

PRESIDENT'S ADVISORY
PANEL
ON FEDERAL TAX REFORM

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The President's Advisory Panel on
Federal Income Tax Reform

Comments Submitted March 15, 2005

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Dear President's Income Tax Panel,

Thank you for the opportunity to present comments regarding the current "income" tax system for your review. Your consideration of these matters is greatly appreciated.

The Internal Revenue Code is extremely complex and makes one's liability difficult to determine. First, the Internal Revenue Code does not define "income." **"The general term income has not been defined in the Internal Revenue Code." (U.S. vs Ballard 535 F.2d 400, 404)**

Not having a definition of "income" makes it difficult to know whether or not one has any "income" and further, since it is an "income" tax, certainly one must have "income" to be liable for the tax. Congress cannot define the word "income" because the word is used in the Constitution and Congress is not permitted to define the language in the document from which it derives its power. (Eisner vs Macomber)

The Supreme Court however, can and has determined the meaning of the word "income" and the Court has held in numerous decisions that "income" can only be a derivative of corporate activity. **"Whatever difficulty there may be about a precise and scientific definition of 'income' it imports, as used here...the idea of gain or increase arising from corporate activities." (Doyle v Mitchell, 247 U.S. 179)**

The Supreme Court also holds that wages are not "income."

a.) **The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who has performed the services which produced the gain *is without support* either in the language of the Act or in the decisions of the courts construing it... ...It is to be noted that by the language of the Act it is not salaries, wages or compensation for**

personal services that are to be included in gross income.” (Lucas vs Earl, 281 US 111 (1930))

b.) “whatever may constitute income, therefore must have the essential feature of *gain* to the recipient. This was true when the 16th Amendment became effective, it was true at the time of Eisner vs Macomber supra, it was true under section 22 (a) of the internal revenue code of 1938, and it is likewise true under section 61 (a) of the internal revenue code of 1954. If there is not gain there is not income... Congress has taxed INCOME and not COMPENSATION.” (Connor vs U.S. 303 F supp 1187 (1969)) (Note: This cite is post Erie Railroad vs. Thompkins)

Relying on decisions of the Supreme Court alone would logically lead the average American to the conclusion that they have no “income” tax liability since they clearly, by the Court’s definitions, have no “income.”

Turning for clarification to the IRC sections that purportedly establish liability – 6001, 6011, and 6012 - is no less confusing.

Section 6001 reads, in part: “Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe...”

Section 6001 not only neglects to specify how, when, where or why a person becomes liable for the tax, but the IRC doesn’t define “person” as people. Instead, it defines person as “partnerships,” “trusts,” “corporations,” and “individuals.” One might think they were an “individual” but the IRC never defines individual, so this is unverifiable.

The lack of specificity in these code sections is perplexing, especially when contrasted with code sections for other taxes that are extremely precise and clear. For example: IRC Section 5703 (a) Liability for tax

- (1) The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701.

There is no question who is liable for this tax - the manufacturers and importers of tobacco products and cigarette papers and tubes.

Withholding is also confusing. When I read it, I'm quite sure I'm exempt from withholding because pursuant to the definitions of terms for chapter 24, I'm not an employee. IRC, Chapter 24, section 3401 definition for "employee" reads:

(c) **Employee** – For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. An employee also includes an officer of a corporation.

This section clearly defines an employee as someone who works for the federal government. The definition also uses the word employee in its definition of employee. As you know, one cannot use the word being defined in the definition of that same word.

Also confusing, with regard to withholding, is that IRC section 6201 requires that all "income" taxes be assessed by the Secretary, yet withholding takes money without any assessment. There is no liability without an assessment, so by enforcing withholding as compulsory, the IRS is violating section 6201. Further, if withholding is compulsory as the IRS contends, it constitutes a direct tax on wages and as such contravenes the taxing clauses of the Constitution which prohibit direct taxes without apportionment. "...We

are of the opinion that taxes on personal property (wages) or on the income of personal property, are likewise direct taxes. (Pollock vs Farmer's Loan, 158 US 601, page 637)

My opinion about unfairness includes but is not limited to the following examples:

-It's unfair that, in spite of the IRS mission statement to help taxpayers understand the tax laws and their responsibilities, my letters raising questions have been answered by the IRS with unsigned letters (violation of IRC section 6065) stating "we don't respond point by point..." and threatening to fine me \$500.00 dollars for frivolous questions.

-It's unfair that any Americans have been prosecuted and convicted for violations of the "income" tax code because the code is unintelligible.

-It's unfair and contravenes the 5th Amendment to compel a Citizen by law to sign a 1040 under penalties of perjury and then use the information they provide against them.

-It's unfair that the IRS, which is only an administrative agency, is allowed to bully Citizens and businesses into responding to summonses, notices of lien, wage and bank garnishments without federal court orders.

-It's unfair that the IRS is not prosecuted for their illegal enforcement of Title 26, which according to CFR Parallel Table of Authorities, has not been enacted as positive law.

-It's unfair that the IRS uses a fraudulent form 668-A Notice of Levy. On the back, form "668-A" cites IRS authority to seize but omits paragraph "A" from section 6331 which unequivocally states the IRS only has the authority to seize federal employees' property.

-It's unfair that an IRS official would actually acknowledge to a member of Congress, "If the taxpayers of this country ever discover that the Internal Revenue Service operates on 90 percent bluff, the entire system will collapse," and nothing is done about it.

-It's unfair that the federal government gives the impression that "income" taxes pay for government services when the Grace Commission reported, "100% of what is collected is absorbed solely by interest on the federal debt and by federal government contributions to transfer payments..."

-It's unfair that the IRS is not forthright with Citizens and businesses about the IRC definition of "employee," being someone that works for the federal government and that no one in the private sector is an "employee" so no withholding is required.

-It's unfair that businesses are either so intimidated by the IRS or so wary of the costs of dealing with IRS legal challenges they refuse to issue paychecks without a signed W-4.

REFORMS: (1) Abandon the vaguery in the IRC intended to mislead Citizens into believing they have a liability they don't and institute a policy of honesty. Inform Citizens the "income" tax must be voluntary to be Constitutional and, by Supreme Court definition, "income" only applies to corporations and their profits, or (2) Repeal the Federal Reserve Act and get the U.S. out from under the bankruptcy. Congress can then assume its Constitutional authority to coin money, or (3) Repeal the 16th Amendment and once it is repealed and forever gone, institute a consumption tax.

Ronald Reagan said it very well: "...our system of taxation has turned into something completely foreign to our nature - something complicated, unfair, and in a fundamental sense, un-American... It is, in short, utterly impossible, utterly unjust and completely counter-productive. It's earned a rebellion, and it's time we rebelled."

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The President's Panel on Tax Reform
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February 28, 2005

Dear Panel:

My background is accounting, military, aviation, and banking. I have been dissuaded from investments by the current tax code and legal tort processes. By my logic any investment that creates jobs and current income for me can only return approximately 24% after estate taxes are considered and any investment is 100% at risk. There is negative incentive to create jobs if there is potential liability risk.

I believe a value added tax would benefit this country. It would help level the field for United States based companies. Under the current system, they must pay their employees enough to have a living wage after the employee pays his/her income tax. If all corporations selling goods and services in the United States paid a tax based on value added for production and distribution it would have a job production incentive for goods manufactured in this country.

An additional advantage to value added taxation that is important is the underground economy would share in the tax burden through purchases of goods and services. A flat tax would not apply to the underground economy that is so extensive today.

BUSINESSES NEVER PAY TAXES. All businesses pass their tax burden to the consumers of their product. Additionally they increase the price to compensate for the computation of their tax. Business taxes only determine where a company operates or calls home. Business taxes disproportionately affect the poor by impacting on a higher percentage of their income. They also disproportionately affect the young who consume more goods and services. All companies must seek the most advantageous tax haven in order to compete and survive.

The international monetary exchange process balances the budgets of all countries. My lower tax bill this year cost hundreds of thousands in lower purchasing power by reducing the value of my estate. I anticipate that the pendulum will continue to swing and hope to recover some of that loss. In order for the pendulum to reverse course the budget of our country must be balanced without shocking it. Lower spending must occur.

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