

The Fundamental Nature of the Federal Income Tax

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Death and Taxes! You can't escape them! Death may be a valid biological fact, but, taxes are an invention of man. There may be a way of escape from taxes. Is there meaning to the association between the concept of taxes and the final and unpleasant consequence of life? Is this association suggesting that the administration of taxes *should* result in the death of the taxee? Is it true that the federal government has ultimate authority and power to lay any tax it deems necessary for the support of itself? Is the life-sucking nature of the present federal taxing system necessary for the constitutional support of the government of the United States? What is the true character of the federal "income tax" collected by the Internal Revenue Service (IRS)? What is the source of federal authority to levy an "income tax"? And, perhaps most importantly, is this tax arbitrarily imposed? Careful examination of the historical and legal record will show that the federal income tax is a legal tax, but it is **not** legal as it is customarily implemented by the IRS against American citizens.

Citizens are Superior to the Federal Government

Historically, the people of the original thirteen colonies in America agreed to form a cooperative association in response to the arbitrary acts of the British crown. One of these arbitrary acts was the imposition of taxes by the king. The colonists were concerned more with the lack of colonial

representation in the taxing process than they were with the actual taxes imposed. This is not to say that they were not also concerned with the potential for tax abuse. Taxes were seen to be necessary for the support of any government and this new confederation was no exception. The colonists agreed on the imposition of taxes to support this new confederation, but these taxes were levied on the transaction of commerce or against each colony rather than against the citizens generally. These taxes were quite modest. Recognizing the potential for taxing powers to be abused, the Founding Fathers sought to provide mechanisms to prevent such abuse in the future. Appreciating the fact that each colony had certain common needs, and each was too small to individually defend itself against an aggressive British military, they sought to form a confederation. Consistent and reliable support was not forthcoming and eventually, the need for a "more perfect union" was realized. After considering many different governmental models, it was agreed that this "more perfect union" would be patterned after the federal model. Checks and balances were devised ensuring that sovereignty rested in the citizen and the sovereignty of each colony itself would be preserved. The new federal government would be delegated specific and limited tasks to perform with sufficient, and specific authority to carry out these intended functions, but would create no new obligations on the citizens of the states.

A new concept in freedom was born. The Founding Fathers recognized that the very status of the private person in America was to be regarded differently from preceding notions. In Great Britain, individuals were perceived as "subjects" subject to the wishes of the king, but in America the people were viewed as "citizens" to be regarded as

sovereign, existing above all forms of government. The government was to be subject to the wishes of the citizen. One's rights emanated from God rather than from the government. (See Articles of Peace, Paris, November 30, 1782, M'Ilvaine v. Coxe's Lessee, 8 U.S. 279 (1804), & DEFINITIVE TREATY OF PEACE Between the United States of America and his Britannic Majesty, (Sept. 3, 1783).) The function of this new federal government was to protect the citizens of the colonies from all threat, both internally and externally.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, ..." Declaration of Independence, July 4, 1776.

The Founding Fathers were well aware of the dangers of unbridled power. No man or government was to receive a general grant of power; measures were to be taken to ensure that the taxing powers would never be misused. If the power to tax were to become arbitrary and punitive (not in the hands of a king, but in the hands of bureaucrats), it would eventually be death to the liberty of Americans. It would become like a cancerous tumor growing unchecked, requiring a rich supply of blood conveyed by a vast network of arteries laid down for just such a purpose. Blood, carrying nutrients intended for the body, would be diverted to the parasitic cancer, which would serve no higher purpose than to consume more nutrients in its growth, eventually killing the host.

The Founding Fathers never intended such a taxing

system to advance to the extent it exists today. Referring to the taxing character of the proposed, new government James Madison wrote:

"It is true, that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States." The Federalist Papers, No. 45, *Independent Journal*, by James Madison.

Internal and external taxes were proposed, but he thought it would be required only in rare instances. So, while the concept of internal taxes or "internal revenue" was born, the actual existence of the present taxing body, the IRS, was beyond his intention. Madison continued:

"Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them persons of character and weight, whose influence would lie on the side of the State. Those which are to remain in the State The powers delegated by the proposed Constitution to the federal government are few and defined. governments are numerous and indefinite. The former

will be exercised principally on external objects, [such] as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." *Ibid.*

The Constitution for the United States of America is the document that created the federal government, defines its functions, grants it its power, and limits its effect upon the citizens of the states of the union. The Constitution is a fence around the federal government, not around the citizen; it limits the federal government, not the citizen; it defines the "rights" of the federal government and not the "rights" of the citizen. The federal government was delegated authority and power, not "rights"; and this authority and power was carefully crafted to prevent the encroachment of its action and keep it from becoming like the British monarchy. The federal government was to play an extremely small part in the daily life of the citizen. It was to become apparent only in foreign commerce and in certain, well defined activities, and in times of general, serious emergency.

Discussions regarding the nature of the taxing powers of the new federal government raged on, some sought greater powers for the government analogous to the British crown while others sought to define and constrain the powers of government.

"The more intelligent adversaries of the new Constitution admit the force of this reasoning; but they qualify their admission by a distinction between what they call INTERNAL and EXTERNAL taxation. The former they

would reserve to the State governments; the latter, which they explain into commercial imposts, or rather duties on imported articles, they declare themselves willing to concede to the federal head." The Federalist Papers, No. 30, *New York Packet*, Friday, December 28, 1787, by Alexander Hamilton.

Clearly, the federal government was restricted from exercising a general taxing power within the states of the union and especially against the citizens of the states. Internal revenue is support derived internally from within the geographic area where the federal government has primary jurisdiction--that is, from territory under the inherent jurisdiction of the federal government, for example Washington, D.C., its territories, etc., and not from the states of the union. It was never intended that the federal government would extract money from the American citizen as a matter of general exercise, and certainly never intended that it become a permanent parasite consuming the livelihood of the sovereign citizen.

The Language of the Federal Taxing Commission

The verb "to tax" is used in a very broad sense. In the previous citation, Hamilton referred to those federal powers to gain revenue as "taxation". The noun "tax" is used more narrowly. Revenue brought into the federal government may be classified into several broad categories, based upon general characteristics shared by specific revenue within that group. For example, revenue may be termed as either "internal" or "external". Another grouping may be either "direct" or "indirect". Yet another grouping is either "taxes" or "duties, imposts, and excises". "Internal-external" taxation refers to the geographical source of the tax, "direct-indirect" taxation refers to the manner in which

the tax is imposed, and "taxes-duties, imposts, and excises" refers to the nature of the thing taxed.

Recognizing the need to have financial support for the new federal government, a grant from the sovereign citizens through the U.S. Constitution gave authority and power authorizing that:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;" U.S. Constitution, Art. I, Sec. 8., cl. 1.

Here is seen the broad grouping of "taxes" and "duties, imposts and excises". (See also Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895).)

Restrictions upon the federal government's potential for enlarging the taxing power and extending it to the citizen directly was tested early. In an early case the opinion of the court states:

"When the People create a single, entire government, they grant at once all the rights of sovereignty. The powers granted are indefinite and incapable of enumeration. Everything is granted that is not expressly reserved in the constitutional charter, or necessarily retained as inherent in the people. But when a Federal Government is erected with only a portion of sovereign power, the rule of construction is directly the reverse, and every power is reserved to the member that is not, either in express terms or by necessary implication, taken away from them, and vested exclusively in the federal head. This rule has not only been acknowledged by the most intelligent of friends of the Constitution, but is plainly declared in the instrument itself. Congress have

[sic] power to lay and collect taxes, duties and excises, but as these powers are not given exclusively, the states have a concurrent jurisdiction, and retain the same absolute powers of taxation which they possessed before the adoption of the Constitution, except the power of laying an impost, which is expressly taken away. This very exception proves that, without it, the states would have retained the power of laying an impost; and it further implies, that in cases not excepted, the authority of the states remains unimpaired." Livingston v. Van Ingen, 9 (Johns) 507; 4 N.Y. 861 (1812).

The federal constitution placed additional restrictions on the taxing powers of the federal government stating that:

"No capitation, or other direct, tax shall be laid, unless in proportion to the census enumeration herein before directed to be taken. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another." Constitution for the United States of America, Article I, Section 9, Clauses 4 & 5.

What is the nature of the federal income tax as applied by the IRS to individuals living in America today? Does a man, let's call him Cyd Citizen, have "income" if he lives in one of the 50 states of the union and receives money for the work done by his own hands? And if he does have "income" does that make him liable for the federal income tax? Examining these questions requires some understanding of the nature of these various "taxes". The three general groups, mentioned previously, are examined below. Note also that there is substantial overlap in these groups with potential for great confusion.

INTERNAL & EXTERNAL TAXES

This dichotomy deals with the geographical source from which the revenue is raised.

Internal taxes.

1. Internal tax is defined in Black's Law Dictionary. "In the legislation and fiscal administration of the United States, revenue raised by the imposition of taxes and excises on domestic products or manufactures, and on domestic business and occupations, inheritance taxes, and stamp taxes; as broadly distinguished from "customs duties," *i. e.*, duties or taxes on foreign commerce or on goods imported. Rev.St. U.S. tit. 35, § 3140 et seq." (Black's Law Dictionary, Revised Fourth Edition, 1968, p. 952). In other words, revenue from some protected activity connected with commerce where the federal government is domestic.
2. Internal taxes are reserved to the State governments. The Federalist Papers, No. 30, *supra*.
3. Internal taxes are to be used in times of emergencies affecting the safety and security of all the states. The Federalist Papers, No. 30, *supra*.

External taxes.

1. External taxes were to be used to support the general, daily, legitimate operations of the federal government. The Federalist Papers, No. 45, *Independent Journal*, by James Madison; Gibbons v. Ogden, 22 U.S. 1; 9 Wheat 1; 6 L.Ed. 23 (1824).
2. Listed as commercial imposts, or rather duties on imported articles, belonging to the "federal head". The Federalist Papers, No. 30, *supra*.

It appears from the above that the work done by Cyd

Citizen is not subject to the federal income tax through either of these two groups. While the "income tax" appears to be internal in nature, it properly applies only to some federally protected commercial activity. Since the man is not engaged in any work that falls into that privileged capacity, he is not subject to either an internal tax or an external tax.

DIRECT & INDIRECT TAXES

These two classes of tax are defined in the U.S. Constitution and in case law.

Direct taxes.

1. "...direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service to a term of years, and excluding Indians not taxed, three-fifths of all other persons." Constitution for the United States of America, Article I, Section 2, Clause 3.
2. "No capitation, or other direct, tax shall be laid, unless in proportion to the census enumeration hereinbefore directed to be taken." Constitution for the United States of America, Article I, Section 9, Clause 4.
3. "A tax levied upon property because of its ownership is a direct tax...." Manufacturers Trust Co. v. United States, 32 F.Supp. 289 (1940).
4. "...federal government cannot tax citizens personally except in proportion to census." Beeland Wholesale Co. v. Kaufman, 174 So. 516 (1937).
5. "To levy a direct tax, Congress must first fix an

amount to be raised, and this sum must be divided up among the states in proportion to their respective numbers of inhabitants and assessed in each state at a rate to be determined by dividing the total value of the property within the state subject to the tax by the amount apportioned to the state--a rate which will necessarily be very different in different states even though they have the same number of inhabitants, since the less property subject to the tax there is in the state the higher will be the rate." Ruling Case Law, Vol. 26, (26 R.C.L.), Taxation, 1920, pp. 13-165.

6. "Direct taxes bear immediately upon persons, upon possessions and enjoyments of rights." Knowlton v. Moore, 178 U.S. 41 (1900).
7. "Historical evidence shows that personal property, contracts, occupations, and the like, have never been regarded as the subjects of direct tax. The phrase is understood to be limited to taxes on land and its appurtenances, and on polls." Black's Law Dictionary, Revised Fourth Edition, 1968, p. 1628.

Indirect taxes.

Indirect taxes may be thought of as operating on goods where the cost of these goods and the imposed tax is passed on to the consumer at the time of purchase.

1. "Indirect taxes are levied upon the happening of an event or an exchange." Knowlton v. Moore, 178 U.S. 41 (1900).
2. "'Indirect tax' is tax on some right or privilege, and is also called excise or occupation tax. ... Legislature has unlimited and unrestricted power to tax privileges, which may be exercised in any manner or mode." Foster & Creighton Co. v. Graham, 285 S.W. 570

(1926).

3. "A tax laid upon the happening of an event as distinguished from its tangible fruits, is an indirect tax...." Tyler v. United States, 281 U.S. 497; 50 S.Ct. 356 (1930).

It is apparent that if the present federal "income tax" is classified as a direct tax and applied to Cyd Citizen's earnings, it is illegal because it is not apportioned among the states. Moreover, it is illegal if classified as an indirect tax because Cyd Citizen is not engaged in some "privileged occupation" or a happening or exchange controlled by the federal government. The man is working, an act which is one of his unalienable rights protected (not granted) by the U.S. Constitution.

"The property which every man has is his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property." Butchers' Union Co. v. Crescent City, 111 U.S. 746 (1884).

The federal "income tax" can be neither a direct tax on a citizen nor can it be an indirect tax on the citizen's earnings. For additional clarification and distinction between these two classes, see Hylton v. United States, 3 U.S. 171; 3 Dall. 171; 1 L.Ed. 556 (1796); and Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601 (1895).

TAXES & DUTIES, IMPOSTS, AND EXCISES

Taxes (direct, by implication).

1. "The words "tax" and "excise," although often used as synonymous, are to be considered as having entirely distinct and separate significations..." Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 672-673.
2. "No capitation, or other direct, tax shall be laid, unless in proportion to the census enumeration hereinbefore directed to be taken." Constitution for the United States of America, Article I, Section 9, Clause 4.
3. "By the Constitution all direct taxes were required to be apportioned among the several states according to their population, as ascertained by a census or enumeration (article 1, § 2, cl. 3, and section 9, cl. 4)...." Evans v. Gore, 253 U.S. 245 (1920).

Duties, imposts, excises.

1. They "...must be uniform throughout the United States" Constitution for the United States of America, Article I, Section 8, clause 1.
2. "Excises is a word generally used in contradistinction to imposts in its restricted sense, and is applied to internal or inland impositions, levied sometimes upon the consumption of a commodity, sometimes upon the retail sale or it, and sometimes upon the manufacture of it." Patton v. Brady, 184 U.S. 608; 22 S.Ct. 493; 46 L.Ed. 713 (1902).
3. "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 a privilege." Flint v. Stone Tracy Co., 220 U.S. 107; 31 S.Ct. 342; 55 L.Ed. 389 (1911).

4. "An excise tax is an inland impost on articles of manufacture or sale, and also upon licenses to pursue certain trades, or to deal in certain commodities, and property tax is a tax which is not a capitation tax or a direct tax on land or personalty." Black's Law Dictionary, Revised Fourth Edition, 1968, pp. 672-673.
5. "A tax levied upon property because of its ... use is an excise, duty or impost." Manufacturers Trust Co. v. United States, 32 F.Supp. 289 (1940).
6. "Among the federal taxes which have been sustained as constituting duties or excises rather than direct taxes are included a tax on carriages; a tax on the circulating notes of state banks; a tax on the devolution of real estate by will or descent; a tax on each sale of or agreement to sell any products or merchandise at an exchange or board of trade; a tax on the passing of property real or personal by will or the laws regulating intestate succession; a tax on agreements to sell shares of stock, known as "calls" by stockbrokers; a tax on tobacco prepared for consumption or sale; a stamp tax on contracts for the sale of certificates of stock; a tax on the gross receipts of companies engaged in refining sugar; a tax on the manufacture of cheese; a tax on artificially colored oleomargarine, and a tax on the doing of business in a corporate capacity measured by income." Ruling Case Law, Vol. 26, (26 R.C.L.), Taxation, 1920, pp. 13-165.

Although the IRS exercises its taxing power against the citizen, in reality, it has been delegated **no** such authority.

As leveled against Cyd Citizen, the tax cannot be a legal "tax" because it is a direct tax and, as the Constitution demands, a direct tax must be apportioned among the states. It cannot be a capitation tax either because this type of tax is restricted as well. The man is not subject to any duties, imposts, or excises because he is not engaged in any privileged commercial or corporate activity subject to the control of the federal government.

The Strong-Arm of the IRS

If Cyd's earnings are not subject to the federal income tax according to any of the categories above, how is it that the IRS has such power to coerce and demand that he (voluntarily?) hand over part of his property? And when he refuses, they confiscate it by force? It is all done by the artful crafting of words leading the citizen to form false impressions of their meaning. It is done by threat. It is done by forming assumptions of liability and acting on them, assumptions that are not founded in law. It is often simply done by applying stereotypical labels; calling the citizen a "taxpayer" which automatically places him within the jurisdiction of the IRS's talons. When faced with a meritorious challenge, the IRS often refuses to state its authority in acting against the citizen. They then proceed to confiscate the alleged tax along with massive "penalties" leaving the citizen without resources to rally a defense. This vicious tactic creates profound fear and deters further challenges by even those who understand the true limitations of the IRS. When challenged in the courts, the judge often refuses to allow the challenge to be tested by throwing out the case. Justifying his actions, the judge typically employs some fanciful, legalese mumbo-jumbo or even creates a bogus argument attributed to the citizen which he then

proceeds to discredit. Laws are written to have specific and clearly understood meaning. "Acts of Congress are to be construed by interpreting the words in their plain and actual meaning." Smith v. United States, 1 Wash.T. 262 (1869). "Every citizen of the United States is supposed to know the law,...." Pierce v. United States, 7 Wall (74 U.S. 169) 666 (1869). How is it possible to know the laws relating to the federal income tax? Have you seen Title 26? Each citizen better know the law, at least how it applies to him. If he does not he will suffer the consequences. "The law helps the vigilant, before those who sleep on their rights." California Civil Code, § 3527.

The True Nature of the "Federal Income Tax"

1. "The tax, which is apportioned to the ability of the taxpayer to pay it, is founded upon the protection afforded by the state to the recipient of the income in his person, in his right to receive the income and in his enjoyment of it when received." N.Y. Ex Rel. Cohn v. Graves, 300 U.S. 309 (1937). Notice that it is apportioned to the person, however, it is not the federal government that is levying the tax, it is one of the states of the union.
2. It is "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C., § 110.
3. "(c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C., § 110.
4. Income tax is defined as a "tax based on income, gross or net. Usually regarded as an excise rather than a property tax." Ballentine's Law Dictionary, Third Edition, 1969, p. 601.

5. "'Income" is the gain derived from capital, from labor, or from both combined; something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and received or drawn by the recipient for his separate use, benefit, and disposal. ... Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy. The government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "*Derived--from--capital*"; "the *gain--derived--from--capital*," etc. Here we have the essential matter: *not* a gain *accruing to* capital; not a *growth* or *increment* of value *in* the investment; but a gain, a profit, something of exchangeable value, *proceeding from* the property, *severed from* the capital, however invested or employed, and *coming in*, being "*derived*"--that is, *received* or *drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal--*that* is income derived from property. Nothing else answers the description." Eisner v. Macomber, 252 U.S. 189 (1920).

As already established, in order for the IRS to have any taxing authority over our citizen, Cyd, he must be working in some protected or privileged capacity. Clearly, he must have "income". In common speech the term "income" generally means "cash flow". It is no coincidence that the IRS wants everyone to blindly accept the notion that "cash

flow" is the same as "income". However, "cash flow" and "income" are not the same! The term "income" has a very narrow definition in law. "Income" is profit or gain from investments in capital or labor or both combined. Cyd has no gain resulting from investments in capital or labor. One might think that he is laboring, but the definition of "income" from Eisner v. Macomber, clearly states that income must result from investments in capital or labor. He has invested in neither capital nor labor. Labor, in the common sense, means the work a man does with his hands, in other words, manual labor. (See Rector, Etc., Of Holy Trinity Church v. United States, 143 U.S. 457; 12 S.Ct. 511 (1892).) Labor in its application to "income" is that part of the investment by the capitalist hiring someone to work for him for a wage where the capitalist realizes a profit from that investment in labor. The laborer does not realize a profit because he has made no investment. Profit is excised or cut off or severed from the increase resulting from the capital investment. Evidence of an investment would be stocks, bonds, or certificates of shares, a tangible piece of paper attesting to such a transaction. Clearly, Cyd is not the capitalist; he is merely working either for himself or for the capitalist. He has invested no property in any commercial enterprise. He has not even invested in labor. His work is one of his nontaxable, unalienable rights enjoyed as a result of his birthright in America, a right which is supposed to be protected from federal interference by the U.S. Constitution and cannot legally be abridged. There cannot be any constitutional phrase, statute, or regulation which takes away that right. Only the purchasing of other's labor, where a gain or profit may be made, is there a taxable income realized. Cyd is not investing in labor, he is doing labor and he has the unalienable right to

the fruit of his own labor. "Every man has a natural right to the fruits of his own industry." 48 American Jurisprudence 2d, Labor and Labor Relations § 2.

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed." [Bold added.] Redfield v. Fisher, 292 P. 813 (1930).

Income is the gain derived from capital, from labor, or from both combined. The term "gain" means "Profits; winnings; increment of value ... [d]ifference between receipts and expenditures; pecuniary gain ... [d]ifference between cost and sale price ... "[g]ain derived from capital," is a gain, profit, or something of exchangeable value proceeding from the property, severed from the capital however invested, and received or drawn by claimant for his separate use, benefit, and disposal." Black's Law Dictionary, Fourth Edition, 1951, p. 807. "Derived" specifically means "[t]o receive, as from a source or origin ... [t]o proceed from property, sever from capital, however invested or employed, and to come in, receive or draw by taxpayer for his separate use, benefit, and disposal." Black's Law Dictionary, Revised Fourth Edition, 1968, p. 530. "Capital" is "[m]oney expended in acquiring, equipping, and promoting an enterprise." Black's Law Dictionary, Revised Fourth Edition, 1968, p. 263. "Income" is the result of some business investment. Furthermore, it is not just engaging in some business enterprise that generates "income", it must be a business

that receives a federal corporate franchise, or "protection afforded by the state." (See N.Y. Ex Rel. Cohn v. Graves.)

Governmental Misapplication of the Income Tax

The dreadful reality is that the IRS does consider Cyd's cash flow as being taxable income. How do they justify it? Simple! They have illegally enlarged their authority and power--an enlargement that is contrary to the law. Yet they do it because we allow them to get away with it.

It is true that in a republican form of government, the first responsibility of the government is to protect the rights of the individual (at least that's the theory), but that principle of law grants no license to the federal government to levy a "protection tax" directly on a citizen or on his natural right to earn a living. The exercise of natural, unalienable rights is not a taxable privilege.

"It cannot be denied that the Legislature can name any privilege a taxable privilege and tax it by means other than an income tax, but the Legislature cannot name something to be a taxable privilege unless it is first a privilege. ... Realizing and receiving income is not a privilege that can be taxed. ... Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege." [Bold added.] Jack Cole Co. v. Alfred T. McFarland, 337 S.W.2d 453 (1960).

"That which is not in fact the taxpayer's income cannot be made such for tax purposes by calling it "income". Revenue Act of 1934, §§ 42, 161, 162, 26 U.S.C.A. Int.Rev.Code, §§ 42 161, 162." [Bold added.] Bach v. Rothensies, 37 F.Supp. 217 (1941).

Bureaucrats are forbidden from stretching definitions and statutes to encompass the citizen's income.

"Treasury Department cannot, by interpretative regulations, make income of that which is not income within meaning of Revenue Act. ... Congress cannot, without apportionment, tax as income that which is not income within meaning of the Sixteenth Amendment. ... Congress in defining gross income in Revenue Act manifested intention to use to its fullest extent the power granted it by the Sixteenth Amendment. ... The meaning of the word "income" in the Sixteenth Amendment and in Revenue Acts adopted pursuant thereto is that given to it in common speech and everyday usage, but what is or is not income must be determined in each case according to substance without regard to form. ... The meaning of the word "income" in the language of accountancy and economics was not controlling in determining construction of Revenue Acts defining income, and of administrative regulations interpreting the Revenue Acts. ... The ruling of one administrative department of government concerning income accounting could not control that of another department made for an entirely different purpose under another act of Congress. ... A Treasury Regulation interpreting Revenue Acts of 1934 and 1936 defining "income" were valid and applicable to corporate taxpayer's sales of its stock in 1935 and 1927, notwithstanding substantially identical definition of income in prior Revenue Acts had been given a more restricted administrative interpretation." [Bold added.] Helvering v. Edison Bros. Stores, 133 F.2d 575 (1943).

The hands of Congress, the IRS, and government bureaucrats are legally tied. But that does not stop them

from reaching into the pockets of the citizen and stealing their money.

Sometimes the argument for enlargement is based upon the "Buck Act". This is an erroneous argument. "Purpose of Buck Act [4 USCS §§ 105 et seq.] was to equalize liability for income tax between officers and employees of United States who reside within federal areas and those officers and employees, otherwise identically situated, who reside outside federal areas who had become liable for state tax by passage of Public Salary Tax Act of 1939 [Act of April 12, 1939, Ch 59, 53 Stat 574]." [Brackets original; Cites omitted.] (4 U.S.C.S., § 105, n 2) The Buck Act merely allowed a state of the union to level a tax upon federal citizens living in federal enclaves within the state; it did not authorize the federal government to tax citizens of the sovereign states. In fact, it would not be possible to do so given the restrictions of the federal constitution.

Back to the Constitutional Limitations

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes

nothing to the public so long as he does not trespass upon their rights. ... On the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter." Hale v. Henkel, 201 U.S. 43 (1906).

"A law has no effect of its own beyond the limits of the sovereignty from which its authority is derived." Pringle v. Gibson, 135 Me. 297; 195 A. 695 (1937).

"Congress may not exercise its power, whether explicitly or implicitly derived from the Constitution, in a manner inconsistent with the limitations on government power contained elsewhere in the document." Palmore v. Superior Court of District of Columbia, 515 F.2d 1294 (1975).

"It may be that it...is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed." Hale v. Henkel, *supra*.

Did the Sixteenth Amendment enlarge the taxing powers of the federal government allowing it to tax Cyd's cash flow?

"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." Constitution for the United States of America, Sixteenth Amendment.

"The Sixteenth Amendment... does not extend the taxing power to new or excepted subjects, but merely removed 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." William E. Peck & Co. v. Lowe, 247 U.S. 165; 38 S.Ct. 432 (1918).

The **subject** of the income tax was **not** changed, the only change was regarding the **source** of the income, that being the investment, where ever it may be, was now taxable. So Cyd's cash flow, which was formerly out of reach of the IRS, is still beyond the reach of the IRS.

"This constitutional limitation upon direct taxation was modified by the Sixteenth Amendment insofar as taxation of income was concerned, but the amendment was restricted to income, leaving in effect the limitation upon direct taxation of principal. ... The Sixteenth Amendment did not define the word "income." Richardson v. United States, 294 F.2d 593 (1961). Notice the use of the word "principal".

Again this is an investment term where a "profit" or "gain" is realized.

"The Sixteenth Amendment, like other laws authorizing or imposing taxes, is to be taken as written, and is not to be extended beyond the meaning clearly indicated by the language used." Edwards v. Cuba R. Co., 268 U.S. 628; 45 S.Ct. 614 (1925).

Early this century, and about the same time as the passage of the sixteenth amendment, Frank Brushaber, a citizen of New York, maintained that the income from stock invested in the Union Pacific Railroad Co., headquartered in Utah, was not "income" subject to a federal tax. He lost

his case on the singular issue that, the Union Pacific Railroad was a federal corporation chartered by Congress when Utah was still a territory of the United States. As such, the corporation was a franchise of the federal government. It was a privileged "source" that placed this "income" directly within the taxing power of the federal government. Notice that this "income" was not from his own hands, but was "income" resulting from investment. Even though he lost, this case is very important in that it clearly determined that this "income" was an "excise" tax, relevant only within the privileged capacity afforded by the federal government. (See Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916), Manufacturers Trust Co. v. United States, 32 F.Supp. 289 (1940), & United States v. Francisco, 614 F.2d 617 (1980).)

Cyd's earnings are still not taxable.

Smoke and Mirrors

How is the income tax collection levied and enforced? It is done administratively through administrative trickery and deceit. But actually Cyd does it to himself. True, it is done partly through fear of retaliation, partly from misguided patriotism, and partly from ignorance. Ultimately, Cyd declares himself to be a citizen of the United States subject to the authority and power of the federal realm. (See "The Legal Basis for the Term "Nonresident Alien" by Gerald Alan Brown.) Cyd mistakenly declares that he has "income". The IRS Income Tax Return only requires that Cyd report "Gross Income" or "adjusted gross income"--terms that leave something to the imagination unless aided by statutory definition. "The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross

receipts." 4 U.S.C., § 110. "The term 'gross income' includes gains, profits, and income derived from * * * sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property." Commissioner of Internal Revenue v. Van Vorst, 59 F.2d 677 (1932). "[T]axable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction). 26 U.S.C., § 63(a) & (b). It goes on! "[A]djusted gross income" means, in the case of an individual, gross income minus the following deductions:" 26 U.S.C.S., § 62(a)(1)-(13). Following this is a long list of business type deductions showing the true nature of "income". But where is the term "income" defined? Further, he declares the "source" of his "income" to be from within the United States. This term does not mean one of the states of the union--it means territory subject to the inherent jurisdiction of the federal government. "[T]he term "United States" has a broader meaning than when used in the Constitution, and includes all territories subject to the jurisdiction of the Federal Government wherever located." 77 Am Jur 2d, United States § 2. He also declares that his earnings are within the meaning of "income", and who is the IRS to argue with his mistake when it results in their favor. He does this by filing a W-4 and submitting his signed "Income Tax Return". That "Income Tax Return" has all appearances of being a "business" return. It possesses the declaration of having "income" and "deductions". Cyd has now become like a federal corporation, but where are the allowances for depreciation of the "corpus" (Latin for body) and for maintenance and upkeep? By these acts, he "voluntarily" places himself within the "protection" of the federal government as if he were a federally franchised corporation

and the IRS then taxes him to the limit. Cyd has digressed from having God-given, unalienable rights to a governmentally created "person" who has fewer "rights" than even a non-human corporation. Is this legal? Yes! Is it moral? No! But Cyd does it to himself, voluntarily. Is that why the IRS calls it a "voluntary, self-assessment system"? Quoting from Ford v. United States, [complete cite not given], the legal gymnastics involved in justifying such an idea is revealed. Referring to the "concept basic to our taxing system, the concept of voluntariness" it says that "[i]deally our taxing system is a voluntary one, dependent for compliance in large part upon a sense of civic duty. The system has been described as one of 'self-assessment'." Ford at 360." (Cited in Ewing v. United States, 711 F.Supp. 265 (W.D.N.C. 1989).) "With certain exceptions, an individual may waive constitutional provisions intended for his benefit, especially where no question of public policy or public morals is involved. Such waiver may be in writing or by conduct amounting to an estoppel; or by the failure to make timely assertion of the right; but it must be voluntary." 16 Am Jur 2d, Constitutional Law, § 205.

Cyd Citizen chose to become a federal "taxpayer".

Conclusion

What is the conclusion to all this? The federal government has no taxing authority over a citizen who is earning his living in one of the states of the union. Cyd Citizen's earnings, without his compliance, may not be touched by the federal government. The federal government has never been delegated power to lay a capitation, or other direct, tax on Cyd or the earnings generated by his own hands, even with the passing of the 16th Amendment. Only when the income results from the

privileged capacity granted by the federal government, or when one volunteers to assume this capacity, is there any liability for a federal income tax. This condition does fall into the "internal" nature of taxation as a direct tax and not an "excise" tax. The unauthorized expansion of federal power to tax Cyd Citizen's earnings because of conspiratorial ignorance is an abomination. It is illegal. It is unAmerican.

Federal taxes are a necessary fact of governmental life, but only those taxes that are authorized by the U.S. Constitution are acceptable. Any unauthorized federal tax is not to be tolerated. Any illegal tax is a malignant parasite. It is that illegal tax that must be "excised". It is that illegal tax that results in the irrational association of "death and taxes". It is that illegal tax that gives death a bad name. Death resulting from a long, productive life in the pursuit of happiness is natural. However, death resulting from abusive, arbitrary, excessive federal taxation must be resisted. The federal income tax, as it is currently enforced against the citizens of the states of the union, is just such a tax leading to the death of liberty. The federal government has not been authorized to level a tax on the earnings of a citizen of one of the states of the union engaged in the support of himself and his family by performing his God-given, unalienable right to work. The general enforcement of a federal tax on the American people by the IRS is a malignancy that must be vigorously and repeatedly contested, and if necessary excised.

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