C, enacted 31 years later in 1945 at the end of WWII, that the statutory *liability* for the payment of the tax it is all still created under the same *scheme of* ***indirect*** *taxation* that utilizes an *indirect* scheme of ***collection of the tax at the source*** by a ***tax-collector*** (an employer) who is the party (*person*) who is made ***liable*** by the statutes for the payment of the federal *income* tax (that he has collected), and, as we will see in the Subtitle A tax laws of 1913 when we examine them, it has been this way from the beginning. There is no other specification of a *statutory* liability for the payment of

the *income* tax that exists, or that is made, in the statutes of the United States Code of Title 26 (I.R.C.). Just like a sales tax which also doesn't reach the general population with any specification of any statutory liability for the payment of the tax, (only the stores as the tax-collectors of the sales tax are made liable by law - just like the federal *Withholding* Agents, who we will see, are the statutory *tax-collectors* of the Subtitle A income tax, and are the only party made liable for the payment of the tax under I.R.C. § 1461).

Of course, the tax-collectors (the *Withholding Agents*) must pay over to the Treasury all of the funds they have collected from other persons as tax, - but the tax is not paid by the tax-collectors from their own pocket, wallet, or funds, it is collected from **other** *persons*. Through this *shifting of the burden* of the requirement to pay the tax, from the general population to the "tax-collector" as the actual "*taxpayer*", who has the duty to pay-over the tax collected from other persons, - but not any duty to pay tax out of his own pocket or from his own funds (or even on his own *income*), and who only pays what he has collected (by withholding) from other foreign *persons*, whose pockets the tax is ultimately collected from (by the withholding of tax by the tax-collector when a taxable payment is made). In this way, through this shifting of the burden, the income tax, and the *income tax* taxing *scheme*, are both kept *indirect* in nature, are completely constitutional and legitimate, and are relieved of the requirement to apportion the *uniform* tax on *income*. However, any application of the *income* tax directly to *We the People* as taxpayers alleged to be made subject to a *direct tax* on *income* would require apportionment in order to be constitutional, as was held in *Pollock v. Farmers Loan & Trust Co*., *supra*.

This scheme of implementation for the *collection of the tax at the source*, of course, has the effect of making the tax collector the true "*taxpayer*" in the taxing scheme, and not any other person. The only real question left, is: are you, as an American citizen, subject to the withholding of any tax by *Withholding Agents* under IRC §§ 7701(a)(16), 1441(a) and (b), 1442, 1443, or 1461. If not, well ...

Direct v. *Indirect* Taxation

This position, that the federal income tax is an *indirect* tax, that is "*collected at the source*" has been repeatedly upheld by the Supreme Court when tested, who again, in *Peck & Co. v. Lowe*, 247 U.S. 165 (1918), stated at page 172-173 of the decision:

> "**The Sixteenth Amendment**, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it **does not extend the taxing power to new or excepted subjects, but merely removes all occasion, which otherwise might exist, for an apportionment among the States of taxes laid on income, whether it be derived from one source or another**. *Brushaber v. Union Pacific R.R. Co*., 240 U.S. 1, 17-19; *Stanton v. Baltic Mining Co*., 240 U.S. 103, 112-113."

The Supreme Court, again advances the true understanding, holding, in *Eisner v. Macomber*, 252 U.S. 189 (1920), at p. 206:

> "As repeatedly held, this [the 16th Amendment] **did not extend the taxing power to new subjects**, but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income. *Brushaber v. Union Pacific R.R. Co*., 240 U.S. 1, 17-19; *Stanton v. Baltic Mining Co*., 240 U.S. 103, 112 et seq.; *Peck & Co. v. Lowe,* 247 U.S. 165, 172-173.
>
> Thus, from every point of view we are brought irresistibly to the conclusion that **neither under the Sixteenth Amendment nor otherwise has Congress power to tax without apportionment** a true stock dividend made lawfully and in good faith, **or the accumulated profits** behind it**, as income** of the stockholder." *Eisner v. Macomber,* supra, at 219-220
>
> (emphasis and [bracketed material] added)

While this last *Eisner* decision is a unique case, not generally applicable because of the special circumstances present within it, primarily addressing the technical definition of the term "*income*" to be relied upon by the government, requiring a "gain" that must actually be realized by the shareholder before it can become identifiable as federally *taxable income* to that shareholder, please note that the Court did not simply say that. They took the time to address the 16th

Amendment, and the alleged federal power to tax under it, and, rejecting those arguments, clearly stating: "…*that neither under the Sixteenth Amendment nor otherwise has Congress power to tax* [directly] *without apportionment…*". They further held:

> "The Revenue Act of 1916, **in so far as it imposes a tax upon the stockholder because of such dividend, contravenes the provisions of article 1, (§) 2, cl. 3, and article 1, (§) 9, cl. 4, of the Constitution**, and to this extent **is invalid, notwithstanding the Sixteenth Amendment.**" *Eisner v. Macomber,* supra, at 219-220
>
> (emphasis and (§) added)

Of course, "*notwithstanding*", means: "***irregardless of*** "! Seven years after the adoption of the 16th Amendment, the Supreme Court here says that it is still *unconstitutional* to tax *income* (a dividend) ***directly*** and without the required *apportionment* because Article I, § 2 cl. 3 and Article I, § 9 cl. 4, still prohibit that, despite and not withstanding the ratification of the 16th Amendment.

This *Eisner* decision was handed down in 1920, 4 years after the *Brushaber* decision in 1916 upholding the constitutionality of the income tax. While many people do not properly understand this ruling because it seems to directly contradict the multiple previous Supreme Court rulings, specifically *Brushaber* & *Stanton*, both upholding the federal income tax, - it is **not** really confusing. Additionally, many attorneys believe that those two decisions, together with the passage of the 16th Amendment, overturned the *Pollock v Farmer's Loan & Trust Co.*, 157 U.S. 429, decision of the Supreme Court, handed down in 1895, where the court declared the direct taxation of income attempted by the tested legislation in that case, was unconstitutional for want of apportionment.

However, upon closer examination we find that the 4 rulings are not contradictory at all, and that the two 1916 decisions (*Brushaber & Stanton*), properly applied as held by the Court, do not actually overturn the *Pollock* holding, but are all completely harmonious and consistent with it, and one another, in upholding the different provisions of the Constitution involved and tested in each of the different cases. Each ruling capably differentiating in the various pieces of legislation being tested in the different cases, the difference between the legitimate and constitutional

indirect taxation tested and upheld in both *Brushaber* and *Stanton,* where the tax is held to be *indirect* both as an excise on corporations (*Stanton*) and as a tax indirectly "*collected at the source*" from individuals (*Brushaber*), and the **un**constitutionally *direct* taxation rejected in both *Pollock* and *Eisner,* that would result from the improperly *direct* taxation of a citizen's earnings or "income" that were not derived from an *indirectly* taxable activity or event, as provided under Article I, § 8, Clause 1 of the U.S. Constitution; *i.e.*: the taxation of *income* derived from **only** an *impost, duty or excise*, and therefore federally ***taxable*** activity or event.

Eisner, quite simply, marks the Court's ability to distinguish between the holdings in the previous cases of 1916 (*Brushaber* & *Stanton*), where the income tax legislation of the taxing act that was being tested in those cases was found to be constitutional as an indirect tax (in the form of a corporate excise and a personal tax that is collected indirectly "*at the source*"), and the *Eisner* and *Pollock* decisions which declared the direct taxation of income without apportionment, attempted by the legislation tested in those cases, to be unconstitutional for want of apportionment, and therefore unsustainable.

In the first set of cases the Court upholds the granted Constitutional federal power to tax indirectly under Article 1 § 8, Clause 1. In the second set of cases the Court upholds the Constitutional prohibition on direct taxation without apportionment to the States (Article 1, § 9, Clause 4) or being laid in proportion to the census (Article 1, § 2, Clause 3). These cases involve entirely different provisions of the Constitution addressing entirely different powers. How is there any conflict between the rulings, when the 16th Amendment "*conferred no new power of taxation*" ?

> "Moreover in addition the conclusion reached in the *Pollock* case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that **taxation on income was in its nature an excise** entitled to be enforced as such **unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it**." *Brushaber*, supra, at 16-17.

The federal courts, through their error in accepting the Internal Revenue Service's erroneous argument that the federal personal income tax is a *direc*t tax without apportionment, has invoked the court's duty to uphold the Constitution of the United States of America as the Supreme Law of the land, "*and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it*", and prohibit such alleged *direct* application and assessment, and enforcement, of the federal *income* tax by the Internal Revenue Service in *operational practice,* and the United States in *pleading* argument.

Clearly, there is no true conflict between the controlling decisions, and *Pollock* still stands undisturbed as controlling law as regards the prohibited *direct* imposition of a federal income tax on American citizens, *We the People.*

In a memorandum from the Congressional Research Service, Library of Congress, it was stated, citing both *Brushaber* and *Stanton*, supra, "*Therefore, it is clear that the income tax is an 'indirect' tax*."[2]

There can be no doubt from these controlling cases, that the federal income tax, IN ALL ITS FORMS, is an indirect tax. It is not a property tax. It is not a labor tax. It is also, not any other type of *direct* tax on *income* or even *gross income* that is immune from the apportionment still required by the Constitution of ALL direct taxes. And, there can also be no doubt that the Sixteenth Amendment did not in any way, shape or form enlarge or enhance the taxation powers of Congress. *Brushaber, Stanton, Peck* and *Eisner*, supra.

It is therefore, subject to the same limitations on the federal taxing authority within the United States that are well established, and that is: that it cannot directly tax person or property without apportionment (Article I, § 9, cl. 4), nor any activity that is without either the scope of federal

[2] See "Some Constitutional Questions Regarding the Federal Income Tax Laws", by Howard Zaritsky, Congressional Research Service, Library of Congress, May 25, 1979, p. 3. APPENDIX I.

Exhibit F

Report No. 79-131 A 714/275

SOME CONSTITUTIONAL QUESTIONS REGARDING THE FEDERAL INCOME TAX LAWS

by

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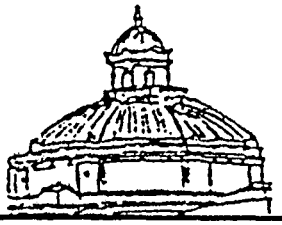

May 25, 1979

CONGRESSIONAL RESEARCH SERVICE

HJ 4625 U.S.A

Exhibit F

decision and the new constitutional provision.

The Sixteenth Amendment provides that:

> The Congress shall have 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.

In Brushaber v. Union Pacific R. R. Co., 240 U.S. 1 (1916), the Supreme Court held that the income tax, including a tax on dealings in property, was an indirect tax, rather than a direct tax, and that the

> command of the amendment that all income taxes shall not be subject to the rule of apportionment by a consideration of the source from which the taxed income may be derived forbids the application to such taxes of the rule applied in the Pollock case by which alone such taxes were removed from the great class of excises, duties, and imposts subject to the rule of uniformity and were placed under the other or direct class.
>
> 240 U.S. at 18-19 (1916).

This same view was reiterated by the Court in Stanton v. Baltic Mining Co. in which the court stated that the:

> Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress, from the beginning from being taken out of the category of indirect taxation to which it inherently belonged.
>
> 240 U.S. at 112 (1916).

Therefore, it is clear that the income tax is an "indirect" tax of the broad category of "Taxes, Duties, Imposts and Excises," subject to the rule of uniformity, rather than the rule of apportionment.

legislative authority[3] or the scope of the federal excise taxing powers,[4] or that doesn't constitute monies owed to nonresident aliens and foreign corporations[5]. Nor does the power to tax by excise permit the federal government to tax "*persons*" or activities that are solely within the jurisdictional realm of the State.[6] Those restrictions do not exist in the taxing of foreign non-resident parties, because, unlike American citizens, the foreign non-resident parties are subject to federal control and jurisdiction under Article I, § 8, cl. 1 of the Constitution wherever they are, within the United States, including within the fifty states.

All of these footnoted cases, *McCulloch, Farrington, Flint, Railroad Co, Bailey*[3] and *Hill*, are still controlling and are the last word of the Supreme Court on the power of the federal government to tax income. While there have been other Supreme Court cases upholding the imposition of the income tax, every one of them has been upheld against challenges by corporations and others whose activities are, by definition of the indirect authorities, within the federal taxing authority, and who are legitimate "*subjects*" of the federal government to tax, or are made so by the federally taxable activities they engage in, in order to derive *income* from their earnings.

Citing the inferior federal Circuit Court *Collins*[7] decision to interpret the federal Supreme Court *Brushaber* Opinion, as argued by the Internal Revenue Service in the instant dispute in the lower

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[3] *See McCulloch v. Maryland*, 17 U.S. 316 (1819) and *Farrington v. Tennessee*, 95 U.S. 679 (1877), which is still controlling Constitutional law, having been cited and followed over one hundred thirty times and as recently as 2005, See *Loeffel Steel Products, Inc. v. Delta Brands, Inc*., (N.D.Ill. 01 C 9389, 7/28/2005)

[4] *See Flint v Stone Tracy,* 220 U.S. 107 (1911) controlling Constitutional law, having been cited and followed as controlling law nearly 600 times

[5] *See Railroad Co. v. Collector*, 100 U.S. 595 (1879) and *United States v. Erie Railway Co*., 106 U.S. 327 (1882)

[6] *See Hill v. Wallace*, 259 U.S. 44, 42 S.Ct. 453 (1922), and *Bailey v. Drexel Furniture Company* (Child Labor Case), 259 U.S. 20, 42 S.Ct. 449 (1922), still controlling Constitutional law, having been cited and followed as controlling nearly 200 times and as recently as 2005, see *Simpson v. U.S.*, 877 A.2d 1045 (D.C. 2005).

[7] *See United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991)

Court, is not a legitimate way to cite the decision handed down by the Supreme Court in that *Brushaber* case. Referring to the *Collins* decision, to explain the *Brushaber* decision, constitutes nothing more, or other, than testimony (or evidence) in the form of third party hear-say. Third party hear-say is not acceptable or admissible evidence in an honest Court of law.

If one wishes to know what the Supreme Court decided in the *Brushaber* case Opinion, then one must of course go to the proverbial "*horse's mouth*" and read for themselves the *BRUSHABER* CASE OPINION actually handed down by the Supreme Court Chief Justice in that case. The District Court cannot legitimately, or properly rely on an inferior court's explanation of a Supreme Court decision, when the decision of the Supreme Court itself is readily available for review and to be relied upon as the controlling source of law to irrefutably settle the matter.

To abandon the Supreme Court's own *Opinion* in a case as the reliable legal resource to accurately portray the ruling in that case, and to attempt to replace that controlling ruling with an inferior appeals court decision, is to abandon the "*horse's mouth*" and to rely instead on the proverbial "*horse's ass*". We are sure this Honorable Court is already aware **that only** manure can come from the "*horse's ass*". The inferior *Collins* decision, cited by the Internal Revenue Service, and apparently erroneously relied on by the lower District Court in its *Opinion*, is manure, pure manure, and nothing more than or but manure, as it not only misreads the true nature of the decision handed down in the *Brushaber* case Opinion, it in fact, completely reversers the actual holding arrived at by the Court therein. Surely this honorable Court knows a "*horse's ass*" when it sees and hears one.

In closing, it can be conclusively asserted that notwithstanding the continuous taxation of *income* for the last 94 years by the federal government, the U.S. Supreme Court has clearly repeatedly and consistently held that the federal income tax **is an indirect tax.**

> "The subject matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the states, though the method of apportionment may at times be different. "The Congress shall have power to lay and collect taxes, duties, imposts and excises." Art. 1, § 8. **If the tax is a direct one, it shall be apportioned** according to the census or enumeration. **If it is a duty, impost, or excise, it shall be uniform** throughout the United States.

> **Together, these classes include every form of tax appropriate to sovereignty.** *Cf. Burnet v. Brooks,* 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.,* 240 U. S. 1, 240 U. S. 12." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581

> "The [income] tax **being an excise**, its imposition must conform to the canon of **uniformity**. There has been no departure from this requirement. According to the settled doctrine the uniformity exacted is geographical, not intrinsic. *Knowlton v. Moore, supra,* p. 178 U. S. 83; *Flint v. Stone Tracy Co., supra,* p. 220 U. S. 158; *Billings v. United States,* 232 U. S. 261, 232 U. S. 282; *Stellwagen v. Clum,* 245 U. S. 605, 245 U. S. 613; *LaBelle Iron Works v. United States,* 256 U. S. 377, 256 U. S. 392; *Poe v. Seaborn,* 282 U. S. 101, 282 U. S. 117; *Wright v. Vinton Branch Mountain Trust Bank,* 300 U. S. 440." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 583

> "Whether the tax is to be classified as an "***excise***" is in truth not of critical importance. If not that, it is an "***impost***" (*Pollock v. Farmers' Loan & Trust Co.,* 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soble,* 7 Wall. 433, 74 U. S. 445), or a "***duty***" (*Veazie Bank v. Fenno,* 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.,* 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore,* 178 U. S. 41, 178 U. S. 46). **A *capitation* or other "*direct*" tax it certainly is not.**" *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581-2

In considering in 1916 the argument that the income tax legislation being tested by the Court in the *Stanton v. Baltic Mining Co.* case enacted a direct nonapportioned tax on all income derived from earnings of all *persons*[8] in America, the Court held:

> "by the previous ruling [*Brushaber v Union Pacific R. Co.*] it was settled that the provisions of the Sixteenth Amendment **conferred no new power of taxation** but simply **prohibited** the previous complete and plenary power of income taxation possessed by Congress from the beginning **from being taken out of the category of indirect taxation to which it inherently belonged** …." *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916).

[8] *See* Title 26 U.S.C. Section 7701(a)(1).

Exhibit A

BRUSHABER V. UNION PACIFIC R. CO., 240 U. S. 1 (1916)

U.S. Supreme Court

Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916)

Brushaber v. Union Pacific Railroad Company

No. 140

Argued October 14, 15, 1915

Decided January 24, 1916

240 U.S. 1

Syllabus

Under proper averments, a stockholder's suit to restrain a corporation from voluntarily paying a tax charged to be unconstitutional is not violative of Rev.Stat. § 3224, and the district court has jurisdiction to entertain the action. *Pollock v. Farmers' Loan & Trust Co.,* 157 U. S. 429.

In this case -- that of a stockholder against a corporation to restrain the latter from voluntarily paying the income tax imposed by the Tariff Act of 1913 -- the defendant corporation notified the government of the pendency of the action and the United States was heard as *amicus curiae* in support of the constitutionality of the Act.

The Sixteenth Amendment was obviously intended to simplify the situation and make clear the limitations on the taxing power of Congress and not to create radical and destructive changes in our constitutional system.

The Sixteenth Amendment does not purport to confer power to levy income taxes in a generic sense, as that authority was already possessed, …

The Court held that the true effect of the Sixteenth Amendment was not to permit the federal government to impose a direct tax on "*income*", nor to grant Congress any new or additional powers of taxation, nor even any powers over any new or additional "*subjects*". Plainly and clearly making NO "*persons*", OR ACTIVITIES, newly *taxable* to the federal government. If that conclusion can be in any doubt from the difficulties experienced by some in understanding the *Brushaber* and *Stanton* opinions, the point is fully explained at the end of the *Stanton* case *Opinion*:

> " It moreover rests upon the **wholly fallacious assumption** that, looked at from the point of view of substance, a tax on the product of a mine is necessarily in its essence and nature in every case a direct tax on property because of its ownership, …. **We say wholly fallacious** assumption because, **independently of the effect of the operation of the 16th Amendment**, it was settled in *Stratton's Independence v. Howbert*, 231 U.S. 399 , 58 L. ed. 285, 34 Sup. Ct. Rep. 136, **that such tax is not a tax upon property** as such because of its ownership, **but a true excise levied on the results of the business of carrying on mining operations.** (pp. 413 et seq.) " *Stanton v. Baltic Mining Co*., 240 U.S. 103, pg. 113-114."

This holding in the Stanton decision, we will see, is repeatedly cited and supported in many of the Supreme Court cases addressing and testing the legitimacy and constitutionality of the corporate income tax in the early 1900's. Of course, we can also look, both to the definition of an excise tax, and to the Court's previous recent holdings (as of 1916) in regards to the excise taxing power when tested. Black's Law Dictionary historically defined excise taxes as:

> **Excise taxes** are taxes "laid upon **the manufacture, sale or consumption of commodities** within the country, **upon licenses to pursue certain occupations**, and **upon corporate privileges**." *Flint v. Stone Tracy Co.,* 220 U.S. 107, 31 S.Ct. 342, 349 (1911); or **a tax on privileges, syn. "privilege tax"**.
>
> (emphasis added)

The Supreme Court case specifically referenced by Black's, has provided a clear and definite scope of the federal excise taxing authority for almost 100 years now. In *Flint v. Stone Tracy Co*., 220 U.S. 107 (1911)[9], the Supreme Court held that:

> "Excises are **"taxes laid upon the manufacture, sale or consumption of commodities** within the country**, upon licenses** to pursue **certain occupations, and upon corporate privileges** ... ***the requirement to pay such taxes involves the exercise of the privilege*** and if business is not done in the manner described ***no tax is payable...it is the privilege which is the subject of the tax*** **and not** the mere buying, selling or handling of goods. " Cooley, Const. Lim., 7th ed., 680." *Flint*, supra, at 151

The basis for the *Stanton* ruling that the federal income tax is an indirect tax, of course, is now obvious and irrefutable. It is based on the factual understanding that the income tax had repeatedly been upheld as a legitimate and constitutional exercise of the indirect federal powers to tax in the form of an excise under Article 1, § 8, Clause 1, even before the adoption and ratification of the 16th Amendment.

Previous to the 16th Amendment, the Corporate Tax Act of 1909 (36 Stat. 11, 112) had imposed an indirect excise tax on the income of corporations, imposed on the privilege of doing business in corporate form, and to be measured by the amount of corporate *income*, i.e.: gains and profits earned in the taxable period (fiscal year) by the corporation.

The Corporate Tax Act of 1909 provided that the excise tax on earnings, laid on the corporate business, was to be measured by the corporate *income,* i.e.: the corporate profits remaining after the deduction from earnings of the allowable expenses. The 1909 act specifically defined the corporate income tax enacted therein as an excise tax, and therefore it is irrefutably an "indirect" tax under Article I, Section 8, Clause 1 of the United States Constitution, granting Congress the power to "…lay and collect taxes, duties, imposts and excises,…". Indirect taxes such as an excise are of course, not subject to the rule of apportionment that direct taxes are subject to.

[9] Again, *Flint v. Stone Tracy Co*. is controlling and Constitutional law, having been cited and followed over 600 times by virtually every court as the authoritative definition of the scope of excise taxing power.

Then in 1913, on the basis established in *Flint v. Stone Tracy Co*., 220 US 107 (1911), referenced above by Black's, the Supreme Court identifies that the constitutional justification for the corporate "income tax", is as an indirect excise tax *"imposed with respect to the doing of business in corporate form",* just as it has been defined under *Flint* two years earlier. The *Opinion* in *Stratton's Independence v. Howbert*, 231 U.S. 399, 400; 34 S.Ct. 136 (1913), plainly recognizes this, stating:

> "Evidently Congress adopted the income tax as the measure of the tax to be imposed **with respect to the doing of business in corporate form** because it desired that **the excise should be imposed**, approximately at least, **with regard to the amount of benefit presumably derived by such corporations** from the current operations of the government. In *Flint v. Stone Tracy Co.* 220 U.S. 107, 165, 55 S.L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, **in exercising the right to tax a legitimate subject of taxation as a franchise or privilege**, was not debarred by the Constitution **from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable**. It was reasonable that Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance of the business transacted." *Stratton's Independence, Ltd. V. Howbert,* 231 U.S. 399, at 416 – 417 (1913)

The Supreme Court clearly has historically identified that the constitutional justification for the corporate "income tax" is as an indirect excise tax *"imposed with respect to the doing of business in corporate form",* just as it has been defined under *Flint* two years earlier. The court further held in *Stratton's*, that:

> "As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. 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,** with certain qualifications prescribed by the act itself. *Flint v. Stone Tracy Co.* 220 U.S. 107 , 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312; *McCoach v. Minehill* & S. H. R. Co. 228 U.S. 295 , 57 L. ed. 842, 33 Sup. Ct. Rep. 419; *United States v. Whitridge* (decided at this term, 231 U.S. 144 , 58 L. ed. --, 34 Sup. Ct. Rep. 24." *Stratton's, supra* at 414

Clearly, the Supreme Court recognized the that Congress had imposed "*not an direct income tax, but an indirect excise tax upon the conduct of business in a corporate capacity,*"

However, this court should certainly be aware that no citizen is directly subject to any federal excise tax on their private, personal activity, simply because the earned money, because citizens, under the *Flint v. Stone Tracy Co* decision, are obviously not subject to any excise tax unless they hold some license to pursue certain occupations, or engage in the manufacture, consumption or sale of commodities, or operate as a corporation rather than as an individual American citizen under the Constitution of the United States of America.

The above cases, *Stanton, Flint, Stratton's*, all show that an excise tax is applied to a corporation and its corporate income, indirectly. But if a "*person*"[10] is not a corporate "*person*", but an individual "*person*", then there can be no federal excise tax imposed, nor any direct tax either, on his or her earnings or *income*, and there is no federal jurisdiction that can be established to lawfully exist within the fifty states, by territory or subject matter, or over the individual "*person*", for any federal tax to be applied to the earnings of the individual citizen.

The important thing here, is the understanding that the federal income tax legislation tested in the *Stanton* case was upheld as a constitutional tax, because it was an indirect tax imposed as a federal excise imposed upon the doing of business in corporate form, AND NO OTHER test was applied in that case.

The federal income tax has never been upheld by the Supreme Court as a direct tax on earnings, nor even as a direct tax on all of the "*income*" of all "*persons*".

And the Supreme Court tells us again in a consistently conclusive manner in 1920 in *Eisner vs. Macomber*, 252 U.S. 189 (1920), how the matter must be addressed by the federal courts:

[10] *See* Title 26 U.S.C. § 7701(a)(1)

> "**The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted**. In *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601 , 15 Sup. Ct. 912, under the Act of August 27, 1894 (28 Stat. 509, 553, c. 349, 27), it was held that taxes upon rents and profits of real estate and upon returns from investments of personal property were in effect direct taxes upon the property from which such income arose, imposed by reason of ownership; and that Congress could not impose such taxes without apportioning them among the states according to population, as required by article 1, § 2, cl. 3, and article 1, § 9, cl. 4, of the original Constitution.
>
> Afterwards, and evidently in recognition of the limitation upon the taxing power of Congress thus determined, the Sixteenth Amendment was adopted, in words lucidly expressing the object to be accomplished:
>
> > 'The Congress shall have 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.'
> >
> > **As repeatedly held**, **this did not extend the taxing power to new subjects**, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income. *Brushaber v. Union Pacific R. R. Co.*, 240 U.S. 1 , 17-19, 36 Sup. Ct. 236, Ann. Cas. 1917B, 713, L. R. A. 1917D, 414; *Stanton v. Baltic Mining Co.*, 240 U.S. 103 , 112 et seq., 36 Sup. Ct. 278; *Peck & Co. v. Lowe*, 247 U.S. 165, 172 , 173 S., 38 Sup. Ct. 432." *Eisner, supra* on page 205

American citizens, individual "*persons*", living and working within the fifty states, were not subject to any federal excise that reached their *labor* or their *Right to Work* before the 16th Amendment[11], nor were they under any other federal jurisdiction, territorial, subject-matter, or personal, by which they could be taxed by the federal government, either directly or indirectly. They cannot now, after the passage of the 16th Amendment, according to these decisions, be lawfully made subject to the payment of any federal excise tax imposed on *income*, as that Amendment extends the federal taxing power to no "*new subjects*".

[11] *See Pollock v Farmer's Loan & Trust Co.,* 157 U.S. 429 (1895)

And so it can be seen that the 16th Amendment does NOT destroy the exclusive territorial sovereignty and jurisdiction of each of the fifty States over its own territories, citizens', and their activities. Consequently, citizens cannot be legitimately brought under the jurisdictional purview of any federal excise tax, or any other federal tax, direct or indirect for that matter, under the pretense of having allegedly earned federally taxable "*gross income*", simply as a result of exercising his or her constitutional rights to labor and contract within one of the fifty states of the union, unless **there exists federally** *taxable* activity, as authorized under Article I, § 8, Clause 1 of the U.S. Constitution, serving as the true TAXABLE "*source*" of the "*income*" within the State.

Clearly it is only the "*income*" derived from the constitutional federal territorial, and subject matter jurisdictions to tax under Article I, § 8, Clause 1, that is constitutionally subject to the federal income tax. Those federally taxable earnings and *taxable income*, include the earnings of the corporations, the foreign "*persons*" in the United States, any "*income*" derived from activity in the U.S. territories and possessions, and only the other earnings and income derived from activities specifically made subject to federal taxation under Article I, § 8, Clause 1 of the U.S. Constitution**.**

In *Bowers v. Kerbaugh-Empire Co.,* 271 U.S. 170 (1926), **[**the case cited by the lower District Court as the basis for its ruling in this matter,**]** the U.S. Supreme Court itself takes note of the above facts and rulings, and clearly writes on pages 173 - 174 of its *Opinion*:

> "The Sixteenth Amendment declares that Congress shall have power to levy and collect taxes on income, 'from whatever source derived' without apportionment among the several states, and without regard to any census or enumeration. **It was not the purpose or effect of that amendment to bring any new subject within the taxing power**. Congress already had power to tax all incomes. But taxes on incomes from some sources had been held to be 'direct taxes' within the meaning of the constitutional requirement as to apportionment. Art. 1, 2, cl. 3, 9, cl. 4; *Pollock v. Farmers' Loan & Trust Co*., 158 U.S. 601 , 15 S. Ct. 912." *Bowers v. Kerbaugh-Empire Co., supra at 173-174*
>
> (emphasis added)

The court clearly states that: "*It was not the purpose or effect of that amendment to bring any new subject within the taxing power"*, and the Congress cannot therefore legitimately effect that unconstitutional end by creating a statutory definition of "*gross income*" that purports to include the income of American citizens earned within the fifty states, without federal jurisdiction existing over any interstate commerce or otherwise excise taxable activity involving a license, privilege, incorporation, commodities, or that is occurring within the federal territories or possessions.

The U.S. Supreme Court has essentially and effectively ruled that the federal government cannot use a single code section, like Section 61, as the sole basis for an expansion of the federal subject matter jurisdiction to tax earnings. NOR may it legitimately use a statutory code section or regulation to expand the federal power to tax income indirectly, by excise, duty, or impost, beyond that power that existed before the ratification of the 16th Amendment. This very issue was specifically addressed in the *Eisner v. Macomber Opinion*:

> "In order, therefore, that the clauses cited from Article 1 of the Constitution may have proper force and effect, …, and that the latter also may have proper effect **it becomes essential to distinguish between what is and what is not "income"** as the term is there used; **and to apply the distinction,** as cases arise, according to **truth** and **substance**, without regard to form**. Congress cannot by any definition it may adopt conclude the matter**, since it **cannot by legislation alter the Constitution**, from which it derives its power to legislate, **and within whose limitations alone that power can be lawfully exercised**." *Eisner v. Macomber* 252 U.S. 189, 206 (1920)
>
> (emphasis added)

And from the *Brushaber* ruling as well, we have:

> "Nothing could serve to make this clearer than to recall that in the Pollock Case, in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from 'professions, trades, employments, or vocations' (158 U.S. 637), its validity was recognized; indeed, it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that **taxes on such income had been sustained as excise taxes in the past**. Id. P. 635." *Brushaber*, supra, p. 17

Clearly the federal income tax legislation tested in the *Stanton* decision, is upheld by the United States Supreme Court as an indirect tax imposed in the form of an excise that is *measured* by *income*, that is imposed on the privilege of doing business in the corporate form. That is the entire reach of the Court's ruling in this decision. We hereby move this honorable Court to take judicial notice of the results of the decision.

The Federal Corporate Income Tax is a Domestic Excise

In considering in 1911, the constitutionality of the corporate income tax legislation being tested by the Court in the *Flint v. Stone Tracy Co.* case, the U.S. Supreme Court held:

> "The act now under consideration **does not impose direct taxation** upon property solely because of its ownership, but **the tax is within the class which Congress is authorized to lay and collect under article 1, 8, clause 1 of the Constitution**, and **described generally as taxes, duties, imposts, and excises,** upon which the limitation is that they shall be uniform throughout the United States.
>
> **Within the category of indirect taxation**, as we shall have further occasion to show, **is embraced a tax upon business done in a corporate capacity**, **which is the subject-matter of the tax imposed in the act under consideration**. The Pollock Case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case **the tax is not payable unless there be a carrying on or doing of business in the designated capacity**, and **this is made the occasion for the tax**, measured by the standard prescribed. **The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way**." *Flint v. Stone Tracy Co.*, 220 US 107, 150 (1911)
>
> (emphasis added)

Justice Day continues in the Opinion of the Court, which we let speak for itself in this Motion:

> "Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' **such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue.**' [157 U.S. 557 .]

Black's Law Dictionary now defines excise taxes, specifically based on this *Flint* case ruling:

> **Excise taxes** are taxes "laid upon **the manufacture, sale or consumption of commodities** within the country, **upon licenses to pursue certain occupations**, and **upon corporate privileges**." *Flint v. Stone Tracy Co.,* 220 U.S. 107, 31 S.Ct. 342, 349 (1911); or **a tax on privileges, syn. "privilege tax"**. *Black's Law Dictionary* 6th Edition

As was identified above, it was specifically held in the *Flint v. Stone Tracy Co*., 220 U.S. 107 (1911)[12] ruling, that:

> "Excises are **"taxes laid upon the manufacture, sale or consumption of commodities** within the country**, upon licenses** to pursue **certain occupations, and upon corporate privileges** ... ***the requirement to pay such taxes involves the exercise of the privilege*** and if business is not done in the manner described ***no tax is payable...it is the privilege which is the subject of the tax*** **and not** the mere buying, selling or handling of goods. " Cooley, Const. Lim., 7th ed., 680." *Flint*, supra, at 151

So, the basis for the holding in the *Stanton* ruling, that the federal income tax is an indirect tax, not a direct tax, is of course now obvious and irrefutable. It is based on the factual understanding that the federal income tax had repeatedly been upheld as a legitimate and constitutional exercise of the indirect federal powers to tax in the form of an excise under Article 1, § 8, Clause 1, even before the adoption and ratification of the 16th Amendment, by this, and other pre-existing Court decisions.

Previous to the 16th Amendment, the Corporate Tax Act of 1909 (36 Stat. 11, 112) had imposed an indirect excise tax on the income of corporations, imposed on the privilege of doing business in corporate form, and to be measured by the amount of corporate *income*, i.e.: gains and profits earned in the taxable period (fiscal year) by the corporation.

The Corporate Tax Act of 1909 provided that the excise tax on earnings, laid on the corporate business, was to be measured by the corporate *income,* i.e.: the corporate profits remaining after the deduction from earnings of the allowable expenses. The 1909 act specifically defined the corporate income tax enacted therein as an excise tax, and therefore it was irrefutably an "indirect" tax under Article I, § 8, Clause 1 of the United States Constitution, granting Congress the power to "…lay and collect taxes, duties, imposts and **excises,…**". Indirect taxes such as an

[12] Again, *Flint v. Stone Tracy Co*. is controlling and Constitutional law, having been cited and followed over 600 times by virtually every court as the authoritative definition of the scope of excise taxing power.

excise are of course, not subject to the rule of apportionment that direct taxes are subject to, as was identified by the court in its decision.

This holding, established in *Flint v. Stone Tracy Co*., identifying that the constitutional justification for the corporate "income tax", is as an indirect excise tax *"imposed with respect to the doing of business in corporate form",* is then used in 1913 by the Supreme Court as the basis for the decisions in *Stratton's Independence v. Howbert*, 231 U.S. 399, 400; 34 S.Ct. 136 (1913), plainly stating:

> "Evidently Congress adopted the income tax as the measure of the tax to be imposed with respect to the **doing of business in corporate form** because it desired that the **excise** should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In *Flint v. Stone Tracy Co.* 220 U.S. 107, 165, 55 S.L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a legitimate subject of taxation as a franchise or privilege, was not debarred by the Constitution from **measuring the taxation by the total income**, although derived in part from property which, considered by itself, was not taxable. It was reasonable that Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance of the business transacted." *Stratton's Independence, Ltd. v. Howbert,* 231 U.S. 399, at 416-417 (1913)

The Supreme Court clearly has historically identified that the constitutional justification for the federal "income tax" is as an indirect excise tax *"imposed with respect to the doing of business in corporate form",* or as otherwise indirect as authorized under Article I Section 8, Clause 1 of the Constitution, exactly as it had been decided in the *Flint* decision two years earlier in 1911. The court further held in 1913 in *Stratton's*, that:

> "As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. 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,** with certain qualifications prescribed by the act itself. *Flint v. Stone Tracy Co.* 220 U.S. 107 , 55 L. ed. 389, 31 Sup. Ct. Rep.

> 342, Ann. Cas. 1912 B, 1312; *McCoach v. Minehill* & S. H. R. Co. 228 U.S. 295 , 57 L. ed. 842, 33 Sup. Ct. Rep. 419; *United States v. Whitridge* (decided at this term, 231 U.S. 144 , 58 L. ed. --, 34 Sup. Ct. Rep. 24." *Stratton's, supra* at 414

Clearly, the Supreme Court recognized that Congress had imposed "*not an direct income tax, but an indirect excise tax upon the conduct of business in a corporate capacity,*", because they cite *Flint v. Stone Tracy* in this decision as the justification for the tax.

However, this court should certainly be aware that no citizen is directly subject to any federal excise tax on their private, personal activity, simply because the earned money; because citizens, under the *Flint v. Stone Tracy Co* decision, are obviously not subject to any excise tax unless they hold some license to pursue certain occupations, or engage in the manufacture, consumption or sale of commodities, or operate as a corporation rather than as an individual American citizen under the Constitution of the United States of America.

The above cases, *Flint* and *Stratton's*, all show that an excise tax is applied to a corporation and its corporate income, indirectly, based on the privilege of doing business in the corporate form and capacity. But if a "*person*"[13] is not a corporate "*person*", but an individual "*person*", then there can be no federal excise tax imposed, nor any direct tax either, on his or her earnings or *income*, and there is no federal jurisdiction that can be established to lawfully exist within the fifty states, by territory, subject matter, or over the individual "*person*", for any federal tax to be applied to the earnings of the individual citizen.

The federal income tax legislation tested in the *Flint v Stone Tracy* case was upheld as an INDIRECT constitutional tax, because it was a tax imposed as a federal excise, imposed upon the doing of business as a corporation.

The federal income tax has never been upheld by the Supreme Court as a direct tax on any "*person's*" earnings, nor even as a direct tax on any of the "*income*", "*gross*" or otherwise, of any "*person*"

[13] *See* Title 26 U.S.C. § 7701(a)(1)

This decision, under *Flint v. Stone Tracy Co*., is still the controlling decision and rule of law today, and is in fact now recognized as Constitutional law, having been cited and followed over 600 times by virtually every court in the nation as the authoritative definition of the scope of excise taxing power.

Under the *Stanton v. Baltic Mining Co*., 240 US 103, (1916) decision, the Supreme Court upholds the legitimacy of the federal corporate income tax as an indirect excise tax imposed on the privileged income of the corporate (mining) operations. The court determined that under the specific provisions of the legislation that it was testing in that *Brushaber* case, that the tax properly applied to the corporate income of the Baltic Mining Co., which corporate "*person*" was required to pay the tax as an excise on its mining operations. The company argued that the tax on its income, derived from its mining operations, was unconstitutionally direct, and prejudicial to mining corporations because of a legislated depreciation limitation only applicable to those mining corporations. The Court rejected those arguments stating conclusively that the tax laid on the mining corporations by the legislation is in fact not a direct income tax at all under the 16th Amendment, but an indirect excise tax, representing a legitimate exercise of the pre-existing federal, constitutional power to lay indirect taxes, imposts, duties and excises, granted under Article I, Section 8, Clause 1 of the Constitution:

> "… We say wholly fallacious assumption because, independently of the effect of the operation of the 16th Amendment, it was settled in *Stratton's Independence v. Howbert*, 231 U.S. 399 , 58 L. ed. 285, 34 Sup. Ct. Rep. 136 (1913), that such tax is not a tax upon property as such because of its ownership, **but a true excise** levied on the results of the business of carrying on mining operations. (pp. 413 et seq.)" *Stanton v. Baltic Mining Co.*, 240 US 103, 114 (1916)
>
> (emphasis added)

However, in *Flint v. Stone Tracy Co.* the Court clearly identified and held that citizens are not subject to excise taxation unless they are engaged in the specific excise taxable activities identified and listed therein. And that: *"the requirement to pay such taxes involves the exercise of the privilege and if business is not done in the manner described no tax is payable" - Flint v. Stone Tracy Co.*, supra.

Therefore, the personal federal income tax CANNOT BE the same excise tax on corporate income that was tested and upheld by the Supreme Court in the *Baltic Mining* decision.

There is a third area of taxation authority that is not found in the Constitution, nor can any historical or traditional foundation for the taxing authority be found, but since the Supreme Court based its sanctioning of the exercise of taxation over that area as an excise, we can call it an excise of unknown ancestry. This third area of excise of unknown ancestry was established in two cases that, ironically, the Supreme Court believed would be of little significance. The fact, however, is that these cases had a profound effect on taxation in the country that accounts for many of the arcane and mysterious twists, turns and surprising dead ends in the labyrinth of past and current tax codes and regulations.

In *Railroad Co. v. Collector*, 100 U.S. 595 (1879), the Supreme Court was faced with a challenge to a tax on interest paid by corporations. In this particular case, however, the interest was payable to foreign bond holders. Fully aware of the fact that the foreign bond holders were outside the jurisdiction of the government and that the situs of an obligation is always that of the obligee, the Court (sort of) upheld the tax:

> "That the tax was actually collected without resistance, and the present suit is brought to recover it back, is sufficient answer to the assertion that it could not be enforced.
>
> "Whether Congress, having the power to enforce the law, has the authority to levy such a tax on the interest due by a citizen of the United States to one who is not domiciled within our limits, and who owes the government no allegiance, is a question which we do not think necessary to the decision of this case.
>
> "The tax, in our opinion, is essentially an excise on the business of the class of corporations mentioned in the statute.
>
> "The tax is laid by Congress on the net earnings, which are the results of the business of the corporation, on which Congress had clearly a right to lay **it;** and

> being lawfully assessed and paid, it cannot be recovered back by reason of any inefficiency or ethical objection to the remedy over against the bondholder." *Railroad Co*., supra, at 597-9
>
> See also, *United States v. Erie Railway Co*., 106 U.S. 327 (1882).

This provides three areas of authority for indirect taxation that the federal government can exercise, those activities within its regulatory authority and all privileged activities within those territories and federal enclaves over which it has exclusive legislative authority (*McCulloch*); excise taxes on the manufacture, sale or consumption of commodities, licensing of certain occupations, and corporate privileges (*Flint*, supra), and, finally, the indirect taxation, by *excise* or *impost*, of monies payable **to** nonresident aliens and foreign corporations (*Railroad Co*., supra).

We also have federally prohibited areas of taxation, those being any activities that are within the scope of the regulatory authority of the States *(McCulloch, Farrington, Bailey* and *Hill*, supra) and those activities to which the jurisdiction of the federal government may not apply, i.e., those subjects of taxation that do not exist by the federal government's authority, and are not introduced by its permission *(McCulloch*, supra), with the exception, of course of monies owed to nonresident aliens and foreign corporations. In other words every activity outside of those three areas of taxation authority are, in Marshall's words, exempt from federal taxation.

PARALLEL TABLE OF AUTHORITIES AND RULES

The following table lists rulemaking authority (except 5 U.S.C. 301) for regulations codified in the *Code of Federal Regulations*. Also included are statutory citations which are noted as being interpreted or applied by those regulations.

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Entries in the table are taken directly from the rulemaking authority citation provided by Federal agencies in their regulations. Federal agencies are responsible for keeping these citations current and accurate. Because Federal agencies sometimes present these citations in an inconsistent manner, the table cannot be considered all-inclusive.

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U.S. Master™ Excise Tax Guide

Second Edition

Appendix A

EXCISE TAX FORMS

List of Forms by Subject ..... ¶ 3001
List of Forms by Number ..... ¶ 3002

¶ 3001 List of Forms by Subject*

This is a selective list of the most commonly used excise tax forms.

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Alcohol sold as fuel
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Ammunition
application for registration for tax-free transactions..... ATF F 5300.28
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Assessment
claim for refund 8849
consent to extend assessment time . 872-B
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Aviation fuel (other than gasoline)
application for registration for certain excise tax activities 637
claim for refund 8849
credit for federal tax paid on fuels .. 4136
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Aviation gasoline
claim for refund 8849
credit for federal tax paid on fuels .. 4136
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Bows and arrows
application for registration for certain excise tax activities 637
quarterly federal excise tax return ... 720
Buses
application for registration for certain excise tax activities 637
heavy vehicle use tax return 2290
Coal
quarterly federal excise tax return ... 720
Communications
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Credit
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Diesel powered train
application for registration for certain excise tax activities 637
Environmental
environmental taxes 6627
quarterly federal excise tax return ... 720
Export
exemption certificate 1363
Extension
application for extention to file..... 2758
consent to extend assessment time . 872-B
Firearms
application for registration for tax-free transactions..... ATF F 5300.28
firearms and ammunition excise tax deposit..... ATF F 5300.27
firearms and ammunition excise tax return ..... ATF F 5300.26

* The most commonly used excise tax forms. Liquor tax forms not included.

Fishing equipment
application for registration for certain excise tax activities 637
quarterly federal excise tax return ... 720
Floor stocks tax
environmental taxes 6627
quarterly federal excise tax return ... 720
Foreign insurance
quarterly federal excise tax return ... 720
Fuel
application for registration for certain excise tax activities 637
quarterly federal excise tax return ... 720
Gas-guzzler tax
application for registration for certain excise tax activities 637
gas guzzler tax 6197
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Gasohol
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Gasoline
application for registration for certain excise tax activities 637
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Heavy vehicles
application for registration for certain excise tax activities 637
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Highway motor vehicles
heavy vehicle use tax return 2290
Imports
environmental taxes 6627
Importer
application for registration for certain excise tax activities 637
Inland waterways fuel tax
quarterly federal excise tax return ... 720
Jobber
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Liquefied petroleum gas
quarterly federal excise tax return ... 720
Luxury
passenger vehicles
quarterly federal excise tax return ... 720
Manufacturer
application for registration for certain excise tax activities 637
quarterly federal excise tax return ... 720
Other excise taxes
order blank for forms and publications 9117
quarterly federal excise tax return ... 720
Ozone depleting chemicals (ODCs)
application for registration for certain excise tax activities 637
environmental taxes 6627
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Passenger vehicles
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Producer
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Refund claim
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Retail
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Ship passenger
quarterly federal excise tax return ... 720
Special fuels
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credit for federal tax paid on fuels .. 4136
Tires
application for registration for certain excise tax activities 637
quarterly federal excise tax return ... 720
Trailers
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Transportation of persons by air
quarterly federal excise tax return ... 720
Transportation of property by air
export exemption 1363
quarterly federal excise tax return ... 720
Truck bodies
application for registration for certain excise tax activities 637
heavy vehicle use tax return 2290
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Vaccines
application for registration for certain excise tax activities 637
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Wagering
monthly return 730
occupational tax and registration return 11-C
Wholesaler
application for registration for certain excise tax activities 637

¶ 3002 List of Forms by Nu

Form 11-C, Occupational Tax and
Return for Wagering .....
Form 637, Application for
Certain Excise Tax Activities
Form 720, Quarterly Federal
Return .....
Form 730, Monthly Tax on Wa
Form 843, Claim for Refund
Abatement .....
Form 872-B, Consent to Ext
Assess Miscellaneous Excise
Form 1363, Export Exempti
.....
Form 2290, Heavy Highway
Return .....
Form 2758, Application for
To File Certain Excise
Information, and Other
Form 4136, Credit for Federal
Fuels .....
Form ATF F 5300.26, Fed
Ammunition Excise Tax
Form ATF F 5300.27, Fed
Ammunition Excise Tax
Form ATF F 5300.28, Ap
Registration for Tax-Fr
Under 26 U.S.C. 4221 .....

** ¶ references are to paragra

¶ 3002 List of Forms by Number**

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Form 637, Application for Registration (For Certain Excise Tax Activities) ..... ¶ 270
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Form 843, Claim for Refund and Request for Abatement ..... ¶ 305
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Form 1363, Export Exemption Certificate ..... ¶ 380
Form 2290, Heavy Highway Vehicle Use Tax Return ..... ¶ 390
Form 2758, Application for Extention of Time To File Certain Excise, Income, Information, and Other Returns ..... ¶ 420
Form 4136, Credit for Federal Tax Paid on Fuels ..... ¶ 440
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Publication 225, Farmer's Tax Guide: Chapter 18, Excise Taxes ..... ¶ 700
Publication 349, Federal Highway Use Tax on Heavy Vehicles ..... ¶ 710
Publication 378, Fuel Tax Credits and Refunds ..... ¶ 720
Publication 510, Excise Taxes for 2000 .. ¶ 730

** ¶ references are to paragraphs of the Federal Excise Tax Reporter.

Appendix B

INTERNAL REVENUE CODE FINDING LIST

Citations to the Internal Revenue Code of 1986 . ¶3101

¶3101 Citations to the Internal Revenue Code of 1986

Citations to sections of the 1986 Internal Revenue Code are included throughout this Guide. The following Finding List indicates the paragraph(s) in the Guide at which each listed Code Section is discussed.

Code Sec.	Guide Par. No.	Code Sec.	Guide Par. No.
34	2243	368(a)	2220
38	2257	501(c)(21)	800
39	2257	613	804
40	2257	1273(a)(1)	1800
40(a)	2257	1504(a)	970
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Structural Organization of Title 26 U.S.C.

Perhaps a short explanation regarding the organization of the laws in the United States, and specifically, the tax laws, will be helpful at this point in keeping our understanding clear. The United States Code (U.S.C.) is the collection of all of the laws in America. In order to make the law easy to use it has been divided into separate books or "Titles" which are based on subject matter, each containing its own. For instance, Title 27 is Intoxicating Liquors. Title 18 is Crimes & Criminal Procedure and Title 20 is Education, etc. Practically all of the tax laws of the United States of America are in Title 26 of the United States Code, which is the Internal Revenue Code, also called the IRC (I.R.C.). Title 26 is broken into a number of "Subtitles", with each Subtitle providing for a completely distinct and separate set of granted taxing powers related to each of the taxes imposed on the certain activities and events addressed in each of the separate Subtitles, as shown in the table below:

Tax or Topic of Title 26	**Subtitle**	**Chapters**	**Section**
Income Taxes	**A**	**1 to 6**	**1**
Estate & Gift Taxes	B	11 to 13	2001
Employment Taxes	**C**	**21 to 25**	**3101**
Miscellaneous Excises	D	31 to 47	4041
Alcohol, Tobacco & Certain Other Excises	E	51 to 54	5001
Procedure and Administration	F	61 to 80	6001
Joint Committee on Taxation	G	91 to 92	8001
Financing Presidential Election Campaigns	H	95 to 96	9001
Trust Fund Code	I	98	9500

This book explains the true scheme of the federal personal income tax, as identified by the Supreme Court in its original and controlling decisions on the federal income tax in 1916, and the correct application of the laws under the Subtitle A - Income tax laws, as they actually exist, and the Subtitle C - Employment tax laws, as they actually exist. The federal personal income tax laws are imposed in Title 26, Subtitle A, which consists of chapters 1 through 6 of that Title of the United States Code (U.S.C.). Employment taxes are in Subtitle **C** of Title 26, which consists only of chapters 21 – 25, and is entirely different part of the law and Title (as a separate and distinct "Subtitle" in the Title). The Subtitle C employment tax laws were enacted in 1945,

31 years **after** the Subtitle A income tax (Tariff) laws were enacted in 1913. They are entirely separate legal authorities at law, which is important to know because, of course, most American are made victim, initially, to the transgressions of the tax system through their *employment* relationships under Subtitle C, **not the** Subtitle A income tax laws!

It is important to understand that each Subtitle establishes a distinct and separate program, or "tax", with its own individual authorities to exercise within that distinct Subtitle. These authorities do not automatically cross over into the other Subtitles and cannot be legitimately invoked as an authority in the other Subtitles. i.e. the *Withholding Agent* does not withhold employment taxes (does the bank withhold employment tax (social security) from interest payments on Certificates of Deposit), and Subtitle C does **not** impose an income tax on any individual or *person*, it provides for the administration of the social security and employment taxes – which under the law are a completely separate and distinct set of taxes and programs from Subtitle A income tax. Subtitle C provides the tax laws related to the implementation of the Social Security tax and other employment taxes. It does not impose the income tax, which is imposed in Subtitle A.

Each Subtitle imposes its own tax and establishes its own groups of persons that are subject to that specific Subtitle's tax. Just because one group of people is subject to one tax under one Subtitle, does not necessarily imply that group is automatically also subject to the taxes imposed by other Subtitles. To demonstrate this point one could ask "Do you pay Subtitle E taxes"? For most people, the answer is a resounding "No!". Why not, you may ask, isn't everyone subject to the law? The answer, of course, is that the group of persons who are subject to the Subtitle E taxes are only those persons who engage in activities relating to the manufacture, transportation and sale of alcohol and tobacco products, and have involvement with certain other excise taxes as proscribed in Subtitle E.

The group of people who are subject to the Subtitle C Employment Tax laws are the foreign persons who are required by law to participate in the Social Security program and the American citizens who have voluntarily chosen to apply for a Social Security number to provide to their employer. But that's another story (– actually it's the same story – pass a law that really only

applies in a mandatory fashion to foreigners, and then over time, make all Americans believe that it applies to them, when in fact it does not!).

The Constitutional Federal Foreign Jurisdiction

The Constitution, of course, gives the federal government complete authority over all foreign affairs and foreign persons in America. Article 1, Section 8, Clauses 3 and 4 of the Constitution grant powers to the federal government over foreign affairs, agreements, and persons;

Article I, Section 8, clauses 2 and 3

Congress shall have power ...
To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.
To establish an uniform Rule of Naturalization, ...

And Article I, Section 10, Clauses 1, 2 and 3 of the U.S. Constitution prohibit the States from enacting agreements with foreign entities.

Article 1, Section 10, Clause 1

"No State shall enter into any treaty, alliance, or confederation; grant letters of marquee and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

This absolute federal jurisdiction over all agreements with foreign governments and over all foreign persons in America is part of the legal authority allowing for the passage of a *tariff Act* authorizing the collection of an income tax that is withheld from payments that are made to foreign persons in America, that is constitutionally authorized, and is laid, on their *foreign* activity that is conducted in America.

To see that the income tax requirements at law that were actually created by the Underwood Simmons Tariff Act of Oct.3, 1913, is only a tax that is imposed by law within this foreign jurisdiction that the federal government possesses under the Constitution over all foreign matters, and is not actually imposed domestically beyond that foreign jurisdiction, on citizens and residents within America, one only need examine the difference in the treatment under the law between non-resident aliens and resident aliens in regards to the withholding of tax at the source.

From the legal definition of the *Withholding Agent* we clearly see that non-resident aliens are subject to the withholding of income tax under Section 1441. However, as soon as a non-resident alien becomes a resident alien, then he/she is no longer subject to the withholding of income tax at the source by the *Withholding Agent* because he/she is no longer part of the definition of the *Withholding Agent's* authority over subject persons. The statutory definition of the *Withholding Agent*, from Title 26 U.S.C. Section 7701(a)(16), only specified that withholding was required under Sections 1441, 1442, 1443 and 1461, as we have seen. Once the non-resident alien become a resident alien they are no longer the subject of the tax, and it is no longer authorized to be withheld from them because they are no longer within its jurisdictional reach because as a resident of one of the fifty states the aliens' activity is now recognized by the law as being domestic and not foreign, and therefore outside the federal territorial and subject matter jurisdictions.

The resident alien's economic activity is no longer within the foreign jurisdictional authority of the federal government because they are now under the territorial jurisdictional authority of the state government that they are resident within. Tariffs are imposed on foreign activity, not domestic. As soon as the non-resident alien becomes a resident ("resident" is defined in the law) his activity is recognized by the law as being moved from the "foreign" category that is subject to a tariff, and into the "domestic" category, which is outside the subjectivity to any tariff, and the withholding of tax from their payments terminates. Domestic activity is not subject to any tariff because a tariff is a foreign tax. Even when the activity is conducted by a foreign person who has become a resident in the U.S. (but who is still foreign) the tax is not withheld at the source because the resident is not subject to the payment of a tariff, because a resident's activity is not considered foreign, but domestic, and is therefore not lawfully subject to payment of a

tariff on foreign activity. If resident aliens aren't even subject to the income tax it is of course absurd to even suggest that American citizens are, or ever were the proper subjects of this income tax in the form of a foreign tariff – that is all government mythical fiction and propaganda, as we will expose.

The indirect collection scheme of the income tax, which is collected at the source by withholding from subject persons, and which is paid by the third party *Withholding Agent* who is made liable, and is not paid by the actual subject of the tax (the foreigner), has never changed in 94 years. The rate of tax to be ultimately owed under Sections 1, and the percentage of earnings to be withheld under Sections 1441 and 1442 have all been adjusted both up and down at different times through the years, and the language of the statutes establishing the amounts of the allowable deductions, credits and expenses has been continuously altered as well, but the fundamental scheme of the income tax laws under Subtitle A has never changed in 94 years – it is now, and has always been, a tax that is collected at the source from subject persons by a third party, by withholding at the source from subject payments.

The subject persons are all foreign, of course, because the tax is clearly, from a simple and straight forward reading of the law, nothing more than an indirect tariff on the income derived from the economic activity of foreigners under the federal jurisdiction, it is not a direct tax on the domestic activity or income of any American citizens under the territorial jurisdiction of the fifty states. Liability has nothing to do with the collection of the tax from the taxpayer – it is just taken from foreign persons by *Withholding Agents,* who are then made liable for turning over the collected tax to the Treasury. Note that Section 1461 indemnifies the *Withholding Agent* from any claims made by the foreign taxpayer regarding the taking (withholding) of the tax. If no tax is collected by withholding when it should have been, then Sections 1461 and 1463 clearly and simply state that it is the *Withholding Agent* who is liable for the uncollected tax, penalties and interest, not the (foreign) taxpayer receiving payments. Under the actual laws the IRS should never approach a taxpayer directly to collect any uncollected tax because that constitutes direct taxation, only the *Withholding Agents or the* payors may be approached according to the law – that keeps it all indirect and constitutional.

Exhibit J

1132.75 (12-21-87)
Criminal Investigation Division

The Criminal Investigation Division enforces the criminal statute applicable to income, estate, gift, employment, and excise tax laws (other than those excepted in IRM 1112.51) involving United States citizens residing in foreign countries and nonresident aliens subject to Federal income tax filing requirements by developing information concerning alleged criminal violations thereof, evaluating allegations and indications of such violations to determine investigations to be undertaken, investigating suspected criminal violations of such laws, recommending prosecution when warranted, and measuring effectiveness of the investigation processes. Assists other Criminal Investigation offices in special inquiries, secures information from foreign countries relating to tax matters under joint investigation by district offices involving United States citizens, including those involved in racketeering, stock fraud and other illegal financial activity, by providing investigative resources upon district and/or the Office of the Assistant Commissioner (Criminal Investigation) requests; also assists the U.S. attorneys and Chief Counsel in the processing of criminal investigation cases, including the preparation for the trial of cases.

Citizens residing where ?

What kind of aliens ?

And that is the entire extent of the proper legal domestic application of the income tax (in America) under the law. There are no other provisions anywhere in all of Subtitle A - Income Taxes, authorizing the withholding of this tax from any other persons, foreign or otherwise, or stating that any other person other than the *Withholding Agent* is liable, or is made liable, for either the payment of the income tax, or for the payment of any penalties or interest incurred as a result of a failure to pay.

The income tax is an indirect foreign tax in the form of a tariff that is collected at the source by withholding (agents) from subject persons - who are all foreign and properly subjected to the payment of a tariff. But, tariffs do not apply to domestic economic activity, and the scheme of the income tax - withholding at the source from subject persons, has never changed in 94 years. The same provisions exist in the law now as did in 1913, when the Supreme Court ruled (of course) that the whole thing is certainly Constitutional under Article 1, Section 8, Clause 1 authorizing the government to lay taxes: imposts, duties and excises.

This understanding, based on these legal facts presented here regarding the withholding of income tax from subject persons under Subtitle A, represents what is still in the law today in subtitle A – the Income Tax. The income tax does not apply to domestic economic activity, because domestic activity cannot be lawfully made the subject of any tariff act or tariff tax.

The Original History in America

Income Duty of 1861

Most people in America believe that the federal personal income tax first started here in 1913, with the adoption of the 16th Amendment. That is not correct. Income tax first appeared in the United States law at the beginning of the Civil War, in 1861. The text of the law read:

INCOME DUTY

> **§ SEC. 89.** And be it further enacted, That for the purpose of modifying and reenacting, as hereinafter provided, so much of an act, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other

> purposes," approved fifth of August, eighteen hundred and sixty-one, as relates to income tax;...

The first income tax was an income **duty**, imposed as a duty on revenue derived from **foreign imports**. Duties are collected at the Ports of Entry to a nation, But they are not imposed on domestic activities.

Also in the 1860s, in 1862, along with the Income Duty of 1861, Congress passed an Act into law that can only, and most accurately, be described as a Federal employment "return" agreement. The text of the Act read:

> **Section 86. Salaries and Pay of Officers and Persons in the Service of the United States, and Passports.**
>
> **§ SEC. 86.** And be it further enacted, that on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the **civil, military, naval, or other employment or Service of the United States**, including senators and representatives and delegates in Congress, **when exceeding the rate of six hundred dollars** per annum, a ***duty*** of three per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling or adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the payroll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment.
> ...[balance of section 86 applied to passports] (emphasis added)

Please note that the only people who are subject to this tax, by clear statutory language**,** are "*persons in the civil, military, naval, or other employment or Service* ***of the United States***". Section 86 identifies that the *income* tax, even in the 1860's, was an *indirect* tax that was originally based on the concept of taxation by a scheme of tax that provides for *collection of the tax at the source*; which indirect *scheme* allows the burden of the tax to be <u>*shifted*</u> by the actual *taxpayers* (who are the *tax-collectors*; - who are the federal *paymasters* under the Section 86

tax), to some other party (the federal employees), by some *operational* mechanism (the *paymasters* deduct and withhold the tax from payments made to those *persons* working for the United States). Thus effecting, "*collection of the tax at the source*".

By this Act, the amount of compensation contractually originally agreed to, was diminished by one party to the agreement (Congress) without the consent of the other party (the federal employee). An unilaterally imposed change in the employment contract of all persons already in the employ of the Federal government was, and is **not** legal, and the conduct of the United States judges for the next 70 years proves it, as they themselves refused to pay this "duty" until after 1932. Thus the federal judges collectively became, according to the IRS, the first "*tax protesters*" in American history.

Of course, the Judges understood that the result of unilaterally arranging for the withholding of three (3%) percent of the compensation contractually due to federal government employees under existing contracts, was an improper and unlawful deprivation of private property and liberty, without due process of law, which was violative of the Fifth Amendment to the Constitution, among other *Rights*.

The Judges Refuse

In 1863 Supreme Court Chief Justice Taney sent a letter to the Secretary of the Treasury attacking implementation of Section 86 on the compensation of Federal judges as being unconstitutional. This letter was also published as a Supreme Court decision (157 U.S. 701). In it, Justice Taney states:

> *"The Act in question, as you interpret it, diminishes the compensation of every judge three percent, and if it can be diminished to that extent by the name of a tax, it may in the same way be reduced from time to time at the pleasure of the legislature."*

Here you can see that the judges understood the effect of this law was a diminishment *"by the name of a tax"*. They knew it was not an actual tax, but an lawful change of a pre-agreed contractual obligation, imposed unilaterally by one party to the contract without the agreement of

the other party to the contract. The judges chose to exercise their right to refuse to accept this arbitrary change to their contracts.

The facts presented above were expressed by the Supreme Court in *Pollock v Farmer's Loan & Trust Co*., in 1895 where they said:

> "Subsequently, in 1869, ... The question arose whether the law which imposes such a tax upon them was constitutional. The opinion of the Attorney General thereon was requested by the Secretary of the Treasury. The Attorney General, in reply, gave an elaborate opinion advising the Secretary of the Treasury that no income tax could be lawfully assessed and collected upon the salaries of those officers who were in office at the time the statute imposing the tax was passed, holding on this subject the views expressed by Chief Justice Taney. His opinion is published in Volume XIII of the Opinion of the Attorney General, at page 161. I am informed that it has been followed ever since without question by the department supervising or directing the collection of the public revenue."

The unlawfully enacted "tax", had the result of creating a three percent debt obligation, effected by an un-agreed unilateral contractual change imposed upon Federal government employees working under an existing employment agreement in 1862. However the tax established by Section 86 was legal when applied to the salary of persons who took employment with the Federal government <u>after</u> the Act was passed because they were on notice that a three percent tax was part of their employment agreement.

This “tax” (notice that it is not even called a tax in the Act, but a “Duty”) **only applies to federal employees**. It is these two acts from the 1860's: the foreign income duty, and the federal employment tax (or "return" of money to the Treasury), - where the *power* to tax *income* derives its original *constitutional* and *historical* existence; Which facts serve as additional proof that the foundational constitutional authorities for the *income* tax, and the taxation of income, pre-date the adoption of the 16th Amendment by some 50 years, and is a taxing power that is granted fundamentally under the *indirect* Article I, Section 8, clause 1, granted powers to tax, by *Impost, Duty* and *Excise.*

UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE FIRST SESSION OF THE
SEVENTY-SIXTH CONGRESS
OF THE UNITED STATES OF AMERICA

1939

AND

TREATIES, INTERNATIONAL AGREEMENTS OTHER
THAN TREATIES, AND PROCLAMATIONS

COMPILED, EDITED, INDEXED, AND PUBLISHED BY AUTHORITY OF LAW
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOLUME 53

PART 1

INTERNAL REVENUE CODE

APPROVED FEBRUARY 10, 1939

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SUPPLEMENT P—FOREIGN PERSONAL HOLDING COMPANIES

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CHAPTER 1—INCOME TAX
SUBCHAPTER A—INTRODUCTORY PROVISIONS

SEC. 1. APPLICATION OF CHAPTER.

The provisions of this chapter shall apply only to taxable years beginning after December 31, 1938. Income, war-profits, and excess-profits taxes for taxable years beginning prior to January 1, 1939, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1938 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1938.

SEC. 2. CROSS REFERENCES.

The cross references in this chapter to other portions of the chapter, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

SEC. 3. CLASSIFICATION OF PROVISIONS.

The provisions of this chapter are herein classified and designated as—

Subchapter A—Introductory provisions,

Subchapter B—General provisions, divided into Parts and sections,

Subchapter C—Supplemental provisions, divided into Supplements and sections.

SEC. 4. SPECIAL CLASSES OF TAXPAYERS.

The application of the General Provisions and of Supplements A to D, inclusive, to each of the following special classes of taxpayers, shall be subject to the exceptions and additional provisions found in the Supplement applicable to such class, as follows:

(a) Estates and trusts and the beneficiaries thereof,—Supplement E.

(b) Members of partnerships,—Supplement F.

(c) Insurance companies,—Supplement G.

(d) Nonresident alien individuals,—Supplement H.

(e) Foreign corporations,—Supplement I.

(f) Individual citizens of any possession of the United States who are not otherwise citizens of the United States and who are not residents of the United States,—Supplement J.

(g) Individual citizens of the United States or domestic corporations, satisfying the conditions of section 251 by reason of deriving a large portion of their gross income from sources within a possession of the United States,—Supplement J.

Here are the classes of persons subject to the indirect tax on income under Article I, Section 8.

(h) China Trade Act corporations,—Supplement K.

(i) Foreign personal holding companies and their shareholders,—Supplement P.

(j) Mutual investment companies—Supplement.

SUBCHAPTER B—GENERAL PROVISIONS

Part I—Rates of Tax

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 of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25.

SEC. 12. SURTAX ON INDIVIDUALS.

(a) DEFINITION OF "SURTAX NET INCOME".—As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25 (b).

(b) RATES OF SURTAX.—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

Upon a surtax net income of $4,000 there shall be no surtax; upon surtax net incomes in excess of $4,000 and not in excess of $6,000, 4 per centum of such excess.

$80 upon surtax net incomes of $6,000; and upon surtax net incomes in excess of $6,000 and not in excess of $8,000, 5 per centum in addition of such excess.

$180 upon surtax net incomes of $8,000; and upon surtax net incomes in excess of $8,000 and not in excess of $10,000, 6 per centum in addition of such excess.

$300 upon surtax net incomes of $10,000; and upon surtax net incomes in excess of $10,000 and not in excess of $12,000, 7 per centum in addition of such excess.

$440 upon surtax net incomes of $12.000; and upon surtax net incomes in excess of $12,000 and not in excess of $14,000, 8 per centum in addition of such excess.

$600 upon surtax net incomes of $14,000; and upon surtax net incomes in excess of $14,000 and not in excess of $16,000, 9 per centum in addition of such excess.

$780 upon surtax net incomes of $16,000; and upon surtax net incomes in excess of $16,000 and not in excess of $18,000, 11 per centum in addition of such excess.

$1,000 upon surtax net incomes of $18,000; and upon surtax net incomes in excess of $18,000 and not in excess of $20,000, 13 per centum in addition of such excess.

$1,260 upon surtax net incomes of $20,000; and upon surtax net incomes in excess of $20,000 and not in excess of $22,000, 15 per centum in addition of such excess.

$1,560 upon surtax net incomes of $22,000; and upon surtax net incomes in excess of $22,000 and not in excess of $26,000, 17 per centum in addition of such excess.

$2,240 upon surtax net incomes of $26,000; and upon surtax net incomes in excess of $26,000 and not in excess of $32,000, 19 per centum in addition of such excess.

$3,380 upon surtax net incomes of $32,000; and upon surtax net incomes in excess of $32,000 and not in excess of $38,000, 21 per centum in addition of such excess.

$4,640 upon surtax net incomes of $38,000; and upon surtax net incomes in excess of $38,000 and not in excess of $44,000, 24 per centum in addition of such excess.

$6,080 upon surtax net incomes of $44,000; and upon surtax net incomes in excess of $44,000 and not in excess of $50,000, 27 per centum in addition of such excess.

The Requirement to File an *income tax* Return Form

The IRS is required by law to provide an I.R.S. *Notice 609* to the American public with nearly every piece of correspondence that it issues to an individual in America in pursuit of the enforcement of the federal income tax laws. That *Notice 609* plainly and clearly states:

> **Privacy Act and Paperwork Reduction Act, Notice 609.**
>
> … Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that **you must file a return or statement with us for any tax you are liable for**. …

By this specific language of the I.R.S. *Notice 609*, an intelligent *person* must **immediately** be concerned with properly understanding the statutorily specified legal facts controlling the issue of determining the presence or absence of any liability imposed by the specific provisions of the Title 26 statutes of the United States Code (U.S.C.) for the payment of any federal tax.

Support for this understanding is readily available from the Title 26 statutes themselves, as the I.R.S. itself has historically cited Sections 6001, 6011, and 6012 among others as the source for general information on filing requirements.

Title 26 U.S.C. Section 6001, the first code section relied upon by the I.R.S. in establishing the requirement to "*keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe*" regarding the requirement to make a federal tax return, plainly and clearly states

> **§ 6001. Notice or regulations requiring records, statements, and special returns**
>
> **Every person liable for any tax** imposed by this title, or for the collection thereof, **shall keep such records**, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, **he may require any person, by notice served upon such person or by regulations, to**

Department of the Treasury
Internal Revenue Service

Notice 609

(Revised April 1992)

Privacy Act Notice

The Privacy Act of 1974 says that when we ask you for information, we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if you do not provide it and whether or not you must respond under the law.

This notice applies to tax returns and any papers filed with them. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections.

Code section 6109 and its regulations say that you must show your social security number on what you file. You must also fill in all parts of the tax form that apply to you. This is so we know who you are, and can process your return and papers. You do not have to check the boxes for the Presidential Election Campaign Fund.

We ask for tax return information to carry out the U.S. tax laws. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to certain foreign governments under tax treaties they have with the United States.

Cat. No. 45963A

If you do not file a return, do not give us the information we ask for, or provide fraudulent information, the law says that we may have to charge you penalties and, in certain cases, subject you to criminal prosecution. We may also have to disallow the exemptions, exclusions, credits, deductions, or adjustments shown on your tax return. This could make your tax higher or delay any refund. Interest may also be charged.

Please keep this notice with your records. You may want to refer to it if we ask you for other information. If you have questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

Notice 609
(Rev. April 1992)

GPO : 1992 O - 326-518

> **make such returns, render such statements, or keep such records**, as the Secretary deems **sufficient to show whether or not such person is liable for tax under this title**. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a)."

Clearly this code section, by its first six words: "*Every person liable for any tax*", requires that statutory liability for tax, or for the *collection thereof*, be first established in law to actually, factually exist, in order for a *person*[14] to be *required* by this statute to keep any records, render any statements, or file any federal tax returns. Without a statutory liability for the payment of federal tax actually existing in a *person's* name or capacity, no *person* is, or can legitimately be, required by the I.R.S. to file a federal tax return under this or any other code section.

It is clear from this statute that under the law there are two distinct classes of "*persons*"[15] identified within it who are required to "*keep records, render statements, and make returns*". The first is those *persons* who are liable by statute for the payment of a tax imposed within Title 26 of the United States Code. Those liable persons are required to keep whatever records the Secretary prescribes. The second class is any persons *who have been served Notice,* or for whom *regulations have been published*, which requires them to keep records, render statements and make returns. These persons, by law, must only keep records sufficient to show whether or not they are liable for tax, and to what extent that liability has accrued.

Petitioner has been unable to locate any statute in Title 26 which makes him liable for the payment of any federal tax imposed thereunder. The only statutes that he is able to identify in Title 26 that makes anyone liable for the payment of federal personal income tax is I.R.C. §§ 1461, 1463, and 3403, which state that it is the federal tax collectors in the form of the statutorily defined "*Withholding Agents*"[16] and the "*employers*"[17], who are both made liable for the payment of those taxes that they have collected from other "*persons*", by withholding money as tax from

[14] *See* Title 26 U.S.C. § 7701(a)(1)
[15] *See* IRC § 7701(a)(1)
[16] *see* IRC § 7701(a)(16)
[17] *see* IRC § 3401(d)

payments made to those other subject "*persons*". Section 1463 also mentions liability, but it simply says that it is those same *Withholding Agents* who are also made liable for the payment of any penalty, interest, or additions to tax that are resultant from any failure to timely report or pay any tax that is due by law to be collected.

Therefore, since Petitioner is unable to determine that he falls within the first class of *persons* referred to above (liable "*persons*"), it therefore would appear that he has no lawful requirement to keep any records described in the first sentence of I.R.C. § 6001. Likewise, since he has never been served any legal or written *Notice*, nor been able to find any published regulations which require him to keep the records described in the second sentence of I.R.C. § 6001, he also has no lawful requirement with respect to those records either.

I.R.C. Section 6011 reinforces this understanding as it repeats the requirement to be a *person* "*made liable for any tax*" , "*or with respect to the collection thereof*", before any statements or returns are required to be made by that individual.

> **Sec. 6011. General requirement of return, statement, or list.**
>
> **General rule.**
> When required by regulations prescribed by the Secretary **any person made liable for any tax** imposed by this title, **or with respect to the collection thereof,** shall make a return or statement according to the **forms and regulations prescribed by the Secretary**. Every person required to make a return or statement shall include therein the information required by such forms or regulations.....
>
> [Emphasis added]

This code section also specifies again, as we were told by *Notice 609*, and as was also specified in Section 6001, that before a return or statement can be required by law from a *person*, that *person* must be "*made liable for any tax"*, or liability must be identified in statute "*with respect to the collection thereof"*.

This code section also specifies that the "*forms and regulations*", allegedly required, must be "*prescribed by the Secretary*". This immediately raises the next question of just exactly where in the law have those allegedly *required* "*forms and regulations*" been identified and proscribed, as

required under this provision of this statute? Also, this must surely raise the next logical question of: "Is it possible, and how, to look up in the law those required forms in order to positively correctly ascertain that one is filing the correct return actually required under the law"?

Clearly, due process requires that before being required to keep books and records, make returns and statements, or pay any federal tax, one must be a person made liable by the statutes for the payment of the tax. Without liability for the payment of tax being established in the statutes, there can be no credence given to any demand for the payment of tax, or alleged deficiency for tax which itself must be based in the establishment of some statutory liability for the payment of the tax.

Due to the lack of any clear requirement passed to the Petitioner by these statutes: to keep records or render statements or make returns of any kind pursuant to I.R.C. §§ 6001 and 6011, there appears to be no lawful authority to force him to produce for the I.R.S. any records or statements, or make returns of any kind regarding his own earnings, as opposed to any taxes that he may have collected from other *persons*, which mandatory disclosure is authorized, but does not factually exist in this matter as an enforceable tax liability, as no federal tax has been collected from any person by the Petitioner.

It is for this reason that the identification of the claimed statutory authority for these disputed deficiency actions is of extreme importance. If it is claimed that there is some provision of law which authorizes the I.R.S. or its employees to demand records of some kind which are not required by law to be kept by me, then it is imperative that such provision be identified at this time, so that such claimed authority can be verified by both the Petitioner and the court.

If instead, it is contended that Petitioner actually does fall into one of the two classes of *persons* to which the requirements of I.R.C. §§ 6001 or 6011 applies, then please substantiate such contention by providing the appropriate information – that is, IDENTIFY BY CITE (Title and Section) the statute which allegedly makes him liable for any tax imposed by Title 26, or a copy of the required legal *Notice* sent to him by the Secretary, or the citation of the published regulation applicable to him as referenced in I.R.C. § 6001.

The Statutory Liability for Tax under Subtitle A Law

From a plain and clear reading of these statutes, that the I.R.S. itself cites as the authority for controlling the filing requirements, it is readily determined that if a *person* is liable by statute for the payment of tax, then he or she must file a federal tax return.

It is therefore clear that a *person* must then accurately and lawfully establish whether or not the statutes make he or she liable for the payment of tax, and how, and when.

I say liable by statute because due process requires that required elements of the law, like liability for tax, must be actually specified and spelled out in statute, in writing, and cannot be legitimately assumed to exist and therefore operate against an individual *person*.

> "If any question of fact **or liability** be **conclusively presumed against him, this is not due process of law."** Black's Law Dictionary 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

A computerized search of the Title 26 statutes of Subtitle A for the word "liable", reveals that the **only statutes** in Subtitle A that specify a "*person*" who is either made "liable" for the payment of the income tax, or that has "liability" for income tax payments, are code sections 26 U.S.C. §§ 1461 and 1463.

Apparently, many people in America, including those that work for the I.R.S., are completely unaware that while Section 1 imposes a tax on individuals, its language does not include the word liable, or any form of it, and it does not actually make any specific person liable for the payment of the tax, it only establishes a rate of tax imposed on the *taxable income* of the different groups (married, single, heads of households, etc.) therein defined.

However, the establishment of the true statutory liability that actually does exist in the written law, for the payment of the federal personal income tax, is plainly and clearly done in Title 26 U.S.C. § 1461, which states:

> **§ 1461 Liability for withheld tax.**
>
> Every *person* **required to deduct and withhold any tax** under this chapter **is hereby made liable for such tax** and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

This statute plainly states that any *person* who has deducted and withheld any income tax, is made liable for the payment of the collected tax to the U.S. Treasury. Much the same way that a store, acting as a tax collector, is made liable for the payment of the sales taxes that it has collected from its third party customers. Both the store and the *"person"* are empowered under the law to act as the tax collectors, and are then subsequently made liable for the payment over to the Treasury of the collected tax. But the "*person*" is **not made liable** for the payment of tax on their own activity, they are only made liable for the tax that has been collected by deducting and withholding from the subject transactions of other *persons*.

The Subtitle A Withholding Authority by Statute

The *persons* who are empowered to collect the income tax under the Subtitle A authorities, by deducting and withholding tax from subject taxable *persons*, are of course, the legislatively defined *Withholding Agents*. Title 26 U.S.C. Section 7701(a)(16) states;

> **§ 7701 Definitions.**
>
> **(a)** When used in this Title ...
>
> **(1). Person.** – The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.
> ….

> **(16). Withholding Agent.** - The term "Withholding Agent" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461."

This subsection, (a), provides the general statutory definition of these and other terms to be used within the context of the Title 26 statutes of the United States Code. We see that a *person* is really not just an individual, but could also be any of a number of different types of entities that exist under our laws, i.e.: a company, trust, corportation, etc., and that a *Withholding Agent* has a very explicitly listed set of statutory authorities at the heart of the statutory definition of his or her legal power to act under the law.

The statutory definition of the term "*Withholding Agent*", those "*persons*" identified in Section 1461 as being the *persons* required to deduct and withhold tax, and who are the "*persons*" who are made liable for the payment of tax in Subtitle A of Title 26**,** is simple and straight-forward. To understand the complete enacted authority of the *Withholding Agent,* all one need do is read the actual code sections invoked by the statutory definition shown above. Those code sections: 1441, 1442, 1443, and 1461, which are the only authorities cited in the statutory definition of the *Withholding Agent* provided by 7701(a)(16), supra, provide as follows;

> **§ 1441**. **Withholding of Tax on Nonresident Aliens**
>
> **(a) General rule.** Except as otherwise provided in subsection (c) all persons, in whatever capacity acting having the control, receipt, custody, disposal or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any **nonresident alien individual**, or of any **foreign** partnership **shall deduct and withhold from such items a tax** equal to 30 percent thereof, except that in the case of any items of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

Section 1441 only authorizes the withholding and collection of income tax from nonresident aliens.

Section 1442 states;

§ 1442 Withholding of Tax on Foreign Corporations

(a) General rule. In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in Section 1441 a tax equal to 30% thereof. ....

(b) Exemption. Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporations engaged in trade of business in the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations. For purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam, American Samoa, the Northern Marianna Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

Section 1442 only authorizes the withholding and collection of income tax from foreign corporations.

Section 1443 states;

§ 1443 Foreign Tax Exempt Organizations

Income subject to section 511. In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

(b) Income subject to section 4948. In the case of income of a foreign organization subject to the tax imposed by section 4948 (a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

Section 1443 specifies provisional treatment for some foreign organizations that are partially tax exempt, but also plainly and clearly only affects foreign organizations.

And finally, Title 26 U.S.C. § 1461, the last code section referenced in the statutory definition of a *Withholding Agent,* is the same statute that we have already seen because it is the same code section that we found that actually makes a *person* liable for the payment of the federal personal income tax.

Title 26 U.S.C. § 1461 clearly says that the *Withholding Agents* are made liable for the payment of the income taxes that they have withheld from other persons, who are all foreign. It does not make the *Withholding Agent* liable for the payment of tax on his own income. Under the provisions of code sections 1441, § 1442 and § 1443, the only persons subject to the withholding of income tax from their payments by *Withholding Agents,* are all foreign "persons".

As regards this simple reading of the establishment of statutory liability;

> involving statutory construction, a court's starting point must be the language employed by Congress, and it would be assumed that the legislative purpose is expressed by the ordinary meaning of the words used; thus, absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *American Tobacco Co. v. Patterson*, 456 US 63, 102 S.Ct. 1534, 71 L.Ed.2d 748 (1982)

Earlier, it was seen that Sections 6001 and 6011 both referenced liability for tax, or *for the collection thereof,* and now we understand why. Both of these code sections, 6001, and 6011, clearly apply to the *Withholding Agents* and invoke their duty to report and pay over to the U.S. Treasury the tax that has been collected from those subjected foreign *persons*.

Petitioner has never withheld tax from payments made to foreign persons and therefore has no statutory liability for tax under Sections 1461 or 1463. Is there another code section besides Section 1461 that establishes liability for payment of the federal personal income tax? If so, it cannot be identified by the Petitioner in law, so would Respondent please be so kind as to cite it in its response to this Objection, so that it may be located and reviewed?

Exhibit B

Title 26 United States Code

§ 7701 Definitions.

(a) When used in this Title ...

….

(16). Withholding Agent. - The term "Withholding Agent" means any person required to deduct and withhold any tax **under the provisions of sections 1441, 1442, 1443, or 1461.** **(emphasis added)**

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§ 1441 Withholding of Tax on Nonresident Aliens.

(a) General rule. Except as otherwise provided in subsection (c) all persons, in whatever capacity acting having the control, receipt, custody, disposal or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), **of any nonresident alien individual**, or of any foreign partnership shall deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any items of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item. **(emphasis added)**

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§ 1442 Withholding of tax on foreign corporations.

(a) General rule. In the case of **foreign corporations** subject to taxation under this subtitle, there shall be **deducted and withheld at the source** in the same manner and on the same items of income as is provided in Section 1441 a tax equal to 30% thereof. ....

(b) Exemption. Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporations engaged in trade of business in the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

(c) Exception for certain possessions corporations. For purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam, American Samoa, the Northern Marianna Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation. **(emphasis added)**

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§ 1443 Foreign Tax Exempt Organizations

(a) Income subject to section 511. In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

(b) Income subject to section 4948. In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

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§ 1461 Liability for withheld tax.

Every person required to deduct and withhold any tax under this chapter **is hereby made liable** for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter. **(emphasis added)**

The computerized search through Subtitle A for the term “liable” or ”liability” (or any form of them), referenced earlier, also found, if one remembers, Title 26 U.S.C. Section 1463. That code section plainly and clearly states

> **§ 1463. Tax paid by recipient of income**
>
> **If—**
> **(1)** any person, in violation of the provisions of this chapter, **fails to deduct and withhold any tax** under this chapter, **and**
> **(2) thereafter the tax** against which such tax may be credited **is paid**,
>
> the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in **no case relieve** such person **from liability for interest or any penalties** or **additions to the tax** otherwise applicable **in respect of such failure to deduct and withhold.**

This code section says that it is the *Withholding Agents* who are responsible for, made liable for, and must pay, the penalties, interest, and additions to tax that are due on the payment deficiency, that was not properly completely withheld, reported, and paid into the Treasury in a timely manner by the *Withholding Agent* as required by law. It is not the individual *person* who is penalized by any of these monetary additions of interest, penalty, or addition to tax, it is the tax collector, or *Withholding Agent,* who is penalized and is properly subject to civil penalties and fines, not the general population - in an unconstitutionally direct manner.

The United States government has for 95 years held out the *Brushaber v. Union Pacific R.R. Co.* decision as the decision upholding the constitutionality of the income tax legislation enacted in 1913 (and tested by the court in1916). When we examine the decision of the court handed down in the *Brushaber* case we find in the very first sentence of the decision what is, at this point, an extremely revealing statement that has been overlooked or ignored by the legal community for nearly 100 years:

> “…, the appellant filed his bill to enjoin the corporation from complying with the **income tax provisions of the tariff act** of October 3, 1913.” *Brushaber v. Union Pacific R.R. Co*, 240 U.S. 1, 9 (1916)

In the very first sentence of this decision we are told that the Court is testing the income tax provisions of a tariff act. The specific tariff act referenced here is the Underwood-Simmons Tariff Act of October 3, 1913.

A tariff of course is one form of an impost, and an impost, of course, is one of the three kinds of indirect taxes the Constitution authorizes the government to lay and collect under;

> **Article I, Section 8, Clause 1**
>
> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, … "

As an indirect tax, the tax is collected in a manner that is *indirect*, not *direct*, wherein, the taxpayer is insulated from direct contact with the taxing authority and their operations to enforce collection of the tax. This clear, controlling, legal understanding is evidenced by the Court in previous cases:

> "Ordinarily, all taxes paid primarily by persons who can **shift the burden** upon someone else, or who are under no legal compulsion to pay them, are considered **indirect taxes**;" *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 558 (1895)

It is stated by the Court in the very first sentence of the *Brushaber* decision that the income tax legislation was originally passed as the "*income tax provisions of the tariff act of Oct 3., 1913*".

A tariff is a tax, or schedule of rates for a tax, laid or imposed on foreign goods entering the United States. A tariff is also a tax on foreign activity occurring in the United States.

The *Brushaber* Supreme Court decision goes on, also plainly and clearly stating:

> "**2.** The act provides for **collecting the tax at the source**; that is, **makes it the duty of corporations, etc., to retain and pay the sum of the tax** …" *Brushaber v. Union Pacific R.R. Co*, 240 US 1, 21-22 (1916)

Here, the court clearly identifies in its *Opinion* that the true ***tested*** scheme of the income tax, **as provided by the actual legislation** of the tariff act, is **that of a tax that is collected at the source**, **by third party tax collectors,** identified here as the "*corporations, **etc.***"

The entire true scheme of the federal personal income tax, as it was originally imposed under the actual laws enacted by Congress in 1913, and as it was actually tested and upheld by the Supreme Court in 1916, and which still exists in the law today, is described by the Court in this one sentence. The Court identifies that this "…*collecting the tax at the source;"* is how the federal personal income tax is actually established and imposed, and enforced and collected, under the actual provisions of the law because "*The act provides…*", and it identifies how the tax is to be collected and paid under the actual laws that were passed into existence, as it "…*makes it the duty of corporations, etc., <u>to retain and pay</u> the sum of the tax…*".

It should be noted that the "*etc.,*" referenced by the Supreme Court in the reference to the "*corporations, etc.*," with a "*duty… to retain and pay the sum of the tax",* represents the American People, the American Sovereign, who are cast together with the domestic corporations by the statutes, in the role of tax collector when they are making payments to subject foreign persons. This is clear from the statutory definition of the Subtitle A federal income tax collector defined in law as the "*Withholding Agent*", which, as you may remember, made "*any person required to deduct and withhold*" responsible for the administration of the withholding duties, where a "*person*" is any of an "*individual, a trust, estate, partnership, association, company or corporation*". The "*individual*" referenced here is of course any individual who makes any payments to a subject party as defined in law through Section 1441, 1442 and 1443, and could easily be an individual American citizen.

The income tax laws recognize that the proper role of the Sovereign in any legitimate system of taxation is the role of the tax collector, not the subject taxpayer. Sovereigns collect tax. Sovereigns do not impose tax on themselves, they collect it from their subjects. We the People are the Sovereign and hold the sovereign power in these United States. The federal government is merely our elected representative. It is not our ruler and does not possess the power to tax the citizens directly even after the passage of the 16th Amendment.

As an indirect tariff, the income tax provisions of the statutes of Subtitle A plainly and clearly authorize an indirect scheme for the collection of the income tax that is based on the withholding of tax from subject, foreign, non-resident *persons*, by the statutorily defined federal tax collectors, the *Withholding Agents*. The provisions of the statutes work harmoniously together to clearly record that the only *persons* actually subject to the collection of the income tax tariff from their payments, are all foreign, which is why the federal personal income tax, under the documented actual Subtitle A provisions of the statutes, is only withheld from foreign persons.

The injection of this third party, the *Withholding Agent,* into the Subtitle A income tax collection scheme as the tax collector*,* keeps the income tax indirect because the tax is collected by a third party – the *Withholding Agent*, and the burden is shifted from that third party to the ***subject*** *person* through withholding from payments, just as the Supreme Court identified it needed to be in its *Pollock* decision in order to be deemed constitutional.

Under the actual provisions of the statutes, the tax is not collected directly by the government from the general population, but is collected indirectly by the third party tax collectors, the *Withholding Agents.* And under the actual provisions of the statutes, it is again, not the general population that is subjected directly to penalties, interest, and additions to tax for any failure to pay or file. It is the *Withholding Agents,* who failed their legal duty as tax collectors who are subsequently punished under the true provisions of the law as reflected in Section 1463, *supra*.

Under the actual provisions of the statutes, the sovereign American citizens are not taxed and are not cast in the role of subject taxpayers, but rather are empowered as tax collectors – the *Withholding Agents*. It is the subject foreign non-resident entities, the non-resident individuals and corporations, that were actually cast in the role of the subject recipients of income by the "*income tax provisions of the tariff act of Oct. 3, 1913*", and are still plainly and clearly exclusively cast in that role by the statutes today.

It certainly appears that, contrary to popular belief, the 16th Amendment did not authorize the laying of a direct nonapportioned income tax. The Supreme Court, recognizing that the income

tax provisions of the legislation being tested in 1916 were part of a tariff act, and knowing that a tariff is an impost, which is an indirect tax under the Constitution under Art. 1, § 8 , cl. 1, was able to quite easily keep the distinction intact between the two great classes of taxing powers, direct and indirect, and maintain that;

> "… the provisions of the 16th Amendment **conferred no new power of taxation** but simply **prohibited** the previous complete and plenary power of income taxation possessed by Congress from the beginning **from being taken out of the category of indirect taxation to which it inherently belonged.**." *Stanton v. Baltic Mining Co.*, 240 US 103, 112 (1916)

It is stated conclusively by the Supreme Court in these two cases, *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916) and *Stanton v. Baltic Mining Co.*, 240 US 103 (1916), that the income tax legislation enacted in 1913, while constitutional, is so, only as an indirect tax.

In its *Opinion* in the *Brushaber* decision in 1916 the court specifically rejects the contention advanced that the recently adopted 16th Amendment authorized for the first time direct taxation of the people without apportionment (as required under Article 1, Section 2, clause 3, or proportioning as required under Article 1, Section 9, clause 4), stating:

> "We are of opinion, however, that **the confusion is not inherent**, but rather **arises from the conclusion** that the 16th 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. **And the far-reaching effect of this erroneous assumption will be made clear**…" *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 11 (1916)

Here the Court states that it is an "erroneous assumption" to believe that the 16th Amendment did away with apportionment requirement regarding direct taxes. And, in further denying the proposition and contention that the 16th Amendment authorizes a direct income tax, the Court very clearly states:

> "…it clearly results that the proposition and the contentions under it, **if acceded to, would cause one provision of the Constitution to destroy another**; that is, they would result in bringing the provisions of the

> Amendment exempting a direct tax from apportionment **into irreconcilable conflict** with the general requirement that all direct taxes be apportioned. … **This result … would create radical and destructive changes in our constitutional system and multiply confusion"** *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12

This is supported by a careful reading of the specific language of 16th Amendment:

> **16th Amendment**
>
> "Congress shall have power to lay and collect taxes on income from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

The language of the amendment does not actually state that the income tax is to be a direct tax, as the language of the amendment does not include the word "direct". The Supreme Court in the *Brushaber* case understood that if the 16th Amendment is interpreted as authorizing a direct tax, that interpretation would improperly and unacceptably engineer a direct and inherent conflict within the Constitution with the un-repealed and un-amended pre-existing provisions of Article 1 prohibiting direct taxation unless proportionately laid and apportioned for collection.

The Constitution plainly and clearly provides in Article I, Section 9, Clause 4, an unrepealed provisions that also remains unamended, notwithstanding the adoption of the 16th Amendment, that:

> **Article I, Section 9, Clause 4**
>
> "No capitation or other direct tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken."

And Article I, Section 2, Clause 3 of the U.S. Constitution plainly and clearly states that;

Article I, Section 2, Clause 3

> "Representatives and direct taxes shall be apportioned among the several states which may be included in this union, according to their respective numbers..."

The Supreme Court understood in 1916 that the 16th Amendment cannot be interpreted to authorize a direct federal income tax because these two unrepealed and unamended Article I clauses of the Constitution must still be given force of law, even after the passage of the 16th Amendment, as it is entirely improper to use one provision or clause in the law to destroy another (or two others as in this case).

There are no intervening authorities between now and 1916 in the form of subsequent regulation, Supreme Court decisions, or major acts of Congressional legislation that arguably substantially changed the scheme of the Subtitle A income tax laws.

The Supreme Court conclusively determines in 1916 that the income tax legislation being tested in these two cases is perfectly Constitutional as indirect taxation. Those same "*income tax provisions of the tariff act"*, of the Underwood-Simmons tariff act of Oct. 3, 1913, that the Supreme Court upheld then, survive intact today as Subtitle A of Title 26, imposing the tax on individuals and authorizing its *collection at the source* by tax collectors by withholding from payments made to the foreign persons identified in the law as the true subjects of the income tax.

> The primary and general **rule of statutory construction** is that the intent of the lawmaker is to be found **in the language that he has used**. He is presumed to **know the meaning of the words** and the rules of grammar. *U.S. v Goldenberg, et a!.,* 16S U.S. 95, 102 (l897).

Under the actual provisions of the income tax legislation enacted under the tariff act passed in 1913, and still in the United States Code today, those subject taxpayers are the foreign, non-resident aliens and foreign corporations, "*persons*", deriving taxable income from activity within the United States. This is made absolutely clear by the limited authority of the *Withholding Agent* to withhold tax only from foreign non-resident *persons*.

Nowhere in Subtitle A can one find the statutes authorizing the *collecting of the tax at the source* through a granted authority to withhold or collect income tax from payments made to American citizens. Nowhere in Subtitle A can one find any other statute making any other person, acting in any other capacity, liable for the payment of the federal personal income tax, interest, penalties or additions to tax.

On March 21, 1916, shortly after the *Brushaber* decision was taken on January 24th, 1916, and the Opinion of the Court was delivered by Chief Justice White, the Treasury Department released Treasury Decision 2313. This un-repealed Treasury Decision is, after over 90 years, still the active standing decision of record, controlling in these Subtitle A matters. It states:

Treasury Decision 2313 very clearly states that "*Nonresident aliens…are liable for the normal and additional tax upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States".* It does not say all *persons* in the United States are liable for tax on all of their business. It does not say that citizens, or even resident aliens, are liable for the payment of income tax on all of their business in a direct manner. It also states that Form 1040 was originally to be used by *Withholding Agents* to report the income of nonresident alien foreign principals.

Exhibit C

(T.D. 2313)
Income tax

Taxability of interest from bonds and dividends on stock of domestic corporations owned by nonresident aliens, and the liabilities of nonresident aliens under section 2 of the act of October 3, 1913.

Treasury Department
Office of Commissioner of Internal Revenue
Washington, D.C., March 21, 1916

To collectors of internal revenue:

Who is subject ?

Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway Co., decided January 21, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913.

Who is liable ?

Nonresident aliens are not entitled to the specific exemption designated in paragraph C of the income-tax law, but are liable for the normal and additional tax upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States," computed upon the basis prescribed in the law.

Who files Form 1040 ? Regarding whose income ?

The responsible heads, agents, or representatives of nonresident aliens, who are in charge of the property owned or business carried on within the United States, shall make a full and complete return of the income therefrom on Form 1040, revised, and shall pay any and all tax, normal and additional, assessed upon the income received by them in behalf of their nonresident alien principals.

The person, firm, company, copartnership, corporation, joint-stock company, or association, and insurance company in the United States, citizen or resident alien, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodic gains, profits, and income of whatever kind, to a nonresident alien, under any contract or otherwise, which payment shall represent income of a nonresident alien from the exercise of any trade or profession within the United States, shall deduct and withhold from such annual or periodic gains, profits, and income, regardless of amount, and pay to the office of the United States Government authorized to receive the same such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall make an annual return on Form 1042.

TREASURY DECISION 2313

Income Taxes

Treasury Department
Office of Commissioner of Internal Revenue
Washington, D.C., March 21, 1916

To collectors of internal revenue:

Under the decision of the Supreme Court of the United States in the case of *Brushaber v. Union Pacific Railway Co.*, decided January 21, 1916, it is hereby held that **income accruing to nonresident aliens** in the form of interest from the bonds and dividends on the stock of domestic corporations **is subject to the income tax** imposed by the act of October 3, 1913.

Nonresident aliens are not entitled to the specific exemption designated in paragraph C of the income-tax law, but **are liable for the normal and additional tax** upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States," computed upon the basis prescribed in the law.

The responsible heads, **agents**, or representatives **of nonresident aliens**, who are in charge of the property owned or business carried on within the United States, **shall make a full and complete return of the income therefrom on Form 1040,** revised, and shall pay any and all tax, normal and additional, assessed upon the income **received by them in behalf of their nonresident alien principals.**

The person, firm, company, copartnership, corporation, joint-stock company, or association, and insurance company in the United States, Citizen or resident alien, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodic gains, profits, and income of whatever kind, **to a nonresident alien**, under any contract or otherwise, which payment shall represent **income of a nonresident alien** from the exercise of any trade or profession within the United States, shall deduct and withhold from such annual or periodic gains, profits, and income, regardless of amount, and pay to the office of the United States Government authorized to receive the same such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall make an annual return on Form 1042.

The first paragraph very clearly states that "*income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913*." It does not say all *persons* in the United States are subject to federal personal income tax on all *sources* of earnings or *income*. It says

non-resident aliens are subject. This coincides perfectly with the lawful authority of the *Withholding Agent* to withhold tax in the form of a tariff from foreign "*persons*" as defined by 26 U.S.C. §§ 1441 & 1442, *supra*.

The second paragraph of Treasury Decision 2313 very clearly states that "*Nonresident aliens are not entitled tot he specific exemption designated in paragraph C of the income tax law, but are liable for the normal and additional tax upon the entire net income "from all property owned, and of every business, trade, or profession carried on in the United States".*

I.R.C. Section 5 confirms the limitation in scope of application.

26 U.S. Code § 5 - Cross references relating to tax on individuals

(a)OTHER RATES OF TAX ON INDIVIDUALS, ETC.

(1) For rates of tax on nonresident aliens, see section 871.
(2) For doubling of tax on citizens of certain foreign countries, see section 891.
(3) For rate of withholding in the case of nonresident aliens, see section 1441.
(4) For alternative minimum tax, see section 55.

The Citizen's Exemption

And here's the "*exemption*" in "*paragraph C*" of the (recodified) income tax law referenced by the Treasury Decision (2313), - that does not apply to non-resident aliens:

TITLE 26 USC

§ 6654 - FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX

(e) Exceptions
(1) Where tax is small amount
No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $1,000.
(2) Where no tax liability for preceding taxable year

> No addition to tax shall be imposed under subsection (a) for any taxable year if—
> (A)the preceding taxable year was a taxable year of 12 months,
> (B)the individual did not have any liability for tax for the preceding taxable year, and
> **(C)<u>the individual was a citizen or resident of the United States throughout the preceding taxable year.</u>**

Who <u>does</u> the exemption apply to ?? (American citizens and residents) . And of the course, the *exemption* here, based on *liability for tax*, coincides perfectly with the exemption provided for the *employee* under IRC Sec. 3402(n), where, if it is certified by the *employee* that there is no liability for tax under Subtitle A, then employer is **not** allowed to withhold any *income tax* form the *employee's* salary, *wages*, and paychecks.

American Citizens and residents are exempt from the withholding of tax. Imagine that. Oh yea, you don't have to *imagine* that because here it is (again) in the written law, **not** your *imagination*.

The Treasury Decision does not say that all *persons* in the United States are liable for tax on all of their business. It does not say that citizens, or even resident aliens, are liable for the payment of income tax on all of their business in a direct manner. It again emphasizes "*Nonresident aliens ... are liable for ... tax*", in perfect conjunction with what one would expect from the provisions of a **tariff act**, *i.e.*: the *Underwood Simmons Tariff Act of Oct. 3, 1913*.

The third paragraph of the Decision describes the duty of the *Withholding Agents* and the proper original use of the Form 1040, in 1913. The Form 1040 is used by the *Withholding Agents* to report and pay tax, **not** on their <u>own</u> "*taxable income*" (or even their own "*gross income*"), but on the income "*<u>received by them in behalf of</u> their **nonresident alien** principals*".

Clearly, under the actual laws enacted in 1916, the Form 1040 was originally the mechanism by which the *Withholding Agent* turns over to the U.S. Treasury the tax that has been collected from other persons, by withholding tax from payments made to persons subject to withholding. In doing so the *Withholding Agent* is simply obeying and operating under the legislatively created duty of the *Withholding Agent,* identified by the Supreme Court in the *Brushaber* case, to "*retain*

and pay the sum of the tax". And the *Withholding Agent*s, by virtue of the statutory definition for the term, only have authority to withhold tax from foreign non-resident "*persons"*, which only includes foreign non-resident corporations and individuals.

These statutes from 1913 have never been changed, and there are no intervening Supreme Court authorities in these Subtitle A matters. The United States government still today, relies on and refers to these two Supreme Court cases in 1913, *Brushaber* and *Stanton*, to document the constitutionality of the income tax provisions (of the Underwood-Simmons tariff act of Oct. 3, 1913). The same legislation that we now call the Subtitle A income tax. However, as the statutes clearly indicate, citizens are not subject to the payment of income tax, **nor does** any statutory liability accrue to their name, except while performing as *Withholding Agents,* when they are required to collect tax from foreign non-resident *persons*. This is, of course, because citizens are not subject to the payment of a tariff on activity conducted in the fifty states because a tariff is a TAX on FOREIGN activity.

Form 1040 was originally to be used by *Withholding Agents* to report the income of nonresident alien foreign principals. Under the actual laws enacted it was not to be used by U.S. Citizens to report their own income, as that would have constituted an incidence of unconstitutionally direct taxation without apportionment.

Treasury Decision 2313 also plainly and clearly states that it is only those non-resident aliens that are liable for the income tax on the net income from all of their trade and business. It does not say, however, that citizens are liable for tax on the net income from all of their trade or business, because citizens are not subject to the payment of a tariff (on foreign activity).

Under the scheme of the tax adopted in the tariff act, the foreign "*person*", non-resident aliens and foreign corporations, are the actual subjects of the income tax as proper subjects of the federal government under the Constitution, which gives the federal government absolute control and jurisdiction over all foreign affairs, including foreign persons in the fifty states. The Sovereign, We the People, the American citizens, were and still are, cast in the role of the tax collector, not the *subject* taxpayers.

The only tax the citizens are required to pay is on the income of foreign *persons* that they themselves have withheld monies from when services or properties were paid for. Under the letter of the actual law the citizens did not, and still under the law do not, pay tax on their own earnings or even income, they only pay over the tax that they have collected by withholding moneys from payments made to the foreign *persons* who are subject to the withholding of income tax under the provisions of the Title 26, Subtitle A statutes.

According to the Supreme Court, the 16th Amendment does not create a new power or authority for the government to exercise to tax directly. The 16th Amendment, according to the Supreme Court, merely prevents the income tax from being moved out of the category of indirect taxation to which it inherently belongs.

Clearly, even after the passage and adoption of the 16th Amendment, the income tax enacted and approved by the Court is actually legislated as an indirect tax. It is not the direct tax without apportionment that has been erroneously misrepresented, and wrongfully is attempting to be enforced by the Service through the instant disputed *Notice of Deficiency*.

It was noted before that the government avers through its *Notice 609* that a "*person*" must be shown to be a "*person*" made liable for tax by the statutes, before he or she can be shown to be required under the law to file a tax return.

That was demonstrated by the language of the I.R.S. *Notice 609* itself, which stated: *"Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. ...*"

We examined Section 6001 and 6011 earlier and saw how they were both contain specific language calling for the establishment and identification of specific statutory liability for tax, or for the collection thereof, in order to be properly relied upon for subsequent enforcement operations. We now very clearly understand why the reference to "for the collection thereof" is

included. It is included to address the entitles that are actually made liable by statute for the payment of tax, the *Withholding Agents* – the federal tax collectors.

All of these statutes are now very clearly seen in their true and correct, intended legislative capacity, which is not to convert the indirect income tax tariff on foreign activity to a direct tax communistically imposed on the earnings of all *persons* by the miss-application of filing requirements by the Service, but to control the *Withholding Agents,* acting as duly authorized federal tax collectors, and, as regards income tax, who are responsible *"for the collection thereof*".

Because of the above identified lack of any specified statutory liability for the payment of any federal tax that would require any person to file a tax return, the alleged assessment that the disputed *Notice of Deficiency* is claimed to be based on, has been clearly made outside of the Secretary's lawful authority to assess tax and deficiencies of federal personal income tax under the enforcement provisions of Title 26.

Assessments

This is plainly and clearly established by the undisputed facts of the written law as applied within context of the provisions of I.R.C. Section 6201, which states:

> "**§ 6201. Assessment authority**
>
> **(a) Authority of Secretary.**
> The Secretary is authorized and required to make the inquiries, determinations, and **assessments of all taxes** (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, **which have not been duly paid by stamp** at the time and in the manner provided by law. Such authority shall extend to and include the following:
>
> **(1) Taxes shown on return.**
> The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.
> **(2) Unpaid taxes payable by stamp.** ..."

From this section, it is clear that the Secretary's (IRS') statutory authority to make assessments of tax, is limited to the assessment of those taxes which are either payable by stamp, or those for which returns or lists have been made. The stamp taxes referred to are of course those taxes imposed on the manufacture, consumption and sale, of certain taxable commodities subject to such stamp taxes; - like alcohol and cigarettes which all have the required federal tax "stamps" on the retail packages and bottles.

However, the federal personal income tax is NOT payable by stamp; there are no tax return forms (1040) that must be filed by any regular, unprivileged "*person*", or that have ever been shown to be statutorily required from a citizen for any disputed tax years, nor are there any enforceable tax returns or Substitute for Returns (SFRs) that have ever been filled out and then subscribed by the employees of the I.R.S, as required by law before enforcement of any deficiency may proceed, as is explicitly specified under Title 26 USC § 6020(b). Therefore it is factually impossible for there to be a lawful assessment upon which the Service could base the enforcement of any alleged deficiency for tax.

Plainly and clearly under this statute (6201), in order for enforcement of the alleged deficiency to lawfully proceed, there must be a valid signed tax return form or Substitute for Return (SFR) under IRC § 6020(b).

Substitute for Return (SFR) Authority

Title 26 U.S.C. Section 6020 provides the statutory specification of the authority of the Internal Revenue Service employees to file tax returns for *persons* who have been determined by the Service to have failed a perceived requirement to do so.

The I.R.S. has alleged in this case that there has been a failure by Petitioner to file required tax return forms. But, as shown above, since Petitioner had no statutory liability for tax, he consequently had no lawful requirement that can be identified in law to file any returns for the

years in question, therefore, he could not *fail* any requirement to file such return, willfully or otherwise, because no actual requirement can be shown to exist in the statutes.

Since Petitioner had no requirement that he can identify in law to file any tax return forms for the disputed tax years, the controlling legal process for the filing of a tax return, or substitute for return (SFR), for the Petitioner by the Service employees, is plainly and clearly spelled out under Title 26 U.S.C. Section 6020. It plainly and clearly states:

> **"§ 6020. Returns prepared for or executed by Secretary.**
>
> **(a) Preparation of return by Secretary**. If any person shall fail to make a **return required** by this title or by regulation prescribed thereunder, **but shall consent** to disclose all information necessary for the preparation thereof, then, and in that case, **the Secretary may prepare such return**, which **being signed by such person**, may be received by the Secretary as the return of such person.
>
> **(b) Execution of return by Secretary.**
> **(1) Authority of Secretary to execute return.** If any person fails to make any **return required** by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return, **the Secretary shall make such return from his own knowledge and from such information as he can obtain** through testimony or otherwise.
> **(2) Status of returns.** Any return **so made** and **subscribed** by the Secretary **shall be prima facie good and sufficient for all legal purposes."**

In the instant matter the Secretary and her delegates have violated the requirement in the federal statutes to make a return and subscribe it by signature, in order to make it "*prima facie good and sufficient for all legal purposes*" under the requirements of subsection (b)(2) of this statute. Therefore, there is no lawful basis in the instant matter for the issuance of the *Notice of Deficiency* that has been issued and is now disputed.

Section 6020(a) confers no authority at all to file returns with respect to Petitioner without his permission and cooperation. Petitioner did not make any agreement with or request any assistance from anyone employed by the Internal Revenue Service pursuant to 26 U.S.C. § 6020(a) involving anything relating to the instant disputed years.

Section 6020(b) only confers authority on Service employees to file returns where those prepared returns or substitute for returns are actually subscribed by the Service employees.

Petitioner did not make or file any type of tax return for the years in question that could be "examined", "adjusted", or "changed", nor upon which any deficiency could legitimately be claimed to be based.

Therefore, how could there have been any deficiency resultant from any examination, any change, any adjustment, or any assessment of a tax return that has never lawfully factually existed, because none has ever been lawfully executed? The Internal Revenue Manual Chapter 3, Section 3(17)(46)1.2(10)(a), clearly states:

> "**The taxpayer return is considered the account**."

Title 26 U.S.C. Section 6020(b)(2) requires that any return prepared by the Secretary must be subscribed — that is, signed — in order for it to be "*prima facie good and sufficient for all legal purposes*."

In addition, Title 26 U.S.C. §§ 6061 and 6065 both support this *signing* requirement, stating that all such prepared returns must be *signed* and *verified under penalty of perjury*. They plainly and clearly state:

> **§ 6061. Signing of Returns & Documents**
>
> Except as other wise provided by sections 6062 (Signing of Corporation returns) and 6063 (Signing of Partnership returns) , **any return, statement, or other document required to be made under any provision** of the internal revenue laws or regulations **shall be signed** in accordance with forms or regulations prescribed by the Secretary
>
> [Emphasis added]

And Title 26 U.S.C Section 6065 states:**.**

> **§ 6065. Verification of Returns**
>
> Except as other wise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations **shall contain or be verified by a written declaration that it is made under the penalties of perjury.**

Plainly and clearly there is a statutory requirement to subscribe and certify returns and Substitute for Return documents that are prepared by the Service employees for individuals.

Internal Revenue Manual Section 5291 (Exhibit III-16) plainly and clearly establishes the scope of the assessment authority actually authorized for I.R.S. employees to engage in, under authority of Section 6020(b) to file returns for individual *persons*, by listing all of the tax return forms that I.R.S. employees are authorized to use under that code Section in pursuit of imposing a 6020(b) based assessment. Form 1040 is not an included form in the list, that is shown in the Internal Revenue Manual as being authorized for use by I.R.S. employees under that code section.

The *Delegation Orders* (Exhibit III-20) granting the legal authority to Revenue Officers to prepare and execute returns for the Secretary under authority of Section 6020(b) also does not include the Form 1040 in the list of forms that are authorized for use under that code section, but strangely enough the list of forms that is provided there agrees completely without omission or addition with the same list that is provided in the Internal Revenue Manual in the afore-mentioned Section 5291.

Petitioner is herein requesting that a copy of any returns or *substitute for returns* that are alleged to have been prepared with respect to him under the authority of § 6020(b) for the disputed tax years, that are allegedly serving as the basis of the alleged disputed deficiency, be immediately provided to him at this time, so that he may finally see the evidence alleged to be arrayed against

him, and so that he may finally have the opportunity to verify that they have been signed, verified, and sworn to under penalty of perjury as required by these statutes.

Petitioner is also herein requesting that a statutory explanation of how it was lawfully concluded by the I.R.S. employees, from the provisions of the statutes and regulations, that Form 1040 was the correct form and the actual form required by law for the Petitioner to *return* to the I.R.S. in the disputed tax years.

Production of evidence of the legitimacy of this I.R.S. enforcement process is now absolutely necessary, since all of the actual evidence currently on the record of this court through these briefs and their accompanying Exhibits, clearly indicates that Form 1040 is NOT the correct, or required, tax return form for citizens to use to satisfy the liability for federal personal income tax that actually exists in law in their names or legal capacities.

The *substitute for return* (SFR) documents used as the basis for the assessment by the Service employees in this case are not signed or verified as required by statute under §§ 6020(b)(2), 6061, and 6065. This lack of signature and verification upon the returns or SFRs renders them legally defective, and therefore insufficient and illegitimate, and subsequently invalid and unenforceable.

Therefore, any alleged deficiency or assessment based upon such invalid return(s) or SFRs is likewise invalid and unenforceable. If there is some other section of the I.R.C. which authorizes unsigned returns to be used as the basis for an assessment, then it is necessary for the I.R.S. or Justice department attorneys to identify such section in their response to this brief, so such alleged authorities can be verified by both the Petitioner and the court.

The lawful method for the making of a formal federal tax assessment for income tax that can be identified in law is clearly stated in Title 26 U.S.C. Section 6203:

> **§ 6203. Method of assessment**
>
> The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary in accordance with rules or regulations prescribed by the Secretary. **Upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of the assessment**.

Petitioner has repeatedly asked for this required copy of the signed record of assessment to be provided to him, and his request has been consistently refused, without explanation, by the Service employees.

Petitioner now repeats again his demand to be provided with the required "*copy of the record of the assessment*", and the signed tax return or SFR, that is alleged to exist and be serving as the lawful foundation for the enforcement of the alleged deficiency.

The associated federal regulations, from 26 C.F.R. Part 301, implementing the statute (§ 6203), clearly state:

> **"Sec. 301.6203-1 Method of assessment**.
>
> The district director and the director of the regional service center shall appoint one or more assessment officers. The district director shall also appoint assessment officers in a Service Center servicing his district. **The assessment shall be made by an assessment officer signing the summary record of assessment**. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is **signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts of the assessment** which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessment."

Petitioner is plainly and clearly entitled by both statute and regulation to the return and assessment documents that he is demanding, that were prepared by the IRS employees.

Deficiencies

Title 26 U.S.C. Section 6211 provides the statutory definition of an actual tax "deficiency" under the law. It states:

> **§ 6211. Definition of deficiency**
>
> **(a) In general.** For purposes of this title in the case of income, estate, and gift taxes imposed by **subtitles A and B** and excise taxes imposed by chapters **41, 42, 43, and 44,** the term "deficiency" means the amount by which the **tax imposed by subtitle A or B,** or chapter **41, 42, 43, or 44,** exceeds the excess of - …
> (1) the sum of
> (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus
> (B) the amounts previously assessed (or collected without assessment) as a deficiency, over -
> (2) the amount of rebates, as defined in subsection (b)(2), made.

The Statutes very specifically define deficiencies herein as occurring only under "*subtitles A and B and excise taxes imposed by chapters 41, 42, 43, and 44*". [An IRS Notice of Deficiency is appealed into the U.S. Tax Court, and a "*Petitioner*" is the *person* making the appeal to the court to formally legally dispute the alleged *deficiency* for tax.]

It has herein been shown that Subtitle A, - the federal personal income tax, only establishes a statutory liability for the payment of federal Subtitle A tax in the name of the federal tax collector, the "*Withholding Agent*". It has also been shown that without any statutory liability for the payment of tax, there is no statutory requirement to file a tax return that can be shown to exist in the Petitioner's name under the Subtitle A provisional requirements that require individuals to file a return or cooperate with the IRS in the preparation of a return or substitute by the Service employees.

Subtitle B deals exclusively with the federal "Estate and Gift Taxes", and has no connection or relevance to the Petitioner or the instant disputed *Notice of Deficiency* in this mater.

The referenced Chapters 41, 42, 43, and 44 are easily identified as:

CHAPTER 41 - PUBLIC CHARITIES (§§ 4911—4912)

CHAPTER 42 - PRIVATE FOUNDATIONS; AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS (§§ 4940 - 4967)

CHAPTER 43 - QUALIFIED PENSION, ETC., PLANS (§§ 4971 - 4980G)

CHAPTER 44 - QUALIFIED INVESTMENT ENTITIES (§§ 4981 - 4982)

CHAPTER 45 - PROVISIONS RELATING TO EXPATRIATED ENTITIES (§ 4985)

These Chapters also, have NO connection or relevance to the Petitioner or the instant disputed *Notice of Deficiency*.

Clearly then, all of Petitioner's earnings and income were earned outside of the provisions of those identified "*subtitles A and B and…chapters 41, 42, 43, and 44*", and therefore the deficiency procedures are wrongfully being applied to his earnings, which are not identified in, or covered by, the statutory definition of a "deficiency" as provided and controlled under Section 6211.

Next, we carefully examine the Subtitle A (and B and chapters 41, 42, 43, and 44) statutes to identify if there are any specific "*wages*" identified in those Subtitles that are specifically addressed therein, and made subject to the collection of the Subtitle A federal personal income tax, and which would therefore properly be included in the calculation of a *deficiency* for tax under the provisions of Subtitle A as specified under Section 6211.

In Title 26 U.S.C. Section 1441(b), we do indeed find the identified "*wages*" that are made specifically subject to the collection of the federal personal income tax under the provisions of the Subtitle A statutes. That code section very plainly and clearly states

> **§ 1441. Withholding of tax on nonresident aliens**
> **...**
> **(b) Income items** The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries**, wages**, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent **are amounts which are received by a nonresident alien individual** who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act ...
>
> (emphasis added)

Subsection (a) of this code section (§ 1441), requiring the collection of the federal personal Subtitle A income tax from payments made to non-resident aliens was documented and presented earlier in this brief. Now we find, that it is only the "*wages*" of the non-resident alien that are actually made subject to the collection of the federal personal income tax under the actual provisions of the Subtitle A statutes. There is NO other statute in Subtitle A that includes the term "*wages*". There are no other parties, other than the identified non-resident aliens, who are made subject to the collection or payment of any federal personal income tax in the SUBTITLE A code provisions. Petitioner is not the identified subject NON-RESIDENT ALIEN whose "*wages*" are made the focus of the Subtitle A collection authorities, and the inclusion of Petitioner's "*wages*" by the Internal Revenue Service in the calculation of the Subtitle A deficiency alleged to exist in this mater was improper and unlawful.

Title 26 U.S.C. Section 6212 – "*Notice of deficiency*" quickly confirms this understanding of the limitations imposed on the authority of the employees of the I.R.S. to assess deficiencies ONLY within "*subtitles A or B or Chapters 41, 42, 43, or 44*". It plainly and clearly, and consistently, states:

§ 6212. Notice of deficiency

(a) In general

If the Secretary determines that there is a deficiency in respect of any tax imposed **by subtitles A or B or chapter 41, 42, 43, or 44** he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail. Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

Furthermore, subsection (d) of Section 6212, provides the authority to the I.R.S. employees to rescind a *Notice of Deficiency* that was improperly or wrongfully issued outside of the authorized Subtitles (A & B) and code Chapters (41-44) with the taxpayer's consent. It says:

§ 6212. Notice of deficiency
…
(d) Authority to rescind notice of deficiency with taxpayer's consent

The Secretary may, with the consent of the taxpayer, **rescind any notice of deficiency mailed to the taxpayer**. Any notice so rescinded shall not be treated as a notice of deficiency for purposes of subsection (c)(1) (relating to further deficiency letters restricted), section 6213 (a) (relating to restrictions applicable to deficiencies; petition to Tax Court), and section 6512 (a) (relating to limitations in case of petition to Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice. Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding.

The last code section mentioned in I.R.S. *Notice 609* in regards to the duty of an individual to file a tax return form for a given tax period, is Title 26 U.S.C. Section 6012(a), which states;

§ 6012. Persons required to make returns of income.

General rule.
Returns **with respect to income taxes under subtitle A** shall be made by the following:

(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, except that a return shall not be required of an individual - …

While this statute appears relevant to properly making a determination concerning the requirement to file a federal tax return under Subtitle reporting *gross income*, it leaves unanswered and unaddressed the underlying, overlooked, but all important and controlling question of: "Which return is required by law to be made "with respect to income taxes under Subtitle A?" and "How is that form selection determinable under the statutes and regulations?"

This statute (6012) is silent as to that specific filing requirement, leaving it to the reader to then either: know how to personally use the law to look up that legal requirement in the law; or to act on some other motivation**,** like habit or assumption, neither of which are actually enforceable under law. So, what is the actual requirement proscribed in law to provide a return under Title 26 U.S.C. Section 1, - the Subtitle A code section that actually imposes the federal personal income tax? And how does an individual go about looking up and identifying in the law or regulations just exactly which I.R.S. Form is really required by that specific code section imposing the tax; - in this case 26 U.S.C. Section 1 – "*Tax Imposed*"?

The Tax Return Form Required By Law

The Paperwork Reduction Act of 1980 attempts to ensure that the United States government does not require or collect more information from citizens (or other persons) in the United States than is really necessary to satisfy the actual requirements of the law. Under this act, which was passed in 1980, the I.R.S. was required to file with O.M.B., the Office of Management and Budget, a list of all the United States code sections that required information to be collected from individuals, together with the cross-referenced list of forms to be used to satisfy those legal information collection requirements for any given code section.

This table is incorporated into the law in the Code of Federal Regulations at 26 C.F.R. Part 602, Section 602.101, whose introduction states that the purpose of this regulatory provision is to comply with the legal requirements imposed on the government by the Paperwork Reduction Act. Although it took the I.R.S. over 5 years to comply with the mandate, the IRS itself prepared and supplied this Table to O.M.B. (Exhibit E) Up until the year 2000, it stated in pertinent parts;

Exhibit D

Subchapter A.—Determination of Tax Liability

Part

I. Tax on individuals.
II. Tax on corporations.
III. Changes in rates during a taxable year.
IV. Credits against tax.
V. Repealed.
VI. Minimum tax for tax preferences.
VII. Environment tax.

In '86, P.L. 99-499, Sec. 516(b)(5), added Part VII.
In '76, P.L. 94-455, Sec. 1901(b)(2), deleted Part V.
In '69, P.L. 91-172, Sec. 301(b)(1), added Part VI.
In '68, P.L. 90-364 added Part V.

PART I.—TAX ON INDIVIDUALS

Sec.

1. Tax imposed.
2. Definitions and special rules.
3. Tax tables for individuals having taxable income of less than $20,000.
4. Repealed.
5. Cross references relating to tax on individuals.

In '76, P.L. 94-455, Sec. 501(c)(1), amended item 3 and deleted item 4, which previously read "Optional tax tables for individuals" and "Rules for optional tax," respectively.
In '69, P.L. 91-172, Sec. 803(d)(9), amended items 2 and 3 which previously read "Tax in case of joint return or return of surviving spouse." and "Optional tax if adjusted gross income is less than $5,000." respectively.

The tax imposed.

Sec. 1. Tax imposed.

(a) Married individuals filing joint returns and surviving spouses.

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $32,450.....	15% of taxable income.
Over $32,450 but not over $78,400	$4,867.50, plus 28% of the excess over $32,450.
Over $78,400	$17,733.50, plus 31% of the excess over $78,400.

(b) Heads of households.

There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $26,050.....	15% of taxable income.
Over $26,050 but not over $67,200	$3,907.50, plus 28% of the excess over $26,500.
Over $67,200	$15,429.50, plus 31% of the excess over $67,200.

(c) Unmarried individuals (other than surviving spouses and heads of households).

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $19,450.....	15% of taxable income.
Over $19,450 but not over $47,050	$2,917.50, plus 28% of the excess over $19,450.
Over $47,050	$10,645.50, plus 31% of the excess over $47,050.

(d) Married individuals filing separate returns.

There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $16,225.....	15% of taxable income.
Over $16,225 but not over $39,200	$2,433.75, plus 28% of the excess over $16,225.
Over $39,200	$8,866.75, plus 31% of the excess over $39,200.

(e) Estates and trusts.

There is hereby imposed on the taxable income of—

(1) every estate, and

(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $3,300.....	15% of taxable income.
Over $3,300 but not over $9,900	$495, plus 28% of the excess over $3,300.
Over $9,900	$2,343, plus 31% of the excess over $9,900.

(f) Adjustments in tax tables so that inflation will not result in tax increases.

(1) **In general.** Not later than December 15 of 1990, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) **Method of prescribing tables.** The table which under paragraph (1) is to apply in lieu of the table contained in subsection (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed—

(A) by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax is imposed under such table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) **Cost-of-living adjustment.** For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1989.

(4) **CPI for any calendar year.** For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year. • • •

Exhibit D

§ 1. Tax imposed

(a) **Married individuals filing joint returns and surviving spouses**
There is hereby imposed on the taxable income of—
(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and
(2) every surviving spouse (as defined in section 2 (a)),
a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000	$20,165, plus 31% of the excess over $89,150.
Over $140,000 but not over $250,000	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000.

(b) **Heads of households**
There is hereby imposed on the taxable income of every head of a household (as defined in section 2 (b)) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500	$17,544, plus 31% of the excess over $76,400.
Over $127,500 but not over $250,000	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000.

(c) **Unmarried individuals (other than surviving spouses and heads of households)**
There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2 (a) or the head of a household as defined in section 2 (b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000	$12,107, plus 31% of the excess over $53,500.
Over $115,000 but not over $250,000	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000.

(d) **Married individuals filing separate returns**
There is hereby imposed on the taxable income of every married individual (as defined in section 7703)

PART 602 - OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Section 602.101. OMB Control numbers.

(a) Purpose. This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part comply with the requirements of ... (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations....

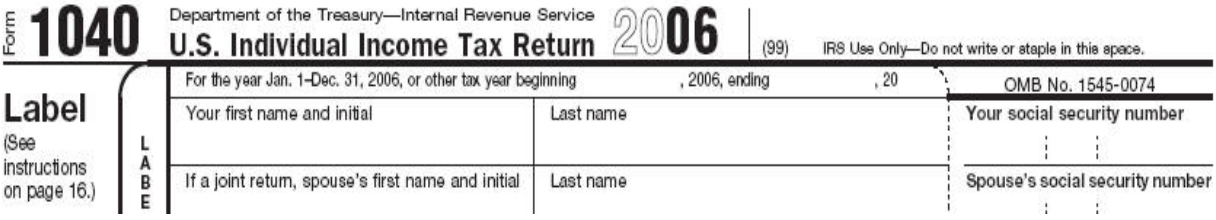
26 CFR (4-1-94 Edition)

CFR part or section where identified and described	Current OMB Control No.
1.1-1	**1545-0067**
1.23-5	1545-0074
1.25-1T.....	1545-0922 1545-0930
1.25-2T.....	1545-0922

In the portion of the table reproduced above, the left hand column shows the code section with the information return requirement. The first entry lists the code section where the income tax is imposed, i.e.; PART 1, Chapter 1, Section 1, designated here in the left hand column of the table as **1.1-1**. The right hand column shows the O.M.B. Document Control Number (DCN) assigned to the information collection request, or form, that is required by the code section to satisfy its legal information return requirements. Unique document control numbers were assigned by O.M.B. to all of the Forms used by the various government agencies in order to clearly and specifically keep track of all of the different information return requirements of all of the different code sections of the various Titles.

Note that in this table there is only one document control number, or form, shown here as being required by the law that imposes the income tax, Section 1, and note also that the form that is to be used to satisfy the requirements of this code section where the income tax is imposed carries the OMB Document Control Number **1545-0067**.

Then, if Form 1040 is the proper information tax return form for United States Citizens to file to satisfy the legal Return filing requirement created by Section 1, that OMB Document Control Number - **1545-0067,** will show up on the top of a Form 1040;



Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** 2006 (99) IRS Use Only—Do not write or staple in this space.

Label (See instructions on page 16.) LABEL

For the year Jan. 1–Dec. 31, 2006, or other tax year beginning , 2006, ending , 20 — OMB No. 1545-0074

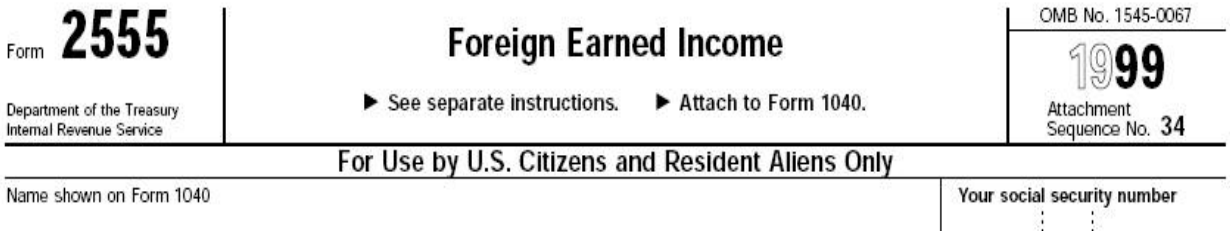
Your first name and initial | Last name | Your social security number

If a joint return, spouse's first name and initial | Last name | Spouse's social security number

Here is the reproduced top portion of a Form 1040, and there in the upper right hand corner, it says "**OMB No. 1545-0074"**. That number does not match the entry shown in the table as being the correct number that is assigned to the form that is required by law by Section 1, where the tax is imposed. The Table in the Code of Federal Regulations shows that the law actually requires the form with O.M.B. Document Control Number **1545-0067**, not the number 1545-0074, which is the OMB control number that is on the Form 1040.

O.M.B. Document Control Number 1545-0074 is assigned to Form 1040, but the form that is actually required by the law that imposes the income tax, Section 1, should carry Document Control Number 1545-0067. Obviously, Form 1040 is not the form listed in the law for citizens as being required by law to satisfy the information return requirements of the code section that imposes the income tax.

So what Form is assigned the OMB Document Control Number 1545-0067, and does satisfy the information return requirements of Section 1 – Income Tax – Tax Imposed?



Form **2555** — **Foreign Earned Income** — OMB No. 1545-0067

Department of the Treasury Internal Revenue Service

▶ See separate instructions. ▶ Attach to Form 1040.

1999 Attachment Sequence No. 34

For Use by U.S. Citizens and Resident Aliens Only

Name shown on Form 1040 | Your social security number

At the top of this form, in the upper right hand corner, it says: **OMB No. 1545-0067**. Now that entry matches the entry in the 602.101 C.F.R. Table for Section 1. And what is the title of this form? **Form 2555 <u>Foreign Earned Income.</u>** And what does it say underneath the title of the Form?

"For Use by U.S. Citizens and Resident Aliens Only".

Form 2555 - Foreign Earned Income, states: **"For Use by U.S. Citizens and Resident Aliens Only".** This is the form that is listed in the law as being required by law to satisfy the information return reporting requirements associated with the individual's liability for tax imposed by Section 1 of Subtitle A of Title 26, the Internal Revenue Code. This form, Form 2555 – Foreign Earned Income, is the only actual information return requirement established in law for the reporting of income tax on *"taxable income"* imposed by Section 1 of Subtitle A of Title 26 that a citizen would be subject to under a proper application and administration of the tax laws as they are actually written in Title 26 United States Code and published in the Code of Federal Regulations.

Up until the year 2000, according to this table in the C.F.R., the only *gross income* a citizen is required to report to the government under the law imposing the federal personal income tax is income earned in a foreign country under a tax treaty or in a territory or possession of the United States. Income earned in a foreign country under a tax treaty, or a U.S. territory or possession, could of course be properly subjected to the payment of a federal tariff since it would constitute foreign activity. These requirements, preserve the income tax entirely as an indirect tax, and keep it legitimate under the Constitution. In the year 2000 the I.R.S. **removed** from this C.F.R. table all listed requirements to file any tax return at all under Section 1 to satisfy the ***Tax Imposed***. No identifiable specific tax return filing requirement exists as a specified element of the law, in the written law, any longer.

Exhibit E

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101, OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural Rules (26 CFR part 601), see 26 CFR 601.9000.

(c) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.1–1	1545–0067
1.23–5	1545–0074
1.25–1T	1545–0922
	1545–0930

CFR part or section where identified and described	Current OMB control No.
1.50A–6	1545–0895
1.50A–7	1545–0895
1.50B–1	1545–0895
1.50B–2	1545–0895
1.50B–3	1545–0895
1.50B–4	1545–0895
1.50B–5	1545–0895
1.51–1	1545–0219
	1545–0241

The Code Section that imposes the tax. Section 1, Tax Imposed.

The Forms' OMB Document Control Number Id's.

The only Form listed for Code Section 1

This number DOESN'T match the requirement shown in the law.

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** (0) **1993**

IRS Use Only—Do not write or staple in this space.

For the year Jan. 1–Dec. 31, 1993, or other tax year beginning , 1993, ending , 19 OMB No. 1545-0074

Label (See instructions on page 12.) Use the IRS label. Otherwise

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see page 12.	Apt. no.	For Privacy Act and Paperwork Reduction

BUT THIS DOES !

Form **2555** Department of the Treasury Internal Revenue Service

Foreign Earned Income

► See separate instructions. ► Attach to front of Form 1040.

For Use by U.S. Citizens and Resident Aliens Only

OMB No. 1545-0067

1993

Attachment Sequence No. 34

Name shown on Form 1040 | Your social security number

Part I General Information

1 Your foreign address (including country) | 2 Your occupation

Exhibit E

Form **2555**

Department of the Treasury
Internal Revenue Service

Foreign Earned Income

▶ See separate instructions. ▶ Attach to front of Form 1040.

OMB No. 1545-0067

1993

Attachment Sequence No. **34**

For Use by U.S. Citizens and Resident Aliens Only

Name shown on Form 1040 | Your social security number

Part I General Information

1 Your foreign address (including country) | 2 Your occupation

3 Employer's name ▶

4a Employer's U.S. address ▶

b Employer's foreign address ▶

5 Employer is (check any that apply): ▶ a ☐ A foreign entity b ☐ A U.S. company c ☐ Self d ☐ A foreign affiliate of a U.S. company e ☐ Other (specify) ▶

6a If, after 1981, you filed Form 2555 to claim either of the exclusions or Form 2555-EZ to claim the foreign earned income exclusion, enter the last year you filed the form. ▶

b If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here ▶ ☐ and go to line 7 now.

c Have you ever revoked either of the exclusions? ☐ Yes ☐ No

d If you answered "Yes," enter the type of exclusion and the tax year for which the revocation was effective. ▶

7 Of what country are you a citizen/national? ▶

8a Did you maintain a separate foreign residence for your family because of adverse living conditions at your tax home? See **Second foreign household** on page 3 of the instructions ☐ Yes ☐ No

b If "Yes," enter city and country of the separate foreign residence. Also, enter the number of days during your tax year that you maintained a second household at that address. ▶

9 List your tax home(s) during your tax year and date(s) established. ▶

Next, complete either Part II or Part III. If an item does not apply, write "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.

Part II Taxpayers Qualifying Under Bona Fide Residence Test (See page 2 of the instructions.)

10 Date bona fide residence began ▶ , and ended ▶

11 Kind of living quarters in foreign country ▶ a ☐ Purchased house b ☐ Rented house or apartment c ☐ Rented room d ☐ Quarters furnished by employer

12a Did any of your family live with you abroad during any part of the tax year? ☐ Yes ☐ No

b If "Yes," who and for what period? ▶

13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? (See instructions.) ☐ Yes ☐ No

b Are you required to pay income tax to the country where you claim bona fide residence? (See instructions.) ☐ Yes ☐ No

If you answered "Yes" to 13a and "No" to 13b, you do not qualify as a bona fide resident. Do not complete the rest of Part II.

14 If you were present in the United States or its possessions during the tax year, complete columns **(a)-(d)** below. **Do not** include the income from column **(d)** in Part IV, but report it on Form 1040.

(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)	(a) Date arrived in U.S.	(b) Date left U.S.	(c) Number of days in U.S. on business	(d) Income earned in U.S. on business (attach computation)

15a List any contractual terms or other conditions relating to the length of your employment abroad. ▶

b Enter the type of visa under which you entered the foreign country. ▶

c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation ☐ Yes ☐ No

d Did you maintain a home in the United States while living abroad? ☐ Yes ☐ No

e If "Yes," enter address of your home, whether it was rented, the names of the occupants, and their relationship to you. ▶

EXHIBIT 21

NO ENFORCEMENT STATUTES / IRS REGULATIONS APPLICABLE TO INDIVIDUAL INCOME TAX

National Archives

Washington, DC 20408

May 16, 1994

THE TRUTH IS IN THE FEDERAL REGISTER

Richard Durjak
5506 West 22nd Place
Cicero, IL 60650

Dear Mr. Durjak:

The Director of the Federal Register has asked me to respond to your inquiry. You have asked whether Internal Revenue Service provisions codified at 26 U.S.C 6020, 6201, 6203, 6301, 6303, 6321, 6331 through 6343, 6601, 6602, 6651, 6701, and 7207 have been processed or included in 26 CFR part 1.

The parallel Table of Authorities and Rules, a finding aid Compiled and published by the Office of the Federal Register (OFR) as a part of the CFR Index, indicates that implementing regulations for the sections cited above have been published in various parts of title 27 of the **Code of Federal Regulations** (CFR). **There are no corresponding entries for title 26.**

However, the Parallel Table is only an extract of authority citations from the CFR data base and cannot be considered a comprehensive key to the statutory basis for all regulations. An agency may have additional authority for regulations that are not listed separately in authority citations, or is carried within the text of CFR sections. Citations in regulatory text generally do not appear as entries in the Parallel Table.

Since there are 12 volumes that make up part 1 of title 26 of the CFR, it would require extensive research to answer your question with certainty. Commercial computer based services are better equipped to perform this type of research. In any case, the OFR has neither the resources nor the authority to perform the research requested, since to do so would require us to make substantive interpretations as to whether certain tax statutes have any association with the specified set of regulations (see 1 CFR 3.1 enclosed).

Your second question refers to IRS procedures for incorporating material by reference in the **Federal Register.** The incorporation by reference process is narrowly defined by the provisions of 5 U.S.C 552 (a) and 1 CFR Part 51. Our records indicate that the Internal Revenue Service has not incorporated by reference in the Federal Register (as that term is defined in the Federal Register system) a requirement to make an income tax return.

I hope this information will be useful to you.

Sincerely,

Michael L. White

Michael L. White
Attoney
Office of the Federal Register

Enclosure

I.R.C. Section 6012(a), *supra*, referenced: "*Every individual having for the taxable year* ***gross income*** …", so we also want to understand Section 61, and the "*gross income"* it statutorily defines. That Section states:

Gross Income

§ 61. Gross income defined.

(a) General definition. Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

(b) Cross references. For items specifically included in gross income, see part II (sec. 71 and following). For items specifically excluded from gross income, see part III (sec. 101 and following).

First one should carefully note that the terms "***wages***" and "***salary***" do **not** actually **appear** in this code section. Second, in reviewing the codified history of this piece of legislation we find a footnote that is shown in the 1954 United States Code (Annotated) version of the statute for Section 61 (Exhibit G, G1, G2), stating;

"***Source: Sec. 22(a), 1939 Code, substantially unchanged"***

This footnote is often not shown in the non-annotated versions of the I.R. code. It is not known why the footnote is not shown, but it is very important because, as you can see, the footnote identifies the legislative source of Section 61 as being **Section 22(a)** in the 1939 code, the last codified version of the law previous to the 1954 version of the United States Code where this footnote is shown.

Section 22(a) from the 1939 code is re-printed below and it is a simple matter to see that the language of the statute is similar to that of the 1986 version already shown;

> **SEC. 22 GROSS INCOME.**
>
> **(a) General Definition.**-"Gross Income" includes 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, trades, businesses commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such 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....

Properly understanding the term "*gross income*", as it was (and is) actually defined in the written law - from 1913 when the tax was legislated in law, and forward - is very important because its perversion in application in I.R.S. *operational practice* is how your sacrosanct *labors* and the simple exercise of your *Right to Work* are converted into a federally taxable event.

This perversion is done and is accomplished by the IRS in *practice,* by construing "*Taxable income*, as defined under Section 63, simply as all *income* that is statutorily defined as "*gross income*" under Section 61, without regard to, or for, the application or applicability of any underlying *Impost, Duty or Excise* tax - to be measured by the *income* earned from the activity that is made subject to the payment of the *Impost, Duty or Excise* taxation.

§ 63. Taxable income defined

(a) In general. Except as otherwise provided in subsection (b), for purposes of this subtitle, the term "taxable income" means **gross income** minus the deductions allowed by this chapter (other than the standard deduction)

Since the definition of "*taxable income*" references "*gross income*" (defined in Section 61), we are falsely led to believe that Section 61 controls both the application of, **and** the ***subjectivity*** to, the *income* tax, rather than Article I of the U.S. Constitution, which precludes such ***direct*** *unapportioned* application of the *income* tax to the *fruits* of the citizens *labors* and the earnings*, salaries, wages,* and even *income,* derived from the simple exercise of the citizens *Right to Labor* and to *Work,* rather than by the *taxable* enjoyment of some federally taxable *privilege,* as was repeatedly historically held and upheld by the Supreme Court in all of the controlling cases, which we are herein exhaustively reviewing.

However in order to properly understand completely how Section 61 is actually applied and implemented under the law today, it is absolutely essential to know and understand how Section 22 was implemented and applied in 1939 as its direct predecessor, because that implementation has been carried forward "*substantially unchanged*" according to the footnote.

The Canadian Tax Treaty of 1918

The following table, shown here from the Code of Federal Regulations, shows Parts 500-599, from the *Index of Parallel Tables - 1991*, which shows the published ***enabling sections*** from the 1939 I. R. Code. It clearly shows that Section 22, under the 1939 code (but still annotated in the law in the enabling section of today's 1986 code), was originally implemented **only under Title 26, Part 519**, but **NEVER** under **Part 1**.

CFR INDEX PARALLEL TABLE
1991 Enabling sections

26 U.S.C. (1939 I.R.C.)

22	26 Part 519
40	26 Part 1
62	26 Parts 509, 513, 521
143—144	26 Part 521
211	26 Part 521
231	26 Part 521
800—938	26 Part 507
3791	26 Part 509

The table above shows that Section 22 is listed by the statutes as being implemented only under Title 26, Part 519. Section 61 is not listed here. The reader should carefully note that Section 40 is implemented under Part 1, but not Sections 22, 61, or 62. The next table reveals what Part 519 actually is:

CHAPTER 1 - INTERNAL REVENUE SERVICE
DEPARTMENT OF THE TREASURY
(Parts 500 to 529)

_____

SUBCHAPTER G - Regulations Under Tax Conventions
Part
500 [Reserved]
501 Australia .....
502 Greece .....
503 Germany .....
504 Belgium .....
505 Netherlands .....
506 Japan .....

507 United Kingdom .....
508 [Reserved]
509 Switzerland .....
510 Norway .....
511 Finland .....
512 Italy .....
513 Ireland.....
514 France .....
515 Honduras .....
516 Austria .....
517 Pakistan .....
518 New Zealand .....
519 Canada ....
520 Sweden .....
521 Denmark.....

Part 519 it is known, was the Canadian Tax Treaty that was signed in 1918 and lasted for 75 years until 1993. 26 U.S.C. Section 61, as historically published in the regulations, actually defined the foreign sources of taxable income under the 75 year tax treaty with Canada that was signed in 1918 and lasted until 1993, just as a tariff on foreign activity would define.

And the **un-**included "**PART 1",** is of course the domestic "***Tax on Individuals***" known as the federal personal income tax that is imposed in Section 1 of Title 26. That is the same "Part I" that Section 61 does **not** apply under, or pertain to; - **only Part 519**).

26 U.S. Code Part I - TAX ON INDIVIDUALS

- § 1 - Tax imposed
- § 2 - Definitions and special rules
- § 3 - Tax tables for individuals
- § 4 - Repealed. Pub. L. 94–455, title V, § 501(b)(1), Oct. 4, 1976, 90 Stat. 1558]
- § 5 - Cross references relating to tax on individuals

Look it up.

This limited implementation of Section 61 should have been inherited from the limited application of Section 22 in the 1939 code, which was carried forward *substantially unchanged* according to the statutes themselves, but has been intentionally forgotten and overlooked by the

Exhibit G2

Section 61 came under our scrutiny through the activities of our power of attorney department during the normal course of case development.

In a series of correspondence, Agent Ballard from a California office of the IRS contended that the income of one of our members was taxable because this section defined "gross income." It was therefore necessary for us to respond and correct the agents misperception of its applicability.

In order to show this agent the limited nature of this section we compared the language of the 1986 code with that of the 1954 code. Both are reprinted to the right. Note that, although the "form" of the statute (layout on the page) may have changed, the actual text itself remains unchanged.

The only exception would be footnote #1 in the 1954 code which for some inexplicable reason did not seem to make it into the new "layout."

That footnote reveals the source law in the 1939 code from which this section was derived (see 1939 section 22 reprinted to the right). Note that while the actual construction of the 1954 code has changed from that of the 1939 code, the footnote explains that the law itself is effectively "unchanged."

According to the missing footnote, the source law for section 61 in the 1954 and 1986 codes is section 22(a) of the 1939 code. When we use the Parallel

[9] **Income Taxes** **(I.R.C.) 20,285**

SEC. 61. GROSS INCOME DEFINED.

(a) General Definition.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

NEW 1986

Last amendment.—Sec. 61(a)(1) appears above as amended by Sec. 331(c) of Public Law 98-369, July 18, 1984 (which inserted "fringe benefits," after "commissions,") effective (Sec. 331(l) of P.L. 98-369, amended by Sec. 13207(d) of P.L. 99-272, Apr. 7, 1986) January 1, 1985. Sec. 61(a)(1) as it read before this amendment is in PH Cumulative Changes.

Implied amendments of Sec. 61(a) were made by the following:

95-134 (commonly referred to as the Omnibus Territories Act of 1977). This section shall be effective for taxable years beginning after December 31, 1985.

SEC. 61. GROSS INCOME DEFINED.

[Sec. 61(a)]

(a) GENERAL DEFINITION.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items.

(1) Compensation for services, including fees, commissions, and similar items;[1]
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

OLD 1954

MISSING FOOTNOTE

Source: Sec. 22(a), 1939 Code, substantially unchanged.

Internal Revenue Code

Sec. 61(a)

SEC. 22. GROSS INCOME.

(a) General Definition.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service *(including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrume more of the foregoing)*, of whatever kind and in whatev professions, vocations, trades, businesses, commerce, o property, whether real or personal, growing out of the or interest in such property; also from interest, rent, or the transaction of any business carried on for gain profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included

OLDER 1939

Exhibit G1

SEC. 61. GROSS INCOME DEFINED.

[Sec. 61(a)]

(a) GENERAL DEFINITION.—Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;[1]

(2) Gross income derived from business;

(3) Gains derived from dealings in property;

(4) Interest;

(5) Rents;

(6) Royalties;

(7) Dividends;

(8) Alimony and separate maintenance payments;

(9) Annuities;

(10) Income from life insurance and endowment contracts;

(11) Pensions;

(12) Income from discharge of indebtedness;

(13) Distributive share of partnership gross income;

(14) Income in respect of a decedent; and

(15) Income from an interest in an estate or trust.

Source: Sec. 22(a), 1939 Code, substantially unchanged.

The footnote in the new 1954 version of the I.R. Code.

26 USCS § 61 INCOME TAXES

§ 61. Gross income defined.

(a) General definition. Except as otherwise provided in this subtitle [26 USCS §§ 1 et seq.], gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, and similar items;
(2) Gross income derived from business;
(3) Gains derived from dealings in property;
(4) Interest;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Alimony and separate maintenance payments;
(9) Annuities;
(10) Income from life insurance and endowment contracts;
(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and
(15) Income from an interest in an estate or trust.

(b) Cross references. For items specifically included in gross income, see part II (sec. 71 and following) [26 USCS §§ 71 et seq.]. For items specifically excluded from gross income, see part III (sec. 101 and following) [26 USCS §§ 101 et seq.].

(Aug. 16, 1954, ch 736, 68A Stat. 17.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law:
IRC 1939, § 22(a).

Another version also shows Section 22 as the prior law.

Exhibit G2

Table of Cross References in the Code of Federal Regulations to identify the 1939 application of this section we find that it is limited to 26 CFR Part 519.

Part 519 is listed in a former version of the Code of Federal Regulations in Part 500 to 599 under subchapter G (reprinted to the far right). Part 500 to 599 gives the "regulations under tax conventions" (tax treaties) for those provisions that currently exist concerning "foreign earned income."

CFR INDEX PARRALLEL TABLE
1991 enabling sections

26 U.S.C. (1939 I.R.C.)	
22	26 Part 519
40	26 Part 1
67	26 Parts 509, 513, 514, 520, 521
143-144	26 Part 521
211	26 Part 521
231	26 Part 521
800-938	26 Part 507
3791	26 Parts 509, 514, 520
26 U.S.C. (1954 I.R.C.)	
1 note	26 Part 13
25	26 Part 1
28	26 Part 1
38	26 Part 1
41	26 Part 1

APPLICATION

CHAPTER I—INTERNAL REVENUE DEPARTMENT OF THE TREASURY—

(Parts 500 to 599)

SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTIONS

Part	
500	[Reserved]
501	Australia
502	Greece
503	Germany
504	Belgium
505	Netherlands
506	Japan
507	United Kingdom
509	Switzerland
510	Norway
511	Finland
512	Italy
513	Ireland
514	France
515	Honduras
516	Austria
517	Pakistan
518	New Zealand
519	Canada
520	Sweden

The application of the income tax is imposed upon, and limited to the income of nonresident aliens, certain foreign earned income of U.S. citizens, and income generated from specific activities or occupations only. Other Reasonable Action Newsletters explain these limitations therefore we will not detail them in this issue, other than to show that only certain foreign earned income is taxable if a tax treaty is in effect. The return that would be required of such U.S. citizens would be the Form 2555 "Foreign Earned Income" return. This is confirmed by checking the listing of approved information collection requests at the Office of Management and Budget.

INCOME UNDER SECTION 22 PERTAINED ONLY TO FOREIGN EARNED INCOME FROM CANADA AND AS OF 1993 THAT TREATY IS NO LONGER IN EFFECT

DEPARTMENT OF THE TREASURY
(Continued)

SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTIONS

Part	
500—501	[Reserved]
502	Greece
503	Germany
504—507	[Reserved]
509	Switzerland
510—512	[Reserved]
513	Ireland
514	France
515	[Reserved]
516	Austria
517	Pakistan
518—519	[Reserved]

As you can see from the reprint, Part 519 pertains only to the tax treaty with Canada. Therefore at present, taxable "foreign earned income" is limited to Canadian "sources" only that would meet the description listed in section 61 - but surprise - the tax treaty with Canada is no longer in effect and subsequent versions of the Code of Federal Regulations Part 500 to 599 reveal (reprinted to the right) that Part 519 is now vacant and reserved for future use (in the event a new treaty should be established).

Exhibit G2

(This table indicates the 1991 enabling sections for the promulgation of Regulations.)

25 U.S.C.-Continued	CFR
450b	34 Parts 250, 410
450e	24 Part 905
	29 Parts 1, 5
	34 Part 221
450f	25 Part 271
	34 Part 410
450g-450h	42 Part 36
450h	25 Parts 151, 272, 276
450i	25 Part 275
450k	25 Part 11
	42 Part 36
450m	25 Part 11
451	25 Part 151
452-457	34 Part 410
452-456	25 Part 273
454	25 Part 21
458	25 Part 274
458c	25 Part 277
458d	25 Part 274
464-465	25 Part 151
466	25 Parts 163, 166
471	25 Part 40
472	25 Part 5
	42 Part 36
	43 Part 20
473a	25 Parts 52, 53, 216
474	25 Part 125
476-477	25 Parts 211, 213, 225
476	25 Parts 81, 82, 89, 166
477	25 Parts 52, 53, 151, 162
479	25 Part 5
483	25 Part 152
487-489	25 Part 151
487	25 Part 179
490	7 Part 1823
501-509	25 Part 16
501-502	25 Parts 151, 216
503	25 Parts 52, 53
509	25 Parts 211, 213
573-574	25 Part 151
576	25 Part 151
607	25 Part 179
	43 Part 4
608-608a	25 Part 151
610-610a	25 Part 151
622	25 Part 151
624	25 Part 151
635	25 Part 162
640c-1	25 Part 41
640d	25 Part 700
640d-8	25 Part 168
640d-10	25 Part 151
640d-18	25 Part 168
677-677aa	25 Part 217
786-788	25 Part 16

25 U.S.C.-Continued	CFR
880	25 Part 211
1401 et seq.	25 Parts 61, 76
1411-1420	25 Part 45
1452	34 Part 221
1466	25 Part 151
1469	25 Part 101
1495	25 Part 151
1498	25 Part 103
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1615	42 Part 36
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1652	42 Part 36
1672	42 Part 36
1674	42 Part 36
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2001-2003	25 Part 36
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2013	25 Part 32
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	43 Part 3590
2101-2108	25 Parts 211, 225
2201-2211	25 Part 179
2601-2651	34 Part 250
2601-2606	34 Part 252
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2621-2622	34 Part 256
2621	34 Part 254
2623	34 Part 263
2624	34 Part 255
2624(c)	34 Part 25
2631	34 Part 257
2651	34 Parts 252, 255, 263
26 U.S.C. (1939 I.R.C.)	
22	26 Part 519
40	26 Part 1
62	26 Parts 509, 513, 514, 520, 521
143-144	26 Part 521
211	26 Part 521
231	26 Part 521
800-938	26 Part 507
3791	26 Parts 509, 514, 520
26 U.S.C. (1954 I.R.C.)	
1 note	26 Part 13
25	26 Part 1
28	26 Part 1
38	26 Part 1
41	26 Part 1

Exhibit G2

SEC. 22. GROSS INCOME.

(a) General Definition.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service [1](*including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing*), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such 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. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly. [2]*In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.*

You can see above, that Section 22 is the nearly the same, but note (left) that Section 22 is only implemented under Title 26 Part 519.

26 U.S.C. (1939 I.R.C.)

22	26 Part 519
40	26 Part 1
62	26 Parts 509, 513, 514, 520, 521
143-144	26 Part 521
211	26 Part 521
231	26 Part 521
800-938	26 Part 507
3791	26 Parts 509, 514, 520

Notice that Section 62 is also only implemented under Parts shown in the table below.

(Parts 500 to 599)

SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTIONS

Tax conventions are tax treaties !

Part		Page
500	[Reserved]	
501	Australia	4
502	Greece	13
503	Germany	22
504	Belgium	32
505	Netherlands	69
506	Japan	108
507	United Kingdom	115
509	Switzerland	190
510	Norway	216
511	Finland	244
512	Italy	272
513	Ireland	280
514	France	294
515	Honduras	329
516	Austria	337
517	Pakistan	349
518	New Zealand	358
519	Canada	366
520	Sweden	399
521	Denmark	412
522 — 599	[Reserved]	

And Part 519 is the Canadian Tax Treaty

United States Justice Department and the federal judiciary in order to wrongfully and improperly secure tax convictions against innocent *persons* for over 60 years.

Section 61 does not define the domestic sources of taxable income at all according to this C.F.R. table. As far as citizens are concerned, 26 U.S.C. Section 61 only defined the Canadian sources of taxable, *gross income* under the Canadian Tax Treaty, up until 1993. This of course, agrees with everything else in the law that we have seen regarding the subtitle A income tax being a tariff in the form of foreign tax, precisely as identified by the Supreme Court in the *Brushaber* Opinion!

However, since the Canadian Tax Treaty expired in 1993, Part 519 is now shown within this C.F.R. Table as reserved for future use. Section 61 no longer has any application at all to Canadian income because there is no longer any tax treaty between the two nations because we have NAFTA instead. But for 75 years from 1918, when it was first signed, to 1993 when it expired, the 75-year tax treaty with Canada is identified here in the statutes as the jurisdiction under which Section 22 was originally applied, implemented, and imposed.

Subsequently after recodification in 1954, Section 61 should have carried forward, *"substantially unchanged",* with the same limitation in its application as Section 22, i.e.: with a known applicability that was limited to Canadian sources under the tax treaty; because the income tax law wasn't changed in 1954. (Remaining an indirect (foreign) tax in the form of a tariff that is withheld at the source from subject *persons*, who are all foreign). Title 26 U.S.C. Section 61 does not authorize a direct tax on all *person's* domestic earnings or *gross income* at all, and careful research of Section 61 and its true legislative history confirms this little known, but legally irrefutable fact.

It should also be carefully noted that Section 62 is also implemented in the law **only** under certain 500 series Parts of the Code, which "Parts", again, are the separate **tax treaties** that exist with **other nations** where the "*Adjusted Gross Income*" (not just "*gross income*") is the basis for the measurement of the amount of the underlying (*Impost, Duty* or *Excise*) tax. **But** *Tax Treaties* with **FOREIGN** nations **do NOT reach** the activities of **Citizens in the 50 States** with *legal*

effect or *force of law***.** They **only** reach the *foreigners* here in America under the *Tax Treaty* between the two nations; and of course, the Americans **in the *foreign nation***, also under the terms of *Treaty*! But **NOT** the "*Adjusted gross income*" of the **American citizens** of the **50 States** living and working in America (instead of in the foreign country where they are taxed under the terms of the *Treaty*).

> **§ 62 - Adjusted gross income defined**
>
> **(a)GENERAL RULE** For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, **gross income minus** the following deductions:
>
> **(1)TRADE AND BUSINESS DEDUCTIONS**
> The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.
>
> **(2)CERTAIN TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES**
> **…**

Treasury Decision 2313, *supra*, properly stated the correct legal use of Form 1040 from 1913 through 1944. It was to be used by United States Citizens and corporations to report the income of their foreign principals. It was not to be used by a citizen to report the citizen's own personal domestic earnings or *income*, because the portion of their income that is taxable to the federal government under the Constitution is reported on a Form 2555 – *Foreign Earned Income*, as recorded by the law.

In 1944, the use of the Form 1040 was altered slightly to make it the mechanism by which any *person* now claims a refund for overpaid tax that either was over-withheld, or was improperly withheld from a person who is not liable by statute for the payment of the federal personal income tax, which is the basis for the absence of any return beig filed by the Petitioner for the disputed tax years.

The underlying statutes imposing the Subtitle A income tax and specifying the statutory liability for the payment of income tax were not changed in 1944. Today, the Form 1040 is required by law to claim a refund, but is not required by law to satisfy a citizen's statutory liability for tax.

Form 2555 is supposed to be used now, according to the published regulations, by "*Citizens and Resident Aliens*" to satisfy the statutory liability for tax that exists in their names, according to the statutes and their regulations, not Form 1040.

Form 1099 is of course commonly known to now be used to report to the United States government the payments made to other *persons* in place of the original Form 1040. Unfortunately the use of the Form 1099 now, is not limited to the reporting of earnings and *income* of only the *subject* foreign *persons*, as was the case with the Form 1040 previous to World War II, thus resulting now in much of the confusion around the term "*taxable income*", which is simply erroneously presumed to exist from the 1099 reports involving the earnings of non-subject *persons*, which are now reported as though they were the earning of subject *persons*.

The scheme for the taxation of income, through the imposition and collection of the income tax as an indirect tax with collection of the tax effected through *collection at the source,* accomplished through the withholding of tax from subject persons, as identified in this brief, still exists in today's laws, and has never changed, is irrefutable and cannot be denied, and is obviously, from a close reading of the original Supreme Court *Opinions*, the same approved indirect scheme for the income tax that the Supreme Court tested in 1916 and found constitutional.

No other scheme of taxation was tested in those 1916 cases, or in any other case since, and the Court of course said in both cases that the income tax was Constitutional as imposed, because, in regards to individual American citizens, it is indirect, *collected at the source* by withholding under a legislatively enacted *duty to retain and pay the sum of the tax*.

> "The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other

> exaction does not come within the legal definition of a 'tax.' ” *Pollock v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 599 (1895)

Petitioner is not a person who is required to deduct and withhold any tax under Chapter 3 as a *Withholding Agent*, and therefore is not a member of that class of *persons*, the *Withholding Agents,* who Congress specifically made liable for the payment of the federal personal income tax, or for the collection thereof.

If the government is contending that Petitioner has been made liable for, or is subject to, any federal personal income tax by any act of Congress, then it should have no trouble identifying for this honorable court such law(s) in its response to this brief, specifically by statute, plainly and clearly making the Petitioner a *person* liable for the payment of tax, just as Section 1461 plainly and clearly does.

Unless and until the United States Code statute section making Petitioner liable for the payment of federal personal income tax is identified by the government through the cite of the code section relied upon to allegedly establish such liability, any enforcement of any alleged deficiency issued wrongfully by improper *Notice* will be unlawful, and will constitute a violation of Petitioner's legal right to constitutional due process in this legally disputed matter.

In conclusion, the alleged deficiency in the instant matter should be re-determined according to the principles of constitutional law herein identified and outlined, or, it should be abated in its entirety as a wrongfully issued "*Notice of Deficiency*", or it should be rescinded under authority of 26 U.S.C. § 6212(d).

The Federal Personal Income Tax is NOT a Domestic Excise

The next issue is whether the federal **personal** income tax is a direct tax which can be levied on virtually anything, or is an indirect tax which can only be laid on those activities identified in the *Flint* decision as being made subject to excise taxation; or is otherwise laid as an indirect tax under Article I, § 8, cl. **1** (as an impost or duty). In 1861 the federal government imposed a tax on income derived from property. The tax was never challenged, but was referred to by Chief Justice White in *Brushaber* as an excise tax. *Brushaber,* supra, p. 15. Prior to *Brushaber*, however, the nature of the income tax had come into question before the court in the aforementioned *Pollock* case in 1896.

Chief Justice White, who had dissented in the *Pollock* case in 1896, wrote for the Court in *Brushaber* in 1916, holding, as we will see, that the Sixteenth Amendment did NOT confer upon the federal government any additional authority NOR any new power to tax income directly, as opposed to *indirectly* (as existed beforehand) and that the Amendment's sole purpose and legal effect was to preclude judicial consideration of the source of income in order to use an *Opinion* of the court reclassify an unapportioned tax on *income* as an unconstitutionally direct tax, requiring that apportionment of the tax to the several states for payment of the tax.

A careful reading of the *Brushaber* Opinion almost immediately makes clear to the reader that the case is not actually about paying tax on one's own income, but rather is a case testing the legislative provisions that compelled the Union Pacific Railway Co. to perform as a tax collector for the federal government and effect the "*collection of the tax*" "*at the source*" by withholding money as tax from payments made to subject "*persons*". The contested legal issues actually tested in the *Brushaber* case do not actually include anything about the direct payment to the federal government of the personal income tax by any individual "*person*", which argument, when advanced by the government, was rejected by the Court in the holding, but rather, only addresses the allegedly undue burdens imposed upon the Union Pacific Railroad Corporation by its being compelled to perform as a tax collector in the form of a "*Withholding Agent*", who is compelled by the duty cast in law (*see* 26 U.S.C. § 7701(a)(16)) to collect federal income tax *at*

the source from the specific subject "*persons*" (see 26 U.S.C. §§ 1441, 1442 & 1443) identified within and under the written provisions of the federal statutes.

Historically, there has certainly been much confusion regarding the actual import of the Brushaber ruling, one court actually holding that the effect of *Brushaber* was to uphold the constitutionality of the Sixteenth Amendment[18](?), and another has held that Congress was given the power to tax incomes by the Sixteenth Amendment[19]. One court, incredibly, cited *Brushaber* as holding that the Sixteenth Amendment "provided the needed constitutional basis for the imposition of a direct non-apportioned income tax,"[20] a proposition that the Supreme Court categorically rejected in the *Brushaber* Opinion!

The Personal Income Tax is an *Indirect* Tax

In considering the government's argument that the legislation being tested enacted a direct non-apportioned tax on income, the *Brushaber* court held:

> "…it clearly results that the proposition and the contentions under it, **if acceded to, would cause one provision of the Constitution to destroy another**; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment **into irreconcilable conflict** with the general requirement that all direct taxes be apportioned. ... This result …." **would create radical and destructive changes in our constitutional system and multiply confusion**
> *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12

The clear and unequivocal ruling of the Court in *Brushaber* is that the Sixteenth Amendment granted no new powers to Congress:

> "It is clear on the face of this text that **it does not purport to confer power to levy income taxes in a generic sense — an authority already possessed and never questioned** — or to limit and distinguish between one kind of income taxes

[18] See *Funk v. C. I. R.*, 687 F.2d 264 (8th Cir. 1982) and *Miller v. U.S.*, 868 F.2d 236 (7th Cir. 1989)

[19] See *Lonsdale v. C. I. R.*, 661 F.2d 71, 5th Cir. 1981); but, "[I]ts enactment was not authorized by the Sixteenth Amendment." *Brushaber*, supra, at 20.

[20] See *Parker v. Commissioner*, 724 F.2d 469, 471 (5th Cir. 1984); as opposed to *Brushaber*, supra, at 19.

> and another, but that **the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived**." *Brushaber*, supra, at 17-8

Nor did the Court recognize the income tax as a new, third class of taxes, a direct tax not requiring apportionment:

> "The various propositions are so intermingled as to cause it to be difficult to classify them. **We are of 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. **And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it**, . . ." *Brushaber*, supra, at 10-11

The effect of the Sixteenth Amendment was **not** to permit a direct income tax, nor to grant Congress any additional power of taxation. If that conclusion can be in any doubt from the difficulties experienced by some in understanding the *Brushaber* opinion, the point is reiterated in the next case the Court decided in 1916, *Stanton v. Baltic Mining Co*., 240 U.S. 103 (1916), where the Supreme Court held:

> ". . . The provisions of the Sixteenth Amendment **conferred no new power of taxation** but simply **prohibited** the previous complete and plenary power of income taxation possessed by Congress from the beginning **from being taken out of the category of indirect taxation to which it inherently belonged** . . ." *Baltic Mining*, supra, at 112-3

and by the Supreme Court, again, in *Peck & Co. v. Lowe*, 247 U.S. 165 (1918), at p. 172-3:

> "**The Sixteenth Amendment**, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it **does not extend the taxing power to new or excepted subjects, but merely removes all occasion, which otherwise might exist, for an apportionment among the States of taxes laid on income, whether it be derived from one source or**

> **another**. *Brushaber v. Union Pacific R.R. Co*., 240 U.S. 1, 17-19; *Stanton v. Baltic Mining Co*., 240 U.S. 103, 112-113."

and by the Supreme Court, again, in *Eisner v. Macomber*, 252 U.S. 189 (1920), at p. 206:

> As repeatedly held, this [the 16th Amendment] did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income. *Brushaber v. Union Pacific R.R. Co*., 240 U.S. 1, 17-19; *Stanton v. Baltic Mining Co*., 240 U.S. 103, 112 et seq.; *Peck & Co. v. Lowe,* 247 U.S. 165, 172-173.

> "Thus, from every point of view we are brought irresistibly to the conclusion that **neither under the Sixteenth Amendment nor otherwise has Congress power to tax without apportionment** a true stock dividend made lawfully and in good faith, **or the accumulated profits** behind it**, as income** of the stockholder." *Eisner v. Macomber,* supra, at 219-220
>
> (emphasis and [bracketed material] added)

While this *Eisner* decision appears to be more about the technical definition of the term "*income*" to be relied upon by the Treasury, requiring a "*gain*" that must actually be realized by the shareholder before it can become identifiable as *taxable income* to that shareholder, please note that the Court didn't simply say that. They took the time to state "…*that **neither** under the Sixteenth Amendment nor otherwise has Congress power to tax without apportionment…*". They further held in this case:

> "The Revenue Act of 1916, **in so far as it imposes a tax upon the stockholder because of such dividend, contravenes the provisions of Article I, § 2, cl. 3, and Article I, § 9, cl. 4, of the Constitution**, and to this extent **is invalid, notwithstanding the Sixteenth Amendment.**" *Eisner v. Macomber,* supra, at 219-220

Seven years after the adoption of the 16th Amendment, the Supreme Court again says, based on the *Pollock* decision in 1896, that it is still unconstitutional to tax the citizen's income directly without apportionment, despite the 16th Amendment's ratification.

Supporting, Non-contradictory Opinions

There can be no doubt, the income tax is an indirect tax, not a property tax or other direct tax that is immune from direct tax apportionment, and there can be no doubt that the Sixteenth Amendment did not in any way, shape or form enlarge or enhance the taxation power of Congress. *Brushaber, Baltic Mining, Peck* and *Eisner*, supra. It is, therefore, subject to the same limitations on taxing authority that are established hereinabove, and that is, that it cannot tax person or property without apportionment (Article I, § 9, cl. 4), nor any activity that is without either the scope of federal legislative authority (*McCulloch* and *Farrington*, supra), outside the scope of excise (*Flint*, supra), or monies owed to nonresident aliens and foreign corporations (*Railroad Co. and Erie R.R.*, supra). Nor does the power to tax by excise permit the federal government to directly tax the citizens' non *excise taxable* activities (*Flint v Stone Tracy*, supra), or to tax activities that are solely within the realm of the State jurisdiction (*Bailey and Hill*, supra). Those restrictions do not exist in the taxing of foreign "*persons*" or parties (by impost or excise), because, unlike American citizens, the non-resident foreign *person* (both individuals, and corporations, trusts, etc.) are subject to federal jurisdiction and authority under Article I, § 8, clauses 1, 3, and 4 of the U.S. Constitution.

All of these cases, *McCulloch, Farrington, Flint, Railroad Co, Bailey* and *Hill*, are still controlling and the last word of the Supreme Court on the power of the federal government to tax. While there have been other Supreme Court cases upholding the imposition of the income tax, every one of them has been upheld against challenges by corporations and others whose activities are by definition of the indirect authorities, within the taxing authority.

Notwithstanding continuous taxation of income for the last 94 years, there are only two instances where the Supreme Court has ruled on the validity of the income tax with respect to anyone who is either not a corporation or otherwise within the jurisdictional and jurisprudential limitations of the federal taxing authority and in both instances it held the income tax exceeded its Constitutional scope. See *Towne v. Eisner*, 245 U.S. 418, 38 S.Ct. 158 (1918) and *Eisner v. Macomber,* 252 U.S. 189, 40 S.Ct. 189 (1920).

That question, then, remains unsettled and unanswered. The principles set forth in those cases, however, do provide the answer by defining the limits of the federal taxing authority with enough certainty to establish that Defendants and the revenue he received for services personally rendered in the practice of a common occupation engaged in by right within one of the fifty states, are not subject to that federal taxing authority.

The Tax is Paid Indirectly By Tax Collectors After Collection

Duties and imposts under Article I, § 8, cl. 1 of the U.S. Constitution, are of course related ONLY to foreign goods, trade, and activity, not domestic. The Supreme Court identifies in the first sentence of the *Brushaber v Union Pacific Railroad Co.,* 240 U.S. 1 (1916), case opinion, that:

> "As a stockholder of the Union Pacific Railroad Company, the appellant filed his bill to enjoin the corporation from complying with the income tax provisions of the **tariff act** of October 3, 1913." *Brushaber*, supra, at 9

The *Brushaber* court tells us in the first sentence of this controlling decision on the constitutionality of the income tax, that the income tax of 1913, contained in Subtitle A of Title 26, was enacted and originally laid in the law as "*the income tax provisions of the tariff act*". A tariff, of course, is one form of an impost, laid under Article I, § 8, cl. 1 as an indirect tax, on foreign goods entering the country, or on foreign activity occurring within it, and is based on the federal jurisdiction granted to the government over all foreign activity, trade, and affairs under Article I, § 8, clauses 3 and 4 of the U.S. Constitution.

Because the income tax was imposed and laid under the provisions of a tariff act, as a tax that is "*collected at the source*", the income tax was easily recognized by the court as a tax "*inherently*" belonging to the constitutional category of indirect taxation, regardless of the specific indirect form it took under the legislation being tested, impost, excise, or duty. (See *Brushaber v. Union Pacific Railroad Co.,* 240 U.S. 1 (1916), and *Stanton v. Baltic Mining Co*., 240 U.S. 103 (1916)).

In addition, the court also recognized that the Congressional legislators, in writing this tariff act legislation enacted in 1913, had very carefully taken their "cues" from the Supreme Court itself in the *Pollock v Farmers Loan & Trust Co*., 157 U.S. 429 (1895) case, on how to write the income tax legislation so that it would, in the future, stand the test of constitutionality.

In the *Pollock* case in 1896 the Supreme Court had declared the income tax legislation tested in that case unconstitutional because it was determined by the court to be an attempt to tax directly and without apportionment:

> "... a tax upon property holders in respect of their estates, whether real or personal, **or of the income yielded by such estates, and the payment of which cannot be avoided, are direct taxes.**.." *Pollock,* supra, at 558

> "… it is apparent (1) that the distinction between direct and indirect taxation was well understood by the framers of the constitution and those who adopted it; (2) that, under the state system of taxation, **all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes**;" *Pollock,* supra, at 574

> "We are of opinion that the law in question, **so far as it levies a tax on the rents or income of real estate**, **is in violation of the constitution, and is invalid**." *Pollock,* supra, at 583
>
> (emphasis added)

However, in discussing the character, nature and histories of both direct and indirect taxation under the Constitution, the *Pollock* Court states:

> "Ordinarily, all taxes paid primarily by persons **who can shift the burden upon someone else,** or who are **under no legal compulsion to pay** them, **are considered indirect taxes**;"
> *Pollock,* supra, at 558.
>
> (emphasis added)

This, "*shifting of the burden*" is a very simple concept to understand, it requires the involvement of a tax collector that actually pays the tax in place of the subject "*person*".

For example: the sales tax in a State. In States where there is a sales tax, the sales tax is imposed on transactions conducted by the customers of the store. It is not imposed on the stores themselves, or upon the customers themselves, it is imposed on the purchases of the store's customers who buy the goods sold by the store.

The customers must pay the tax at the cash registers, in addition to the cost of goods purchased, and therein become the subject *"persons*" of the tax. But the *store*, while it is not "taxed" itself by the legislation directly, becomes the taxpayer liable for the payment of the tax to the government because it is always tasked by the enacting legislation with the duty (and corresponding burdens) of acting as a tax collector for the (State) government in order to administer the tax. The store of course only pays over to the State the tax that it collects from other "*persons*", insulating the customers of the store from any contact with the State government, thus making (and keeping) the sales tax, and its enforcement, indirect.

The Store must then collect the tax at the cash register on all of the subject transactions of its customers, and while the store then becomes the payor of the tax when it sends the collected money to the State, it is not the subject *person* because the funds the store turns over to the State as tax do not come out of the pocket of the store, but from the pockets of its customers from whom it was collected. So, the customer pays the sales tax to the tax collector - the store; and the store then, as a tax collector, is made liable by the law for the payment of the tax to the State, and thus pays the tax as the *taxpayer,* by turning over the collected tax funds to the State Treasury.

If one wants to avoid the legal compulsion to pay the sales tax, he can simply stop going to the store to buy things, and the tax ceases.

And when the tax collector – the store, fails to do his duty under the law and collect the sales tax, the (State) government does not go to the individual subject *persons* (the store's customers) to demand the past due tax, interest, penalties and additions to tax. It of course goes to the tax collector, the store, that failed its statutory duty to timely collect and pay over the tax imposed on the transactions of its customers.

The government never deals at all with the subject customers directly. It always deals, only with the tax collectors. The government only deals with its army of tax collectors – the stores, and never has any direct contact at all with the subject *persons*, the customers of the store. And this complete and total lack of all and any contact between the government and the actual *individuals* of the population is the classic hallmark and indication of an indirect tax, as noted by the Supreme Court in the *Pollock* decision:

> "Ordinarily, all taxes paid primarily by persons **who can shift the burden upon someone else** … **are considered indirect taxes**;"
> *Pollock,* supra, at 558.

The sales tax is an indirect tax because there is a third party tax collector, the store, who is the only *person* made liable to the government for the payment of the tax (that has been collected), who shifts the burden of the tax he pays to some other underlying party, his customers, who are the actual subject "*persons*" (and true tax payers) as customers of the store, even though they are not the actual taxpayer of the tax (as a payor of the tax to the State). And the tax, of course, is not imposed on every loaf of bread that is made in the neighborhood, nor is it imposed on every loaf of bread that is *possessed* by any *person* in the neighborhood, it is only imposed on every loaf of bread that is touched and sold by the store, the true "*taxpayer*".

In addition to knowing that a tariff is an indirect tax in the form of an impost, the Supreme Court also recognized immediately that the legislative authors of the income tax tariff legislation (enacted in 1913), had done their homework regarding the writing of constitutional legislation that legitimately imposes an indirect tax, and authorizes its collection in an indirect manner. They recognized that:

> "**2**. The act provides for ***collecting the tax at the source***; that is, makes it the **duty of corporations**, etc., to **retain and pay the sum of the tax** on interest due on bonds and mortgages unless the owner … gives a notice that he claims an exemption" *Brushaber,* supra, at 21

The court recognized that the "*duty of corporations, etc., to retain and pay the sum of the tax*" could be immediately recognized as creating in the law the position of a federal tax collector, who is defined in the statutes as a "*Withholding Agent"*, who was being tasked by the legislation

being tested with the duty to collect the income tax from subject "*persons*" through the collector's "*duty"* to "*retain and pay the sum of the tax*", just as a store is given the legal duty to administer the sales tax. This statutory *"duty"* to administer and collect the federal personal income tax is clearly defined in the law with no confusion at all in Title 26 U.S.C. Section 7701(a)(16):

> **26 U.S.C. § 7701 Definitions.**
>
> **(a)** When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof-
>
> **(1). Person** - The term "*person*" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation
>
> …..
>
> **(16). Withholding Agent.** - The term "*Withholding Agent*" means any *person* required to deduct and withhold any tax under the provisions of sections **1441, 1442, 1443, or 1461**."

With each of those defining sections referenced in the definition of the "*Withholding Agent*" providing:

> **26 U.S.C. § 1441**. **Withholding of Tax on Nonresident Aliens**
>
> **(a) General rule.** Except as otherwise provided in subsection (c) all persons, in whatever capacity acting having the control, receipt, custody, disposal or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), **of any nonresident alien individual**, or of any **foreign** partnership **shall deduct and withhold from such items a tax** equal to 30 percent thereof, except that in the case of any items of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item. (emphasis added)
>
> **(b) Income items**. The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273),

> dividends, rent, salaries, **WAGES[21],** premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income,...

And:

> **26 U.S.C. § 1442 Withholding of Tax on Foreign Corporations**
>
> **(a) General rule.** In the case of **foreign** corporations subject to taxation under this subtitle, there **shall be deducted and withheld at the source** in the same manner and on the same items of income **as is provided in Section 1441** a tax equal to 30% thereof. ....

And:

> **26 U.S.C. § 1443 Foreign Tax Exempt Organizations**
>
> {text not presented because of lack of relevance}

And, ensuring the collected income tax funds are paid over into the Treasury, in Title 26 U.S.C. Section 1461, it is the *Withholding Agent,* the federal tax collector, who is made liable by statute for payment of the tax that he has collected from those subject foreign persons.

[21] The reader should carefully note that these are **the only "wages" identified in law** as being made subject to the **mandatory withholding** of federal personal income tax under the Subtitle A income tax laws (enacted in 1913), i.e.: the "*wages*" **of the non-resident alien** individual identified in subsection (a).

Statutory Liability For The Payment of Income Tax

Title 26 U.S.C. Section 1461 is the only code section in existence in Subtitle A of the Federal tax code that makes any individual "*person*" liable for the payment of the personal federal income tax, in any capacity.

> **26 U.S.C. § 1461. Liability for withheld tax.**
>
> **Every person required to deduct and withhold any tax** under this chapter **is hereby made liable for such tax** and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

Clearly, it is the federal tax collector, the "*Withholding Agent*", the "*person required to deduct and withhold any tax*", who is herein made liable by this statute for the payment of the federal personal income tax that has been collected from the *subject* transactions involving the identified *subject* foreign "*persons*", whose transactions are made subject to the withholding of tax by the statutes. The Supreme Court identified the true indirect character and nature of the income tax legislation being tested in the *Brushaber* case, by recognizing that under the actual provisions of the legislation enacting the income tax, the *Withholding Agent* was (and still is today) cast by the statutes in the role of the liable federal tax collector, just as the store is cast in that role by a State's sales tax legislation. Under the enacting legislation, it is plainly and clearly made the duty of the American citizens (as well as the corporations), **not** to pay tax directly on their own earnings (the citizen's), but to collect tax as *Withholding Agents* from the transactions of the subject foreign *persons* with whom they do business. (Corporations of course pay the income tax on their own earnings, not as a direct tax without apportionment, but as an indirect *excise* as determined under *Stanton v. Baltic Mining Co.*, supra) That is the full legal reach and complete extent of the law in establishing any legal duty imposed on the American citizens to *pay* any rate of federal personal income tax imposed under "*the income tax provisions of the tariff act of Oct. 3, 1913"*, as they are actually implemented in the statutes of Title 26, United States Code.

It is the federal tax collectors, the *Withholding Agents,* who collect the income tax and who "*pay the sum of the tax"*, by withholding money as tax from payments made to foreign *persons* (who

are subject to the tariff's tax), who become the true payors of the tax by virtue of the tax being withheld from their payments, but who never actually deal with the government because under the actual provisions of the statutes the tax is indirectly collected and paid by the tax collectors, the *Withholding Agents*.

The *Withholding Agents*, because they are the actual payors of the income tax to the government, just as the stores pay the sales tax to the State governments, are the actual taxpayers of the tax, BUT are allowed to shift the burden of the tax (they INdirectly pay) to some other party; i.e.: the foreign "*persons*" subject to the withholding of tax from their pay as proscribed under the provisions of the statutes (26 U.S.C. §§ 1441, 1442 & 1443), and who, under Article I, § 8, cl. 4 of the Constitution, are the ONLY true subjects of the federal government**'s** authority and legitimate legal power to tax the earnings and income of **individual** "*persons*", as opposed to the "corporate" persons who are legitimately subjected to the federal **excise** taxation of their earnings and resultant "income".

In the indirect sales tax, the burden is shifted from the store to the customer by adding the cost of tax to the cost of the goods purchased. In the indirect income tax, the burden is shifted from the *Withholding Agent* to the foreign *person* by withholding the tax from payments made to those subject foreign *persons* from whom the tax is withheld under the provisions of Sections 1441, 1442 and 1443. There are no other withholding provisions in Subtitle A to effect "*collecting the tax at the source*", identified by the Supreme Court as the manner in which the tax is provided by law to be collected. It is of course, that indirect collection of the indirect tax that, according to the Supreme Court, made the federal income tax constitutional. Any transformation of that legitimate indirect application of the tax, that effectively initiates or appears to allow any direct taxation of the American people through that transformation, would of course, be patently unconstitutional.

As an indirect tax that is *collected at the source* by *Withholding Agents* who shift the burden of the tax they pay to subject foreign parties by withholding money as tax from their pay, there is no clear duty in the law for a citizen to pay federal personal income tax directly on their own earnings, because there is no clear imposition in the statutes of the tax upon their own earnings or

income. Nor is there a clear duty in the law requiring a citizen to file a Form 1040 reporting their own earnings or income, because American citizens are not required by the income tax legislation of 1913 to pay income tax on their own domestic earnings. That would be unconstitutionally direct taxation without apportionment and cannot be sustained, and has not been enacted by Congress, and has never been tested or upheld by the Supreme Court (see *Pollock* and *Eisner*, supra). The citizens are required by law to ONLY ACT AS TAX COLLECTORS (in the form of *"Withholding Agents"*) and withhold income tax from payments made to foreign *persons*, whenever dealing with non-resident aliens and foreign corporations whose foreign activity is properly subjected to the provisions of the statutes enacted under the legislation.

One should carefully note that the collection of the income tax tariff is properly limited to the foreign jurisdiction possessed by the federal government over foreign affairs, in that the tax is only *collected at the source* by withholding tax from payments made to non-resident alien individual *person*s and foreign corporations. Additionally, once the non-resident alien becomes a resident alien, taking up domestic residence in the U.S., he or she is removed from subjectivity to the tariff collected on foreign activity, and the withholding of tax from his now domestic earnings terminates upon providing his or her payors *notice* of the change in residency status (*see* I.R.S. Publication 515).

An indirect tax in the form of a tariff of course, would only apply to and be collected from foreign activity, precisely as the statutes command under the legislation tested and upheld by the Court in the controlling *Brushaber* decision taken in 1916, as evidenced by Treasury Decision 2313 and the federal statutes herein identified (IRC §§ 7701, 1441, et seq.).

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