LAWFUL TAX AVOIDANCE

Free e-Book

Know the Truth, and the Truth shall set you free.

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LAWFUL TAX AVOIDANCE
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Summary

The "federal income tax" is the tax on federal income; it is not the Federal tax on income. A person becomes subject to any internal revenue tax when the record shows that he has received or derived a gain from the exercise of a government entitlement or from the use of government property. Thus, the tax is an indirect tax, an excise tax, or a "cut" on the gains or profits derived from the privileges of government. As such, it may be lawfully avoided by avoiding those privileges on which the tax is laid.

The tax on federal income is not "theft." Its operation is based on "voluntary compliance," which is when a person fails to object to an erroneous or fraudulent information return claiming a government interest in his affairs. Failure to object is treated as consent, and establishes the presumption of a valid record, which triggers the enforcement powers of the IRS to execute the terms of the statute.

To lawfully avoid the tax on federal income, one must have knowledge of the language used in the Internal Revenue Code ("*IRC*"), and avoid the privileges and activities defined by those words or terms. One must also properly refute any false information erroneously or fraudulently provided to the IRS by nescient or ignore-ant third parties. Often, a challenge to false presumptions is all that's necessary to relieve the burden they impose, but the IRS and its army of corporations, accountants, and attorneys may persist in their willful blindness to the law, or reckless disregard for the truth in their demands for payment — so be prepared.

Fortunately, despite the use of coercion and intimidation, these IRS tactics generally do not succeed against ordinary and law abiding Citizens who assert the Truth and defend their right to the fruits of their own labor by filing an *Honest Tax Return*. As the record shows, thousands, if not tens of thousands of people have defeated the fraudulent misapplication of the tax on federal income over the last 20+ years, see *https://www.losthorizons.com/BulletinBoard.htm*. Therefore, know the Truth, and Truth shall set you free.

The Tax On Federal Income
(*https://www.youtube.com/watch?v=ADYhyLssQhQ*)

The "federal income tax" is the tax on federal income; it is not the Federal tax on income. This is an inherent power of the United States under Article IV, section 3, Clause 2 of the *Constitution*: "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States…" Proof of this power exercised in the form of taxation is enumerated as follows:

(1) IRS Website describing the history and showcasing the original tax forms for tax year 1863, *https://www.irs.gov/pub/irs-prior/f1040--1864.pdf* states:

"*I hereby certify that the following is a true and faithful statement of the gains, profits, or income ... whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever ... and subject to an Income Tax under the excise laws of the United States*: …"

The word "*excise*," as previously stated, means a "cut;" specifically of the gains, profits, or income derived from the exercise of government privileges. This is compatible with the taxation power of the United States found in Article I, section 8 of the *Constitution*: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, ... but all Duties, Imposts and Excises shall be uniform throughout the United States…" An excise tax avoids the requirement of apportionment[1], imposed on Congress by Article I, section 2, and an indirect tax may be avoided by avoiding the privileges on which the tax is laid.

(2) The Senate Congressional Record on June 16, 1909, page 3344 found at *https://www.congress.gov/61/crecb/1909/06/16/GPO-CRECB-1909-pt3-v44-21-1.pdf* states:

[1] "...in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts and excises." *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 557 (1895)

"I therefore recommend to the Congress ... propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population. ...

... [the] ... power in the National Government to levy an excise tax, ... accomplishes the same purpose as a corporation income tax ...

I therefore recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks, and building and loan association, an excise tax measured by 2 per cent on the net income of such corporations. This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock. ..."

— President William H. Taft

As foreshadowed here and proven subsequently, the word "income" as used in the Internal Revenue Code means income from government sources, and is also the same thing as used in the Corporation Excise Tax Act of 1909.

(3) The House Congressional Record on March 27, 1943 pages 2579 - 2580 found at *https://www.congress.gov/78/crecb/1943/03/27/GPO-CRECB-1943-pt2-20-1.pdf* states:

"I. THE INCOME TAX IS AN EXCISE TAX, AND INCOME IS MERELY THE BASIS FOR DETERMINING ITS AMOUNT ...

... In sustaining the Civil War income tax laws, the Supreme Court held that the tax based on income was not a direct tax but was an excise or duty and as such did not require apportionment among the States. Springer v. United States ((1880) 102 U.S. 586). This decision, rendered after the income tax had been thoroughly tested for a period of 10 years, represents a deliberate determination as to the fundamental nature of the tax. ...

... The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects ... [it] ... did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.

The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax. ..." [Original emphasis.]

To reiterate, in 1880, the Supreme Court made a "deliberate determination as to the fundamental nature of the tax" and determined it "was not a direct tax but was an excise or duty." And well after the purported passage of the 16th Amendment, Congress determined in 1943 that it "did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income."

(4) A number of U.S. Supreme Court decisions have consistently held that the income tax is not a direct tax, but an excise on privileged activities, such as receiving government income, gains made from Property belonging to the United States, including corporate income:

1. *Springer v. United States*, 102 U.S. 586 (1880): "The duty which the internal revenue acts provided should be assessed, collected, and paid upon gains, profits, and incomes was an excise or duty, and not a direct tax, within the meaning of the Constitution."
2. *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 588-589 (1895), reiterating *Springer*: "...a tax upon gains, profits, and income was an excise or duty, and not a direct tax ... and that its imposition was not, therefore, unconstitutional."
3. *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1, 17-18 (1916): "... 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 ..."

4. *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916): "...it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation, but simply prohibited the previous ... power of income taxation ... from being taken out of the category of indirect taxation to which it inherently belonged, ..."

(5) Proof by elimination: In *United States v. Ballard*, 535 F.2d 400, 404 (8th Cir. 1976), the court stated: "The general term 'income' is not defined in the Internal Revenue Code. Section 61 of the Code, 26 U.S.C. § 61, defines 'gross income' ..." In *Eisner v. Macomber*, 252 U.S. 189, 206 (1920) the Supreme Court stated: "it becomes essential to distinguish between what is and what is not 'income,' ... Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate ..."

Since the term 'income' is not and cannot be defined, then clearly it can not be the subject of the federal income tax. That is to say "the law is the definition and limitation of power," see *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) and "If the power is not in terms granted ... it does not exist." *Legal Tender Cases*, 110 U.S. 421, 469 (1884). All that is left as the subject of the tax is "federal income." Hence, the federal income tax is the tax on federal income, not the Federal tax on income.

(6) A devious IRS agent could try to muddy this clear and simple concept by asserting that the federal income tax is analogous to the state income tax, in that it is the power of the specified jurisdiction to tax all income — from whatever source derived. To which one may agree that truly, the 16th Amendment does allow a tax "on incomes, from whatever source derived;" but what is the 16th Amendment definition of income?

The Supreme Court in *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170, 174 (1926) stated: "'Income' has been taken to mean the same thing as used in the Corporation Excise Tax Act of 1909, in the Sixteenth Amendment, and in the various revenue acts subsequently passed."

Thus, "The Corporation Tax is not a direct tax within the enumeration provision of the Constitution, but is an impost or excise which Congress has power to impose under Art. I, § 8, cl. 1, of the Constitution. ... Indirect taxation includes a tax on business done in a corporate capacity; the difference between it and direct taxation imposed on property because of its ownership is substantial, and not merely nominal. ... 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." See *Flint v. Stone Tracy Co.*, 220 U.S. 107, 109-110 (1911).

(7) Finally, any well instructed child who has completed grammar school ought to understand his tax obligations by simply reading the 1040-Instructions published by the IRS. The "federal income tax" as used in the instructions begins with a lower case "f." This means that "federal" is an adjective — not a possessive pronoun, as a capitalized word "Federal" would imply. An adjective normally describes the following word: "income," not "tax." Therefore, "federal income" is the subject upon which the tax is laid; it is not the Federal Government's power to tax "income."

So from here on forth, please refer to the tax as the "**tax on federal income**;" as this shifts the burden of proof to the government to show that it is anything other than a tax on federal income — which cannot be done!

Controlling Words

According to a July 2012 *article* published by the Michigan Bar Journal, the Internal Revenue Code is 3.8 million words long, and counting. This deliberate construction makes it virtually impossible for the public to understand the Truth of the tax laws, and leads most to simply acquiesce, and surrender the hard won fruits of his labor. Not any more.

There are four words which control almost every definition and operation of the Internal Revenue Code. They are: "***Property***," "***income***," "***service***," and "***source***." They *include*[2] Property belonging to the United States, government or corporate income, government service, and sources of government revenue. They *exclude* private property, private income, private labor, and private sources of gain. The meaning of these words are derived as follows:

"It is elementary law that every statute is to be read in the light of the constitution." *McCullough v. Virginia*, 172 U.S. 102, 112 (1898) and "every word must have its due force and appropriate meaning, and no word is to be regarded as unnecessarily used or needlessly added." *Williams v. United States*, 289 U.S. 553, 554 (1933). "The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when adopted, it means now." *South Carolina v. United States*, 199 U.S. 437, 448 (1905), and "Words [in the Constitution] must be read with the gloss of the experience of those who framed them. ... and ... would receive the significance of the experience to which they were addressed -- a significance not to be found in the dictionary." *United States v. Rabinowitz*, 339 U.S. 56, 70 (1950).

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[2] INCLUDES AND INCLUDING: See *IRC § 7701(c)*. The "... verb 'includes' imports a general class, some of whose particular instances are those specified in the definition." *Helvering v. Morgan's, Inc.*, 293 U.S. 121 (1934). "When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning." *Stenberg v. Carhart*, 530 U.S. 914 (2000). "It is axiomatic that the statutory definition of the term excludes unstated meanings of that term." *Meese v. Keene*, 481 U.S. 465 (1987). As "thus far, we have not traveled, in our search for the meaning of the lawmakers, beyond the borders of the statute." *United States v. Great Northern Railway Co.*, 287 U.S. 144 (1932).

Since "Congress cannot invoke the sovereignty of the people to override their will as declared in the Constitution," *Perry v. United States*, 294 U.S. 330, 331 (1935), and "Congress cannot by any definition it may adopt [redefine the meaning of words used in the Constitution], since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate...," *Eisner v. Macomber*, 252 U.S. 189, 206 (1920); therefore the *Constitution* is not only "the supreme Law of the Land," but it also controls the meaning of words, just like a dictionary.

In the light of the *Constitution*, and the context of government power, the word "Property" means "Property belonging to the United States," see Article IV, section 3, clause 2. This "Property" excludes *Fifth Amendment* "life, liberty, or property," which no person shall be deprived of without due process of law, and "private property" which shall not "be taken for public use, without just compensation." Thus, to avoid capital gains tax, one must avoid any interest in "Property belonging to the United States," while enjoying one's right to "life, liberty, [and] property."

Indeed, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, ... and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943). As such, it may be observed that any word so contemplated by the *Constitution*, such as house, arms, life, liberty, private property, [personal] effects ... etc., are "beyond those matters which it was within the constitutional power of the legislature to reach" see *McCullough v. Virginia*, *supra*, *id* at 112.

In the light of the *Constitution*, and as used in the *IRC*, the word "***income***" as discussed previously, generally means government income or corporate income; and may mean income derived from the exercise of any privilege of the government. A prime example is the act of incorporation. Government grants corporations the privileges by of limited liability, trade mark

protection, and perpetual existence. For this reason, corporations are subject to the tax, and an employee "includes an officer of a corporation," see *IRC § 3401(c)*.

In the light of the *Constitution*, and as used in the *IRC*, the word "***service***" means government service, and this excludes private labor. The meaning of service may be deduced from Article I, section 6: "The Senators and Representatives shall receive a Compensation for their Services;" Article II, section 1: "The President shall ... receive for his Services, a Compensation;" Article III, section 1: "...The Judges ... of the supreme and inferior Courts, shall ... receive for their Services, a Compensation;" and Article I, section 8, clause 16: "...the Militia, ... may be employed in the Service of the United States ..."

This fact is highlighted by the names of the agencies we have established to serve us, such as the Armed Services, Postal Service, Secret Service, Marshals Service, Rural Housing Services, National Ocean Service, Economic Research Service, Postal Inspection Service, Food and Nutrition Service, Federal Protective Service, National Park Service, Indian Health Service, Bureau of the Fiscal Service, Agricultural Research Service, National Weather Service, Selective Service System, Congressional Research Service, Fish and Wildlife Service, Health and Human Services, National Marine Fisheries Service, Food Safety and Inspection Service, General Services Administration, Immigration and Citizenship Services, Defense Finance and Accounting Service, Centers for Medicare & Medicaid Services, Citizenship and Immigration Services, and everybody's favorite: the Internal Revenue Service!

The word "***source***" is not used in the *United States Constitution* until 1913, in the Sixteenth Amendment. Therefore its meaning must be read in the light of State constitutions preceding it, as the power of the United States originates from the People and the States that created it:

(1) *Massachusetts Constitution*: "The commonwealth may borrow money ... in anticipation of receipts from taxes or other sources," "Collection of Revenue. - All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof."

(2) *Rhode Island Constitution*: "... the general assembly may provide by law for the state to borrow [money] in anticipation of receipts from taxes, ... and ... receipts from other sources... " "Limitation on state spending. ... No appropriation...or budget act shall cause the...revenue appropriations...to exceed 97% of the estimated state general revenues ... from all sources,

(3) *Pennsylvania Constitution*: "A balanced operating budget ... [includes] ... estimated revenues from all sources. ... the Governor shall recommend specific additional sources of revenue sufficient to pay the deficiency and the estimated revenue to be derived from each source;" "Projected operating expenditures classified by department or agency and by program, ... and estimated revenues, by major categories, from existing and additional sources, and ... Projected expenditures for capital projects specifically itemized by purpose, and the proposed sources of financing each."

(4) *Georgia Constitution*: "The General Assembly shall not appropriate funds ... [to] ... exceed a sum equal to the amount of ... surplus ... [+] ... total treasury receipts from existing revenue sources ... " "The General Assembly is authorized to provide ... an Indigent Care Trust Fund ... [and] ... for the ... deposit of revenues raised from specified sources for the purposes of the fund ... "

It's strongly implied from these founding documents that the word "source" may mean source of government revenue. To confirm this, we look to the present day usage of this word by the Federal Government. A word search of the U.S. Treasury website should suffice, *https://fiscaldata.treasury.gov/americas-finance-guide/government-revenue/*:

(1) "Government revenue is income received from taxes and other sources to pay for government expenditures."

(2) "The primary sources of revenue for the U.S. government are ... taxes ... "

(3) "Sources of Federal Revenue ... Most of the revenue the U.S. government collects comes from contributions from individual taxpayers, small businesses, and corporations through taxes. Additional sources of tax revenue consist of excise tax, estate tax, and other taxes and fees."

(4) "The chart below shows how federal revenue has changed over time, broken out by the various source categories."

(5) "Individual income tax has remained the top source of income for the U.S. government since 2015."

Thus, there is simply no evidence showing that "source" means anything other than a source of government revenue. As such, anyone who has any income "from whatever source derived" is absolutely subject to the tax laws for that privilege. On the other hand, non-privileged private sources of gain are simply not within the scope of lawful government control.

Definition of Terms

The following terms are explicitly defined in the Internal Revenue Code (*IRC*), and "we must follow that definition, even if it varies from that term's ordinary meaning." see *Stenberg v. Carhart, supra*. The definitions below are simplified, but please study them for yourself. "As judges, it is our duty to construe legislation as it is written, not as it might be read by a layman, or as it might be understood by someone who has not even read it." *Meese v. Keene*, *supra*.

- The term "Gross income means all income from whatever source derived," see *IRC § 61*. "Adjusted gross income" (*IRC § 62*) and "taxable income" (*IRC § 63*), are both defined in reference in gross income, which is derived from sources of government income.
- The term "wages" means remuneration for services performed by an "employee" for his "employer," where an "employee" is a government employee, or an officer of a corporation, and an "employer" means the person for whom an employee performs any service. So essentially, an "employer" is the government, and "wages" mean government pay for government service. See *IRC § 3401*.
- The term "trade or business" defined at *IRC § 7701(a)(26)* means the performance of the functions of a public office. Self-employed income, or specifically "net earnings from self-employment" in *IRC § 1402* means the gross income derived from any trade or business. Thus, "net earnings from self-employment" means government income derived from performing the functions of a public office.
- The term "service-recipient" defined in *IRC § 6041A* means the "person" for whom service is performed, and *§ 6041A(d)(1)* defines the term "person" to mean any governmental unit (and any agency or instrumentality thereof). Thus, a service-recipient is part of government.
- The term "broker" is a "person" who acts as a middleman with respect to any transaction in "property or services;" and a "customer" means any "person" for whom the broker has transacted any business. A "person" is again defined to mean any governmental unit (and any agency or instrumentality thereof), see definitions in *IRC § 6045*.

Duty To Be Honest

It is said that when an honest man discovers he is mistaken, he will either cease being mistaken, or he will cease being honest.

For the common man exchanging his labor for a living, it should now be obvious that the *Form W-2*: Wage and Tax Statement he received contains errors. He is not a government "employee" or "an officer of a corporation," he did not perform a government "service," and therefore he did not receive "wages." It is his duty to correct the record. Failure to do so is treated under the law as "voluntary compliance."

The company that hires common laborers for private work has a moral obligation to refrain from bearing false witness against its workers. The company is not a "service-recipient," it's not a "governmental unit (and any agency or instrumentality thereof)," it does not perform "the functions of a public office," and except for its officers, the company does not pay "remuneration for services" to its laborers. The company must not attest to these terms in its tax returns, as they are not true; and where the company has labor expenses, they are lawfully deductible as payments for labor, as "In principle, there can be no difference between the case of [buying] labor and the case of [buying] goods." *Adkins v. Children's Hospital*, 261 U.S. 525, 558 (1923). Just think of the savings in employment taxes and administrative costs!

For the broker who is regularly paid to act as a middleman to transact business in houses, stocks, or other private property, he is deemed to have read and to know the law as a licensed professional. Thus, he must not attest that he is a "governmental unit and any agency or instrumentality thereof," or that he transacted any "Property belonging to the United States," when in fact he is not, and did not. He must not compromise his fiduciary duty to his private customer, who is not "any governmental unit and any agency or instrumentality thereof."

As for the professional, certified public accountant, he ought to know the difference between public accounting and the accounting of private property for his private clients.

How It's Done: Working For Pay

Honest Rella is a Californian[3]. She is a pharmacist who works for Wally's Farmacy. She renders her labor in exchange for a paycheck. She recently learned that she is not a government "employee," does not work for an "employer," does not perform a "service," and in fact does not receive "wages." The honest and correct course of action is to exclude her earnings from tax withholdings imposed on federal income, because no such federal income was forthcoming. Accordingly, she gave proper notice to the payroll staff by correctly declaring her exemption status using *Form W-4*, Employee's Withholding Certificate, effective immediately forwards.

Honest Rella carefully read the entire *Form W-4*; not just the first page where she was asked to sign. She also carefully followed the instructions for "Exemption from withholding" on page 2, stating: "You may claim exemption from withholding for [this year] if you meet both of the following conditions: you had no federal income tax liability in [the previous year] and you expect to have no federal income tax liability [this year]. ..."

At the end of this tax year, Wally's Farmacy issued *Form W-2* Wage and Tax Statement to Honest Rella, in order to document "wages" and tax withholdings for that year. To correct a *Form W-2* containing errors, Honest Rella filed a *Form 4852*. In section 4, she indicated that *Form W-2* contained errors. For example, even though withholdings were taken from federal income, state income, local income, social security wages, and medicare wages, no such federal income, state income, local income, social security wages, or medicare wages was ever received! This indicates that the amounts were withheld in error, and she is entitled to have them returned.

Form 4852 as filed by Honest Rella for the previous year follows. She denies being a government employee, and did not in fact receive remuneration for any government services:

[3] A Californian is a native of California, see *Styles Manual*, published by the United States.

Honest Rella's *Form 4852*:

Form **4852** (Rev. September 2020)

Department of the Treasury
Internal Revenue Service

Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

▶ Attach to Form 1040, 1040-SR, or 1040-X.

▶ Go to *www.irs.gov/Form4852* for the latest information.

OMB No. 1545-0074

Attachment Sequence No. **04**

You must take the following steps before filing Form 4852

• Attempt to get your Form W-2, Form W-2c, or Form 1099-R (original or corrected) from your employer or payer before contacting the IRS or filing Form 4852.

• If you don't receive the missing or corrected form from your employer or payer by the end of February, you may call the IRS at 800-829-1040 for assistance. You must provide your name, address (including ZIP code), phone number, social security number, and dates of employment. You must also provide your employer's or payer's name, address (including ZIP code), and phone number. The IRS will contact your employer or payer and request the missing form. The IRS will also send you a Form 4852. If you don't receive the missing form in sufficient time to file your income tax return timely, you may use the Form 4852 that the IRS sent you to file with your return.

1 Name(s) shown on return	2 Your social security number
Honest Rella	987-65-4321

3 Address: 762 Truth Street, Bismarck, Republic of California, without the United States

4 **Enter year in space provided and check one box.** For the tax year ending December 31, _____ ,
I have been unable to obtain (or have received an incorrect) ☒ Form W-2 **OR** ☐ Form 1099-R.
I have notified the IRS of this fact. The amounts shown on line 7 or line 8 are my best estimates for all wages or payments made to me and tax withheld by my employer or payer named on line 5.

5 Employer's or payer's name, address, and ZIP code	6 Employer's or payer's TIN (if known)
WALLY'S FARMACY, 123 Main Street, Bismarck, California	12-3456789

7 **Form W-2.** Enter wages, tips, other compensation, and taxes withheld.

a Wages, tips, and other compensation	$0	f State income tax withheld	$10,000
b Social security wages	$0	(Name of state)	California
c Medicare wages and tips	$0	g Local income tax withheld	
d Social security tips	$0	(Name of locality)	
e Federal income tax withheld	$35,000	h Social security tax withheld	$9,000
		i Medicare tax withheld	$3,000

8 **Form 1099-R.** Enter distributions from pensions, annuities, retirement or profit-sharing plans, IRAs, insurance contracts, etc.

a Gross distribution		f Federal income tax withheld	
b Taxable amount		g State income tax withheld	
c Taxable amount not determined	☐	(Name of state)	
d Total distribution	☐	h Local income tax withheld	
e Capital gain (included on line 8b)		(Name of locality)	
		i Employee contributions	
		j Distribution codes	

9 How did you determine the amounts on lines 7 and 8 above?
7 - a, b, c, d are in error and hereby corrected to zero.
7 - e, f, h, i, are obtained from Form W-2, and are correct.

10 Explain your efforts to obtain Form W-2, Form 1099-R (original or corrected), or Form W-2c, Corrected Wage and Tax Statement.
No IRC § 3401 or § 3121 employer-employee transaction existed for which Form W-2 applies.

Form 4852 is incorporated into *Form 1040*, which in this case would indicate zero "taxable income," and a total over payment of $57,000 from erroneous withholdings. $47,000 of which was returned from the U.S. Treasury, and $10,000 of which was returned from California. Please see *https://www.losthorizons.com/BulletinBoard.htm* for real world examples.

How It's Done: Labor Contracting

Honest Tom is a Massachusettsan. He is a tradesman who earns a living by contracting his labor. He does not have a "trade or business," because he doesn't perform the functions of a public office. He is not "self-employed," nor receive "net earnings from self-employment," because he does not derive income from any government "source." He works for several private companies and persons, but he does not perform any "service" for a "service-recipient," since he does not work for "any governmental unit (and any agency or instrumentality thereof)."

Such that he may faithfully determine his tax liability under *IRC § 6041A*, before signing a *Form W-9*, Honest Tom requests that the company disclose the following in writing:

1. Does your company perform the functions of a public office?
2. Is your company a governmental unit, or any agency or instrumentality thereof?

Even though these companies all stated "NO" to each of the above questions, at the end of the tax year they still issued Honest Tom a *1099-NEC*. To correct an erroneous *1099-NEC* (or *1099-MISC*, which is treated in much the same way), Honest Tom checks the "CORRECTED" box on top of each *1099-NEC* he received, corrected any erroneous entries, and gave a short statement of facts as follows:

☐ VOID ☑ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.			OMB No. 1545-0116 Form **1099-NEC** (Rev. January 2022) For calendar year 20 ____	**Nonemployee Compensation**
PRIVATE COMPANY LLC 556 NUNYA BUSINESS ST. LOSTON MA [02120] 617-1099-NEC				
PAYER'S TIN 12-3456789	RECIPIENT'S TIN 987-65-4321	**1** Nonemployee compensation $ ZERO.00		**Copy 1** **For State Tax Department**
RECIPIENT'S name Honest Tom		**2** Payer made direct sales totaling $5,000 or more of consumer products to recipient for resale ☐		
		3		
Street address (including apt. no.) 123 Simple Street		**4** Federal income tax withheld $		
City or town, state or province, country, and ZIP or foreign postal code Liberty, Massachusetts, without the United States		**5** State tax withheld $	**6** State/Payer's state no.	**7** State income $
Account number (see instructions)		$		$

Form **1099-NEC** (Rev. 1-2022) www.irs.gov/Form1099NEC Department of the Treasury - Internal Revenue Service

STATEMENT OF FACTS CORRECTING ORIGINAL *1099-NEC*

No payment was made from the party identified above as the "PAYER" to the "RECIPIENT," which was made from a *26 USC § 6041A(a)* "*service-recipient*," including "*any governmental unit* (*and any agency or instrumentality thereof*)," and subject to an Income Tax under the excise laws of the United States.

No payment was received by the party identified above as "RECIPIENT," which is within the meaning of the term "*net earnings from self-employment*" defined in *26 USC § 1402(a)* as "*the gross income derived by an individual from any trade or business*;" that is, derived from "*the performance of the functions of a public office*," as defined in *26 USC § 7701(a)(26)*, and subject to an Income Tax under the excise laws of the United States.

The above "PAYER" made false statements in their original information return, contrary to their prior attestation, where they denied being "a governmental unit, or any agency or instrumentality thereof," and denied "the performance the functions of a public office."

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 15, 2023,

Honest Tom

without the United States in accordance with *28 USC 1746(1)*.

How It's Done: Dealings in Private Property

Honest Satoshi made MASSIVE GAINS from trading private equities and bitcoin. *Form 1040* asks: "At any time during [the tax year], did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.)" Honest Satoshi responded "NO."

That's because he did not receive digital assets "for property or services," as he did not receive any "Property belonging to the United States," nor did he perform any government "services." Furthermore, he did not "dispose of a digital asset," because "virtual currency," including digital assets "is treated as property ... for federal tax purposes." Where, according to IRS *Notice 2014-21*: "General tax principles applicable to property transactions apply to transactions using virtual currency."

Honest Satoshi understood that although gains on "Property belonging to the United States" are taxable, his "private property," and "life, liberty, or property," as secured by the *Fifth Amendment*, may not be deprived without due process of law, nor "taken for public use, without just compensation." Despite the obvious, the exchange sent him a *1099-B*, claiming "Proceeds From Broker and Barter Exchange Transactions."

To correct an erroneous *1099-B*, Honest Satoshi checked the "CORRECTED" box on top of each *1099-B* he received, corrected any erroneous entries, and gave a short statement of facts as follows:

STATEMENT OF FACTS CORRECTING ORIGINAL *1099-B*

No broker-customer transaction occurred, which was pertinent or subject to the information return reporting requirements of *26 U.S. Code § 6045* - "Returns of brokers." Specifically --

No payment was made from the party identified above as the "PAYER," which was paid from a "broker," defined at *§ 6045(c)(1)(C)* to include "any other person who (for a consideration) regularly acts as a middleman with respect to ***property*** or ***services***;" where the explicit definition of "person" at *§ 6045(c)(4)* includes "any governmental unit and any agency or instrumentality thereof;" and, subject to an Income Tax under the excise laws of the United States.

No proceeds were received by the party identified above as "RECIPIENT," which was received by a "customer," defined at *§ 6045(c)(2)* to mean "any person for whom the broker has transacted any business;" where the explicit definition of "person" at *§ 6045(c)(4)* includes "any governmental unit and any agency or instrumentality thereof;" and, subject to an Income Tax under the excise laws of the United States.

The above “PAYER" made false statements in their original information return, contrary to their own publicly available corporate filings, where it is clear that they are neither “a governmental unit, or any agency or instrumentality thereof,” nor engaged in “the performance the functions of a public office.”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 15, 2023,

Honest Satoshi

without the United States in accordance with *28 USC 1746(1)*.

How It's Done: Selling A House

Honest Kevin sold his house. Just like Honest Tom, he confirmed in writing that his real estate broker was not a government agent transacting government "property," which would make him taxable on gains under *IRC § 6045*. To correct an erroneous *1099-S*, he checked the "CORRECTED" box and writes:

STATEMENT OF FACTS CORRECTING ORIGINAL *1099-S*

No FILER-TRANSFEROR transaction occurred, which was pertinent or subject to the information return reporting requirements of *26 U.S. Code § 6045(e)* "Return required in the case of real estate transactions." Specifically --

No payment was PAID from the party identified above as the "FILER" to the "TRANSFEROR;" where the "FILER" is also referred to as a "real estate reporting person;" which means any person under *§ 6045(e)(2)(E)* that "shall be treated as a broker for purposes of subsection (c)(1);" including a "person who (for a consideration) regularly acts as a middleman with respect to property or services;" where such "person" defined at *§ 6045(c)(4)* includes "any governmental unit and any agency or instrumentality thereof;" and, subject to an Income Tax under the excise laws of the United States.

No gross proceeds were RECEIVED by the party identified above as "TRANSFEROR," which is also referred to as seller or "customer," defined at *§ 6045(c)(2)* to mean "any person for whom the broker has transacted any business;" where a "person" defined at *§ 6045(c)(4)* includes "any governmental unit and any agency or instrumentality thereof;" and, subject to an Income Tax under the excise laws of the United States.

The above "FILER" made false statements in their original information return, contrary to their prior attestation, where they denied being "a governmental unit, or any agency or instrumentality thereof," and a title check of the house indicated that it was private property belonging to me.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 15, 2023,

Honest Kevin

without the United States in accordance with *28 USC 1746(1)*.

Frequently Asked Questions

1. **Can you go to jail for filing an honest tax return?**

   Prosecution of honest tax filers is rare, if they still happen at all. The government's website (*www.justice.gov/tax/tax-division-news*) going back to 2009 shows no evidence that the IRS has prosecuted anyone who has filed an honest and educated tax return in good-faith. Prosecutions arising under the *IRC* appear to contain an element of evasion or dishonesty in every case. For example: business owners evading the employment tax or diverting company income for personal use, failure to file, filing false returns (especially as a tax preparer or to obtain larger refunds), reporting false expenses, falsifying financial statements, hiding assets offshore, promoting tax schemes, …etc. Most honest tax filers seem to get their money back, see again *https://www.losthorizons.com/BulletinBoard.htm*, documenting thousands of paychecks returned by Federal and State governments over the last 20 + years.

2. **How far back can the government go to prosecute offenses arising under the *IRC*?**

   The government must institute criminal prosecutions for tax offenses within 3 or 6 years, depending on the nature of the offense, see *IRC § 6531* and *TAX CRIMES HANDBOOK*.

3. **How far can you go back to recover the money unlawfully excised from you?**

   Up to 2020, *Form 1040-X* allowed up to 4 years of retroactive corrections (2019-2016), but as long as records of the transaction still exist, there's no reason why one could not make claims on the money erroneously or fraudulently taken.

4. **What's the difference between tax evasion and tax avoidance?**

   Tax evasion is the unlawful escape from an established duty, it is illegal. Tax avoidance is lawful, because it means to avoid the predicate facts upon which the tax operates. Again, if you receive federal income, then it is a crime to evade the tax imposed on federal income; but if you avoid federal income, then you have lawfully avoided the tax on federal income.

5. **Lazy Larry works for Bear False-Witness. He blindly copied Honest Rella's example, but didn't study the law for himself. Although initially the government gave his money back, a few years later the IRS threatened him with a $5000 *§ 6702* frivolous returns penalty — see *LTR 3176C*. After months of arguing, the IRS rejected all of Lazy Larry's assertions, and summoned him to "tax court," where he eventually lost, and was forced to pay tens of thousands of dollars! Where did Lazy Larry go wrong?**

Lazy Larry rightly asserted that he was not a taxpayer, not an employee and did not receive wages from an employer. What he forgot is that he who asserts bears the burden of proof, and that he can not prove those assertions to the negative! Furthermore, it wasn't the IRS who imposed the liability, it was Bear False-witness — the person Larry labored for!

It was Bear False-Witness who ignored the law, and falsely claimed that he paid Lazy Larry "remuneration for services," when, as a private person, he is not in fact an "employer" of government "employees," nor a recipient of government "services." Thus, Bear False-Witness is guilty of supplying false testimony against Larry the Laborer!

The fact that Larry did not understand this operation of law, meant that he failed to challenge the root of the false presumptions leveled against him. The honest and correct course of action would've been to assign the burden of proof to "the party who had it originally," see Presumptions in Federal Rules of Evidence, *Rule 301*. Larry the Laborer could've given proper notice of error to Bear False-Witness and to the IRS:

> I must bring to your attention that Bear False-Witness EIN 12-3456789 issued *Form W-2*, *1099-NEC*, etc... for tax year 0000 containing errors. He did not in fact pay me any remuneration for services. The IRS is in error because it has relied upon erroneous information claiming payments for services, when in fact no such transaction occurred.
>
> If Bear False-Witness does not correct his errors, or if he is unable to substantiate his positions with facts, and I suffer loss by means of a wrongful civil penalty, collection, levy or other action taken by the IRS, then I will be forced to bring civil action for damages for fraudulent filing of information returns under *IRC § 7434*.
>
> In the event that I bring such action for damages against persons bearing false witness against me, then I shall request that the IRS be made a party. The IRS may have the option to join as a co-plaintiff, as its mistakes are caused directly by its reliance upon erroneously issued information returns; or alternatively, "A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff." Please see *FRCP, Rule 19*. Required Joinder of Parties.

"*Si vis pacem para bellum*." = If you want peace, prepare for war.

6. What's the difference between service and labor?

Service means government service; it is a taxable privilege. Labor is a right, and as "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 Co.*, 111 U.S. 746, 757 (1884).

7. **Now that Larry the Laborer understands this, how can he recover his losses?**

   He will need to bring civil action against Bear False-Witness for fraudulent filing of information returns in accordance with *IRC § 7434* in a District Court of the United States.

8. **Why doesn't Larry the Laborer bring action in the United States Tax Court?**

   Because the "tax court" is not a judicial court of law. It is a legislative forum for the adjudication of government privileges, such as "employment," "income," and "Property belonging to the United States," which must, at a minimum, arise "'between the government and others.'" See *IRC § 7441* establishment of "tax court" under Article I of the *Constitution*, and *Northern Pipeline v. Marathon Pipe Line*, 458 U.S. 50, 83-84 (1982) the "distinction between public rights and private rights."

9. **Honest Abby received payments from AirBnB for renting her private property, and federal income while working for the government. How did she file her tax return?**

   Honestly, of course! Honest Abby notes that her house is private property, not "Property belonging to the United States," and AirBnB is a private company, not a "governmental unit or any agency or instrumentality thereof." She dutifully refuted and to corrected any false information return issued on her behalf. On the other hand, her income from the government is subject to every aspect of the Internal Revenue Code, and must be accounted for as such.

10. **Honest Jane receives tips at her private restaurant job, she was told to report her tips using *Form 4070*. How did she file her tax return?**

    Honestly, of course! Honest Jane notes that *IRC § 6053* provides rules for reporting of tips, which only apply to government "employees performing services." Honest Jane only receives gratuities from customers in their private capacity, and thus, she does not receive "tips which are wages." In lines 1 - 4 of *Form 4070*, she writes ZERO, and further states: "I hereby declare there has never been a *§ 3401* or *§ 3121* employer-employee relationship; furthermore, I am not an employee performing services for which tips, wages, or any remuneration for services were ever received."

11. **How all does this effect my buddy, who "works under the table" for cash?**

    Your buddy is depriving himself of his right to be paid according to his market value. To say that he "works under the table" is derogatory; as a man has a right to compensation for lawful work, and that is something to be proud of. In so far as taxation is concerned, the legal circumstances of his private labor may be termed "without the United States," which I prefer to "working under the table."

12. Why did Honest Jane toss the *Form 1098* Mortgage Interest Statement from her bank?

Honest Jane borrowed money from a bank to buy her house. At the end of the year the bank sends her a *Form 1098*, documenting the amount of interest she paid that year. This amount could be deducted from her tax on federal income, if she owed any. Honest Jane did not receive federal income; she did owe any tax on federal income. So *Form 1098* does not apply and would not help lower her non-existent tax liability.

13. What are some societal advantages of the tax on federal income?

When government workers are taxed, it would incentivize people to avoid government employment, or government will have to pay more for their labor. Either way, government will have to shrink back to its constitutional limits, or be more competitive in the free market to provide equivalent or better services.

When corporate profits and officers are taxed, it tends to reallocate the profits to growth by hiring more labor or buying more productive assets. This may also reduce the need to raise capital by selling shares, making companies more accountable to its laborers and customers, rather than thousands of share holding speculators.

Relief from the tax on federal income will encourage individuals to work more, save, invest, innovate, and ultimately prosper. And that's why we ought to love the tax on federal income!

14. How does the guarantee of a Republican Form of Government inform the tax laws?

Article IV, section 4 of the *Constitution* states: "The United States shall guarantee to every State in this Union a Republican Form of Government, …" According to the Kentucky and Wyoming Constitutions, a republic is one in which: "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

A republican form of government is one of delegated powers, where the people delegate their powers to elected officers to represent them and serve their interests. In other words, the people "are truly the sovereigns of this country, but sovereigns without subjects and have none to govern but ourselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty." *Chisholm v. Georgia*, 2 U.S. 419, 471-472 (1793)

People can not delegate a power they don't have. For example, one may not force his neighbor to share her wealth or other private property, and that non-existent authority can not be delegated to the government, who in turn have no power to reach into the people's pockets or to take from them.

15. How did the *Sixteenth Amendment* change America's taxation system?

"It's difficult to get a man to understand something when his salary depends on not understanding it." — Upton Sinclair.

16. Why don't tax attorneys and CPA's know about all this?

"It's difficult to get a man to understand something when his salary depends on not understanding it." — Upton Sinclair.

Credits and References

1) The Holy Bible.
2) Constitutions of the United States.
3) U.S. Congressional Records
4) U.S. Supreme Court holdings and dicta.
5) Title 26 Internal Revenue Code (*IRC*).
6) *IRS.gov*
7) Peter Hendrickson's work: *www.losthorizons.com*.
8) YouTube Channel: *No Duty To Submit*.
9) *Article*: 3.8 Million and Counting - The Complexity and Wordiness of Tax Law, By Marjorie Gell, Michigan Bar Journal July 2012.
10) IRS.gov: *TAX CRIMES HANDBOOK*
11) Others +

https://www.congress.gov/61/crecb/1909/06/16/GPO-CRECB-1909-pt3-v44-21-1.pdf

gaged in the manufacture of galvanized sheet iron and sheet steel. I am receiving telegrams from those people to the effect that this rise in the cost of spelter, which has already occurred, increases very greatly the cost of galvanizing steel and iron sheets.

The average quantity of zinc used in galvanizing a ton of sheet steel or sheet iron is 325 pounds. This spelter has increased of late about $10 a ton, which means an increase per ton of their material, as they estimate, of nearly $2 a ton. There is a differential in paragraph 126 of this bill between ungalvanized and galvanized of two-tenths of a cent a pound. It was no doubt intended that a large share of that two-tenths of a cent would provide for additional labor; but if this duty is imposed the price of zinc will so increase that the actual difference in the material will be more than two-tenths of a cent a pound. So I must ask, if any duty is imposed, that the schedule with reference to galvanized iron shall be changed to meet the changed conditions.

Mr. President, the principle of protection does not demand that this duty be imposed. It is not a languishing industry; it is not an industry that requires a penny of duty to make it profitable and increasingly profitable in the years to come.

While its imposition will tend to destroy secondary industries which depend upon this for their raw material, the increase in price will also threaten not only a decrease in the quantity made, in the zinc that is smelted, and thus in the zinc ore which is taken from the mines, but the very decadence and almost destruction of the industry itself. I can hardly understand how those who are interested in zinc ore, who have certainly as profitable mining interests as any in the United States, the one that has shown the greatest increase in profits, should be coming here to Congress and asking for this absolutely unnecessary duty—a duty not only unnecessary to themselves, but hurtful to all the related industries. So I trust, Mr. President, that this paragraph will be stricken out of the bill, and that the law will be left as it is.

Mr. HEYBURN. Mr. President——

The PRESIDING OFFICER. The Chair lays before the Senate a message from the President of the United States, which will be read:

Mr. LODGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Clark, Wyo.	Gamble	Overman
Bacon	Clay	Gore	Page
Bailey	Crane	Guggenheim	Paynter
Bankhead	Crawford	Heyburn	Perkins
Borah	Culberson	Hughes	Piles
Bourne	Cullom	Johnson, N. Dak.	Rayner
Brandegee	Cummins	Johnston, Ala.	Root
Briggs	Curtis	Jones	Scott
Bristow	Daniel	Kean	Simmons
Brown	Davis	La Follette	Smith, Md.
Bulkeley	Dick	Lodge	Smith, S. C.
Burkett	Dillingham	McCumber	Smoot
Burnham	Dixon	McLaurin	Sutherland
Burrows	Dolliver	Martin	Taliaferro
Burton	du Pont	Money	Tillman
Carter	Elkins	Nelson	Warner
Chamberlain	Flint	Newlands	Wetmore
Clapp	Gallinger	Nixon	

The PRESIDING OFFICER. Seventy-one Senators have answered to their names. A quorum of the Senate is present. The Secretary will read the message from the President of the United States.

The Secretary read as follows:

To the Senate and House of Representatives:

It is the constitutional duty of the President from time to time to recommend to the consideration of Congress such measures as he shall judge necessary and expedient. In my inaugural address, immediately preceding this present extraordinary session of Congress, I invited attention to the necessity for a revision of the tariff at this session, and stated the principles upon which I thought the revision should be effected. I referred to the then rapidly increasing deficit and pointed out the obligation on the part of the framers of the tariff bill to arrange the duty so as to secure an adequate income, and suggested that if it was not possible to do so by import duties, new kinds of taxation must be adopted, and among them I recommended a graduated inheritance tax as correct in principle and as certain and easy of collection. The House of Representatives has adopted the suggestion, and has provided in the bill it passed for the collection of such a tax. In the Senate the action of its Finance Committee and the course of the debate indicate that it may not agree to this provision, and it is now proposed to make up the deficit by the imposition of a general income tax, in form and substance of almost exactly the same character as that which in the case of Pollock *v.* Farmers' Loan and Trust Company (157 U. S., 429) was held by the Supreme Court to be a direct tax, and therefore not within the power of the Federal Government to impose unless apportioned among the several States according to population. This new proposal, which I did not discuss in my inaugural address or in my message at the opening of the present session, makes it appropriate for me to submit to the Congress certain additional recommendations.

The decision of the Supreme Court in the income-tax cases deprived the National Government of a power which, by reason of previous decisions of the court, it was generally supposed that Government had. It is undoubtedly a power the National Government ought to have. It might be indispensable to the Nation's life in great crises. Although I have not considered a constitutional amendment as necessary to the exercise of certain phases of this power, a mature consideration has satisfied me that an amendment is the only proper course for its establishment to its full extent. I therefore recommend to the Congress that both Houses, by a two-thirds vote, shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population.

This course is much to be preferred to the one proposed of reenacting a law once judicially declared to be unconstitutional. For the Congress to assume that the court will reverse itself, and to enact legislation on such an assumption, will not strengthen popular confidence in the stability of judicial construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed will simply be suggesting to the executive officers of the Government their possible duty to invoke litigation. If the court should maintain its former view, no tax would be collected at all. If it should ultimately reverse itself, still no taxes would have been collected until after protracted delay.

It is said the difficulty and delay in securing the approval of three-fourths of the States will destroy all chance of adopting the amendment. Of course, no one can speak with certainty upon this point, but I have become convinced that a great majority of the people of this country are in favor of vesting the National Government with power to levy an income tax, and that they will secure the adoption of the amendment in the States, if proposed to them.

Second, the decision in the Pollock case left power in the National Government to levy an excise tax, which accomplishes the same purpose as a corporation income tax and is free from certain objections urged to the proposed income-tax measure.

I therefore recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks, and building and loan associations, an excise tax measured by 2 per cent on the net income of such corporations. This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.

I am informed that a 2 per cent tax of this character would bring into the Treasury of the United States not less than $25,000,000.

The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain (192 U. S., 397) seems clearly to establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax on property, and is within the federal power without apportionment according to population. The tax on net income is preferable to one proportionate to a percentage of the gross receipts, because it is a tax upon success and not failure. It imposes a burden at the source of the income at a time when the corporation is well able to pay and when collection is easy.

Another merit of this tax is the federal supervision which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

https://www.congress.gov/78/crecb/1943/03/27/GPO-CRECB-1943-pt2-20-1.pdf

withheld at the source entitles her to a 3-percent discount against the 1943 tax to which it is credited. Since she is paid twice a month, and receives $62.50 each pay day, the amount withheld from her will be $9.30, or a total of $111.60 for the last 6 months of 1943, which is approximately one-half the 1943 liability. This would earn a 3-percent discount of $3.35. By prepaying the other half June 15, this stenographer could earn a 6-percent discount on the $108.25 of the 1943 liability which would remain, or $6.50. Thus her total discount would be $3.25 plus $6.50, or $9.75. And in order to earn this small discount, she would have to pay in 1 year, out of a $1,500 income subject to other deductions—such as 5 percent for retirement, 10 percent for War bonds, and so forth—$181 plus $210.25, or a total of $391.25.

Now, in comparison with the $9.75 which this $1,500 stenographer would get, let us see what the man with a million-dollar income would get. His 1942 tax would be $854,616. His 1943 tax, including the net Victory tax liability, would be $899,500. By paying his 1942 tax June 15, and by prepaying his 1943 tax on the same date, he would earn a discount of $53,970.

The chairman of the Ways and Means Committee and other Members have inferred that there is no difference between the withholding provisions of my bill and of the committee bill. There is a vital difference in this respect: The withholding under the committee bill is applied in the first instance to the payment of the past year's liability. Under my bill, the amount withheld is credited in all instances to the current liability. There is just as much difference between the two as between black and white in this respect. The only similarity is in the mechanical details of the withholding. Where we differ is in regard to what the withholding is credited against. I hope that this difference is clear to the House.

I appreciate very much the opportunity to enter into this dicussion on pay-as-you-go taxation. I do not believe anyone can approach this problem with an unbiased viewpoint without reaching the definite conclusion that our tax collections must be placed on a current basis. It is a fundamental change in our income-tax law and one that should be debated and discussed from every angle. The change is of vital importance to the Treasury, as well as the taxpayers. The issue is clearly drawn and I hope that after the debate is over and the vote is taken it can be said of the Members of the House of Representatives that they had the courage to approve a bill that would remove the tax debt that hangs over all taxpayers and make personal income tax payers current.

This personal income tax indebtedness if a threat to the solvency of our Federal Treasury and a millstone around the neck of the taxpayer.

Under our present law personal income tax payers are 1 year behind. That is, they must pay in 1943 a tax based on their 1942 income. If the taxpayer suffers a serious reduction in income, or loses his job, or dies, the tax debt for the prior year becomes a serious problem.

There are two, and only two, methods of getting the taxpayers immediately on a current basis. First, Congress can base this year's tax on this year's income. In other words, move the tax clock ahead 1 year. Second, Congress can try to collect 2 years taxes in 1 year; in other words, levy an impossible burden of double taxation. These are the only two alternatives. Proposals to collect the 1942 liability in whole or in part in addition to current taxes over a period of years also involve some degree of double taxation and also continue the objectionable overhanging income-tax debt.

For several months I have been studying this problem and am convinced that the only practical way to remove the personal income tax debt is to assess the personal income tax on current income and collect it out of current income. If the problem is as serious as I firmly believe it is, our Nation can well afford to pay whatever the cost may be, if any. This fundamental change in our income-tax law is proposed for all years in the future, and the benefits of the change would continue to accrue, both to taxpayers and the Treasury.

Many economists and tax authorities have offered various proposals to get our taxes on a current basis. One of the original sponsors of a pay-as-you-go tax plan and an outstanding tax authority in the United States, Mr. Beardsley Ruml, of New York City, has proposed the plan which has received Nation-wide approval. It is commonly referred to as the Ruml plan. Mr. Ruml is Chairman of the Federal Reserve Board of New York and treasurer of R. H. Macy & Co., Inc. He was first formerly associated with the administrative branch of the Federal Government in 1930 as a member of Col. Arthur Wood's committee on employment, and more recently as adviser of the National Resources Planning Board. He has also served as a member of the advisory committee of the Division of Cultural Relations of the Department of State, of the advisory committee of the Coordinator of Inter-American Affairs, and of the advisory council of the Department of Agriculture.

Mr. Chairman, before the end of the Seventy-seventh Congress I began studying the problems connected with getting our tax payments on a current basis. I approached this subject with an open mind and studied every plan I could secure. I can definitely state that, in my opinion, just criticism can be levied at any or all of them. It was after this study and research that I reached the conclusion that the Ruml plan offered the best solution to our problem of getting taxpayers current.

Either the tax clock must be advanced 1 year or there must be a collection of 2 years' taxes in 1 year. My knowledge of the economic problems of the American people convince me that our taxpayers cannot pay 2 years' taxes in 1. In my study of this problem I discovered many interesting things concerning our income-tax law. Historically, our Federal income-tax law goes back to a bill signed by President Lincoln on August 5, 1861. It was first announced as a war-revenue measure and even at that early date one provision of the act provided for collections by withholding at the source. The act was carried on the statute books for several years. In its early stages it was definitely an excise tax or a duty and so construed by the courts. A most informative statement in regard to the early history of the income-tax law was recently written by Mr. F. Morse Hubbard, formerly of the legislative drafting research fund of Columbia University, and a former legislative draftsman in the Treasury Department. This compilation of information concerning our income-tax law is so well written that I am making it a part of my statement and the record:

I. THE INCOME TAX IS AN EXCISE TAX, AND INCOME IS MERELY THE BASIS FOR DETERMINING ITS AMOUNT

The first Federal income tax law was approved by President Lincoln on August 5, 1861, a little less than 4 months after the bombardment of Fort Sumter and the President's call for 75,000 volunteers, and less than a month after the disaster at Bull Run. It was distinctly a war-revenue measure. The act of 1861 (12 Stat. 292) provided for a tax to be levied, assessed, and collected in the year 1862, the tax to be based on income for the "preceding" year, that is, the year 1861. This tax, which was due and payable on or before June 30, 1862, was levied only for that 1 year.

In 1862, in order to meet the need for continued war revenues, Congress passed the second income-tax law. This act took effect on July 1, 1862, the day after the tax under the act of 1861 expired. The act of 1862 (12 Stat. 432) which used the word "duty" instead of "tax," provided that this duty should be levied, collected, and paid in the year 1863 and in each year thereafter until and including the year 1866 "and no longer" (sec. 92). Like the act of 1861 it provided that the tax (or duty) collected in each year should be based on the income for the "preceding" year (sec. 91). At the same time it contained a provision for withholding at the source, which will be referred to later on.

The general pattern of the act of 1862 was followed in the subsequent income tax laws of this period, namely, the act of June 30, 1864 (13 Stat. 223), and its amendments, and the act of July 14, 1870 (16 Stat. 256). Under each of these acts the tax to be paid in any given year was based on the income for the preceding year, provision was made for withholding at the source, and the tax was to be in effect only for a limited period. Under the act of 1864 the tax terminated in 1870, and under the act of 1870 the tax terminated in 1872.

The income on which the tax was based was defined as income from all sources, "whether derived from any kind of property, rents, interests, dividends, salaries, or from any profession, trade, employment, or vocation" (act of 1864, sec. 116). Thus investment income, as well as other kinds of income, was included in the basis for measuring the tax.

In sustaining the Civil War income tax laws, the Supreme Court held that the tax based on income was not a direct tax but was an excise or duty and as such did not require apportionment among the States. *Springer v. United States* ((1880) 102 U. S. 586). This decision, rendered after the income tax had been thoroughly tested for a period of 10 years, represents a deliberate determination as to the fundamental nature of the tax.

The true character of the income tax was at the outset so firmly fixed in the minds of those charged with its administration that for 6 years the Treasury Department held that if a person died at any time between

https://www.congress.gov/78/crecb/1943/03/27/GPO-CRECB-1943-pt2-20-1.pdf

January 1 of one year and the date when his return was due in the following year the income for such period was not subject to tax, even though he may have made a return of income before his death in advance of the due date (T. D. June 9, 1865, 2 Internal Revenue Record 54). This rule was not changed until 1867, when it was held that such income was subject to the tax and should be returned by the executor or administrator (T. D. Apr. 6, 1867, 5 Internal Revenue Record 109; T. D. Jan. 1, 1868, 7 Internal Revenue Record 59). See also *Mandell* v. *Pierce* (C. C. D. Mass. 1868, 16 Fed. Cas. 576). The change was doubtless prompted by two important considerations; first, the taxes expired by definite limitation within a very few years; and, second, persons whose tax had been withheld at the source would already have paid their tax up to the date of death. At any rate, the change did not involve any modification in the concept of the income tax as an excise tax based on income.

After a lapse of about a quarter of a century Congress again passed an income-tax law. The act of 1894 (28 Stat. 509, 553; Aug. 27, 1894) provided for a tax to be levied, collected, and paid "from and after" January 1, 1895, "and until the 1st day of January 1900" (sec. 27). Like the Civil War acts it provided that the tax should be based on the "income received in the preceding calendar year." Although the Supreme Court held this portion of the act to be unconstitutional, it still recognized that the income tax was in essence an excise tax. The Court said that a tax on income from business, privileges, or employments, standing by itself, would be valid as an excise tax; but the tax on investment income was held to be invalid because the Court regarded a tax based on income from property as a tax on the property itself and therefore a direct tax which must be apportioned among the States (*Pollock* v. *Farmers' Loan and Trust Co.* (1895), 157 U. S. 429; 158 U. S. 601). The Court said that to sustain a portion of the tax while declaring the rest invalid, "would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor. We cannot believe that such was the intention of Congress" (158 U. S. 601, 637). So the entire portion of the act relating to income tax was declared invalid.[1]

There are still those who think that in this case the Court went further than necessary in treating a tax based on income from property as a tax on property itself, and that in any event the excise-tax principle should have been applied to rents and other investment income, as was done under the Civil War acts. In other words, the making and holding of investments, while perhaps not technically a business, is, at least, a kind of activity or privilege which can properly be subjected to an excise tax measured by reference to the income derived therefrom.

That investment income may be included as a part of the basis for measuring an excise tax was recognized by Congress in the act of August 5, 1909 (36 Stat. 11, 112). This act provided "That every corporation * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, * * * equivalent to 1 percent upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations * * * subject to the tax hereby imposed; * * *." Certain corporations, such as religious, charitable, and educational organizations, etc., were specifically exempted from the tax.

The tax imposed by this act was really an income tax in that it was based on net income, but was given the correct designation of "excise tax." It was imposed with respect to carrying on or doing business; and it should be noted that the basis was net income from all sources, except dividends from other corporations subject to the tax. Such dividends were excepted not because they constituted investment income but because they represented income which had already been taxed. The sole test of taxability under this act was whether a corporation was engaged in business. If it was so engaged, then all the income (except dividends), including investment income as well as strictly business income, was used in measuring the tax. The Supreme Court held that the fact that the tax was measured by net income, and that income from nontaxable property or property not used in business was included in computing net income, did not prevent the tax from being construed as an excise tax which did not require apportionment. *Flint* v. *Stone Tracy Co. et al.* ((1911) 220 U. S. 107).

So far as the objections raised in the Pollock case are concerned, the principle applied to corporations under the act of 1909 with the approval of the Supreme Court might have been extended to individuals engaged in business. In that way investment income of most individuals as well as of corporations could doubtless have been brought under the terms of the act. And the field of income could have been completely covered by applying the principle that the ownership and management of investment property is an activity or privilege with respect to which Congress may impose an excise.[2]

However that may be, Congress chose to remove all doubt by an amendment to the Constitution. The resolution embodying the proposed amendment (S. J. Res. 40, 36 Stat. 184; 61st Cong., 1st sess.) was deposited in the Department of State on July 31, 1909, a few days before the act of 1909 was approved by the President. The amendment was duly ratified and became effective as the sixteenth amendment on February 25, 1913. (Secretary of State's Certificate of Adoption, 37 Stat. 1785).

The sixteenth amendment authorizes the taxation of income "from whatever source derived"—thus taking in investment income—"without apportionment among the several States." The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source or another.[3] So the amendment made it possible to bring investment income within the scope of a general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.

The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax.[4]

The purpose of the income tax is to raise revenue in the year of its levy. It is a method by which some of us make annual payments on account of the governmental expenses and the public debt of all of us—contributions to a common fund to preserve the blessings of liberty. The great French political philosopher and jurist, Montesquieu, stated the fundamental principles of taxation as follows:

"The revenues of the State are a portion that each subject gives of his property in order to secure, or to have the agreeable enjoyment of, the remainder." (Spirit of Laws, book XIII, chap. 1.)

The income tax is now a permanent part of our tax structure, and is designed to provide for such contributions, or payments, year after year, indefinitely. The tax "for" any given year is the tax which is to provide revenue for that year. Strictly speaking, then, the "1942 income tax" was the tax payable in 1942; and the "1943 income tax" is the tax payable in 1943.

The amount of the payments for any year is determined by applying certain rates to a specified basis. Both of these factors are matters of legislative policy. Congress may fix any rates which are not confiscatory and may adopt any basis which is reasonable. Hitherto the previous year's income has been used as the basis. But the basis, as well as the rates, may be changed at any time. In these matters of policy, the Constitution, both before and since the Sixteenth Amendment, has left to Congress practically unrestricted freedom of choice.[5]

Under our existing Federal income-tax law which has been operating for many years, the amount of income tax payable in any year by an individual taxpayer is based, not upon the income of the taxpaying year, but upon the income of the preceding year. This method whereby

[1] It must be remembered that the Court was not appraising economic theories, but was construing provisions of the Constitution. The first related to the power of Congress:

"To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States" (art. I, sec. 8, subdiv. 1).

The second was the provision that:

"No capitation, or other direct, tax shall be laid, unless in proportion to the census of enumeration herein before directed to be taken" (art. I, sec. 9, subdiv. 4).

Thus the Constitution made a distinction between "taxes" on the one hand, and "duties, imposts, and excises" on the other. Uniformity was required in the case of the latter, whereas apportionment according to population was required only in the case of "taxes." The only taxes generally regarded as "direct" were poll taxes and taxes on property. The only direct taxes which had been imposed by Congress prior to 1894 were taxes on lands, houses, and slaves. See Foster and Abbott, A Treatise on the Federal Income Tax under the act of 1894, pp. 27 ff. The Court had no difficulty in classifying a tax on income as an excise tax. Its objection to the act of 1894 was doubtless based on the theory that a tax on rents was not in reality an income tax but was a direct tax on lands and buildings. (See Foster and Abbott, op. cit., pp. 117–118.)

[2] That such is the case is clearly indicated by the recent provision in the Revenue Act of 1942 which allows deductions for expenses incurred in the management of investments (sec. 121). The retroactivity of this provision suggests not merely the declaration of a new policy but the recognition of a fundamental principle.

[3] *Brushaber* v. *Union Pacific Railroad Co.* ((1916) 240 U. S. 1); *William E. Peck and Co.* v. *Lowe* ((1918 247 U. S. 165); *Eisner* v. *Macomber* ((1920) and 252 U. S. 189).

[4] If the tax should be construed as a tax on income as a specific fund the disappearance of the fund before the date of assessment would prevent the collection of the tax. (See Foster and Abbott, op. cit., p. 85.)

[5] "If the income is merely the measure of the tax, it is clearly quite immaterial whether the income that is adopted as a measure is that of the past, or of the present, or of the future, provided only it is practically ascertainable." (Foster and Abbott, op. cit., p. 87.)