A DISCOURSE ON THE CRUX OF THE FEDERAL TAXATION OF INDIVIDUALS

Preliminary Edition

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Luke 18:9-14 (The Parable of Pharisee and the Publican):

"*Two men went up to the temple to pray, one a Pharisee and the other a tax-collector. The Pharisee, standing by himself, was praying thus, 'God, I thank you that I am not like other people: thieves, rogues, adulterers, or even like this tax-collector. I fast twice a week; I give a tenth of all my income.' But the tax-collector, standing far off, would not even look up to heaven, but was beating his breast and saying, 'God, be merciful to me, a sinner!' I tell you, this man went down to his home justified rather than the other; for all who exalt themselves will be humbled, but all who humble themselves will be exalted.*"

Nil desperandum de Republica

"*We are never to despair of the Republic or State.*"

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Respectively, over the better half of the last century the individual federal income tax has been manifestly misapplied so as to perpetually aid in unwinding the (otherwise irreversible) inflationary damage that is brought about by the mass-surging of—non-convertible—fiat *Federal Reserve Notes* (FRN), which are drawn upon annually (thereby effecting the process of monetary deprecation to our national currency supply) in support of ever-expanding (and largely unconstitutional) kleptocratic federalism (this including: austerity, collectivism, corporatism, statism, and global hegemony.) Ergo, if the privately owned Federal Reserve Bank were an immobilizing beast, then the IRS would be designated as a mechanized arm forever administering its sustenance.

This causality pertains to the willful misapplication of the individual federal income tax, as a racket, that operates to prevent our currently structured debt-as-principal monetary system—which is wholly unconstitutional to implement within Union states (see: U.S. Constitution, A.I,S.10,C.1), though is permissible for use by the federal government, its territories, possessions, and foreign allies—from hyper-inflating and crashing; whereas for which without, would have surely collapsed within the first few decades of its inception in 1913 (regardless, this of course makes it no more justified and certainly not any more necessary, appropriate, or constitutional.)

The Federal Reserve Bank is but a private (for profit) medium—thereby permitting its internal operations to remain clandestine from the eyes of the ever-curious and commanding public, for when the layperson comes to acknowledge the whole of facts about such scheming deeds (praise be to Thomas Jefferson, Andrew Jackson, and such others), they will undoubtedly champion its complete demise before nightfall—designated to permit for governmentally sanctioned transferring of wealth from the entirety of the private sector (namely victimizing the middleclass) into the coffers of the public treasury; a large portion of which is allocated annually to be ceaselessly returned to the monopolizing Federal Reserve Bank profiteers in the form of "interest" upon the precipitously increasing national debt (now well over $21,000,000,000,000.00 and left to increasingly burden our posterity by more than one-trillion dollars annually) that had been loaned out throughout the preceding year, (see: the 'Private Sector Survey on Cost Control' (PSSCC)—*The Grace Commission Report*.) Thereby, in-effect slightly deflating an ever enlarging deficit bubble, which is the end result of this epic Ponzi scheme… As all bubbles are destined to burst, becomingly, the question stands: at which point? However, as the reactionary burst threshold of this tirelessly growing tumorous bubble primes, it will be delayed due to the pilfered reciprocating process brought forth with the malice-aid of the U.S. Department of the Treasury's Internal Revenue Service (IRS.)

To further clarify, lending to modern day *status quo* misperceptions, is the misapplication of individual federal income taxation in conjunction with dubious theories surrounding centralized banking, both of which are described as necessary planks (2 & 5) in realizing a core of Marxist-communism (i.e., "*Communist Manifesto*"—edictal corporatism) and thereby, such concepts dare not joust with the well-founded spirited republic and vision of America's great charter, the *Declaration of Independence*. Barbarism, democracy, and despotism are surely not adversaries to tyranny, corruption, nor malign; knowing no ethical or virtuous boundaries, as do neither those peddling such virulently frayed notions.

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It is the aspiration of this work to proffer a truly innovative means to address and comprehend the crux of this longstanding issue, so that others may readily acquire the emboldened capacity to finally break through the limiting confines of the "box" serving only to bound their field-of-vision and once and for all begin to see the forest through the trees.

The thoroughness of this work is by no means all inclusive; and at present remains a continuing project of research. The content included throughout this work is highly accurate, meaning that the quotations and citations used herein have been doubly verified and should contain very few to no errors; additionally, the majority of all such references being imported are from very reliable sources, retaining its original context—that including *controlling* (i.e., primary authorities) and *persuasive* (i.e., secondary authorities.) The scope of this work considers primarily Title 26 of the United States Code (i.e., Subtitle—A of the Internal Revenue Code) as it applies to average day-laborers seeking only to support their families through them privately earning an honest means of competency within their primary state of residency. Additionally, the sum of this work avoids addressing controversial theories and notions, including arguments judicially recognized as being *frivolous*.

Chapter I. Introductory and Overview

If you are familiar with the Tax Honesty Movement (THM), then you are as well most likely aware of at least a few of the arguments strenuously debated by various factions of the THM and that many of those arguments have consistently been deemed legally 'frivolous' by various (*common law*) court rulings, e.g., that the federal income tax is unconstitutional, that it applies only to federal employees and instrumentalities or to those working within 'federal zones' or that it does not apply to sovereign citizens, that the Sixteenth Amendment (XVI Amend.) was never properly ratified, that the IRS is not an agency of the federal government, the '861' argument, and so on. Indeed there are many complexities embedded within the myriad of existing contentions concerning the present day structuring of the *Internal Revenue Code* (IRC)—Title 26 of the United States Code (U.S.C.) The purpose of this discourse is to explore the fundamental distinctions between contractual pay-for-labor and individual federal 'income' taxes, so far as the correct and legal application of the Internal Revenue Code is concerned.

To better illustrate, you of course already realize that until such time that you are the owner or operator of a motor vehicle then your state's *Vehicle Codes* do not directly pertain to you; and that if you are a citizen of the United States of America then you need not concern yourself with the legalities of naturalization or immigration; and that if you do not 'open carry' an unloaded firearm or 'conceal carry' (CCW/CCP) a loaded firearm, then you do not need to worry about complying with your state's *Penal Codes*, so far as such statutes pertain to those choosing to exercise their Second Amendment (II Amend.) rights while in public. More directly, if you are not the subject of the Internal Revenue Code for the purposes of having engaged in specified taxable events or activities then you would not be legally liable to any degree under federal tax revenue law. The same as if you are not the owner or operator of a motor vehicle, are a citizen of the United States of America, or aren't a firearms owner… Being that such relational laws would have no jurisdictional relevance over you otherwise.

Ergo, only an angler or hunter, engaged in qualifying activities need concern themselves with state *Fish and Game Codes*, regardless if they possess a valid fishing/gaming license or not. Only a captain of a seaworthy vessel need concern themselves with *Harbor and Navigation Codes*, etc. Hence, manufacturing positional arguments of any caliber is entirely unnecessary and serves only as a distraction, a proverbial "red-herring" at best.

Specifically, herein we will explore taxation as it pertains to and directly effects the financial earnings (i.e., sustenance based capital) that you receive as a contracted—respectively even—exchange for you providing an individual or business with your own personal toiling, time, skilled craft, knowledge, innovation, ingenuity, effort, and/or creativity. Prepare yourself for a journey into the past, as we will revisit the *original intent* of our Nation's Forefathers, that is so far as 'taxation' is concerned; rather than just simplemindedly following the insinuations beset on behalf of the U.S. Treasury or IRS.

§ 1.1. ***Our Nation's Republican Founding.*** The foundation of our Nation derives from a declaratory charter entitled the *Declaration of Independence*, ratified on July 4th, 1776. Upon this axiomatic document our Forefathers officially decreed America's separation from the tyrannical grasp of the British Empire for a myriad of reasons. Contrary to present day misconceptions the Declaration of Independence is a legally relevant document.

Initially, the United States of America was founded as a 'confederacy' in 1777 under the *Articles of Confederation* (ratified in 1781.) The Articles of Confederation within its Preamble created a *perpetual union* between the first 13-States—the originating Thirteen Colonies known as British America—and within Article I named that confederacy the *United States of America*. Due to ongoing faults and governmental limitations within the established confederation in 1788 the Articles of Confederation was repealed and thereafter succeeded by our newly ratified *United States Constitution* under a "***republican*** *form of government*" (adopted in 1787.) The U.S. Constitution continues the doctrine of that perpetual union within its Preamble stating: "*We the people of the United States,* ***in order to form a more perfect union****, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution* ***for the United States of America.***" The U.S. Constitution is not a "living" document.

In 1789 due to concerns over the potential for governmental abuses and overreaching of powers prescribed to the government by the U.S. Constitution a *Bill of Rights* was devised (ratified in 1791.) During this period of time many of our Forefathers participated in an exchange of anonymously posted articles titled the *Federalist and Anti-Federalist Papers*, wherein it was debated in great detail and at length over the precise reasoning for establishing a national government to oversee our Union of States, including the powers to be vested into each form of government (federalization versus statehood sovereignty.) This debate resulted in an exchange of approximately eighty-five letters being publicly posted from each side. The 'Federalist Papers' are legally relevant as persuasive evidence, concerning the intentions established by our Forefathers in their constructing of the U.S. Constitution, as it stands.

The Massachusetts Compromise resolved the ongoing debate between the Federalists and Anti-Federalists—i.e., the latter being fearful of the impending diminishment of statist-individualism to the creeping centralization of nationalized government—by adopting the first ten amendments to the United States Constitution, establishing our Bill of Rights and concluding ratification of America's new constitution. As reflected within Thomas Jefferson's letter to Francis Hopkinson Paris, March. 13, 1789:

> "*What I disapproved from the first moment also was the want of a bill of rights to guard liberty against the legislative as well as executive branches of the government, that is to say to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury in all cases determinable by the laws of the land. I disapproved also the perpetual reeligibility of the President. To these points of disapprobation I adhere. My first wish was that the 9. first conventions might accept the constitution, as the means of securing to us the great mass of good it contained, and that the 4. last might reject it, as the means of obtaining amendments. But I was corrected in this wish the moment I saw the much better plan of Massachusetts and which had never occurred to me. With respect to the declaration of rights I suppose the majority of the United states are of my opinion: for I apprehend all the antifederalists, and a very respectable proportion of the federalists think that such a declaration should now be annexed. The enlightened part of Europe have given us the greatest credit for inventing this instrument of security for the rights of the people, and have been not a little surprised to see us so soon give it up.*"

See also: *Everson v. Board of Education*, 330 U.S. 1, 38, 42 (1947) and included footnotes.

§ 1.2. ***Fundamental law.*** This is where the federal government realizes its legal authority to lay and collect taxes. The U.S. Constitution is recognized by each State of the Union as "*the supreme law of the land*", as so stated within its Article VI, Clause 2: "***This***

***Constitution**, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, **under the authority** of the United States, **shall be the supreme law of the land**; …*" The Declaration of Independence, U.S. Constitution and Bill of Rights serve conjointly as the basis for what is referred to as 'fundamental law', which is in essence the morality or standing principles (the historical causation) that created a nations' constitution, e.g., our Nation's Declaration of Independence. All acts and bills of law (statutes, regulations, ordinances, codes, etc.) thereafter enacted must remain in absolute accord and spirit with these ever-omnipresent documents. This is what is meant when it is stated that the U.S. Constitution is not a "living" document, for such established precepts transcend present circumstance; they do not simply conform to conditional nor perceived necessity (except through a just amending process—ratification—as prescribed within Article V.)

The law making power of the national Legislature is reinforced by Article I, Section 8, Clause 18; which states that:

> "[The Congress shall have power] [t]*o make all laws **which shall be necessary and proper** for carrying into execution the foregoing powers, and all other powers **vested by this Constitution** in the government of the United States, or in any department or officer thereof.*" Clearly, this power is limited to only that which has been stipulated within the U.S. Constitution and its Amendments.

Thusly, the question is raised, in accordance with the U.S. Constitution, what taxing powers does the Legislature possess? The answer is found in Article I, Section 8, Clause 1 of the U.S. Constitution and the Sixteenth Amendment to the U.S. Constitution.

> "***The Congress** shall have **power to lay and collect** taxes, duties, imposts and excises, to **pay** the **debts** and **provide** for the **common defense** and **general welfare** of the **United States**; but all duties, imposts and excises shall be uniform throughout the United States;*"
> —**Article I, Section 8, Clause 1**

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

The above infers that so long as 'the Congress' is paying the debts, providing for the common defense or general welfare of the United States, they then realize the power to lay and collect such established classes of tax; provided that the taxes being sought are legally imposable and collected in a manner as prescribed by the U.S. Constitution. This then poses the question, what modes of taxation are legally imposable and by what methods are taxes to be levied?

These answers are located in several different sections of the U.S. Constitution and in one Amendment to the U.S. Constitution, which are: Article I, Section 2, Clause 3; Article I, Section 8, Clause 1; Article I, Section 9, Clause 4; and the Sixteenth Amendment.

> "*Representatives and **direct taxes** shall be **apportioned** among the several states which may be included within this union, according to their respective numbers, …*"
> —**Article I, Section 2, Clause 3**

"*The Congress shall have power to lay and collect* ***taxes***, ***duties***, ***imposts*** *and* ***excises***, *to pay the debts and provide for the common defense and general welfare of the United States; but all* ***duties***, ***imposts*** *and* ***excises*** *shall be* ***uniform*** *throughout the United States;*"
—**Article I, Section 8, Clause 1**

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

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

§ 1.3. ***The purpose of laying and collecting taxes.*** Precisely, what is the purpose of laying and collecting taxes? The reasoning for establishing federal taxation is stipulated very pointedly within the U.S. Constitution itself. As per Article I, Section 8, Clause 1, the generation of all federal revenue is distinctly for the purposes of: **1.** paying the debts acquired by the United States in the course of either: **2.** providing for the common defense of the United States or **3.** providing for the general welfare of the United States. A reading of "*Federalist Paper No. 30*" serves to clarify a bit more upon federal taxing powers, lending examples as to for what benefits nationalized taxation would serve the future of our Union.

This then raises three straightforward questions: **(1)** For which specific purposes might the United States incur a debt and to whom would the United States become indebted? **(2)** What exactly is 'common defense'? **(3)** What exactly is 'general welfare'?

To answer **(1)**: The United States could only incur a debt while performing either of providing for the 'common defense' or 'general welfare' of the United States of America or its territories or possessions. If not wise and prudent the United States could become overwhelmingly indebted unto industries such as agriculture, banking, and manufacturing or to states, nations, or international businesses through treaties, trade agreements, grants, or other similar compacts. Presently, the debt of our Nation amounts into many trillions of dollars and grows with each passing second. This is the pith of "*taxation without representation*", as this debt is foisted unto our Nation's posterity.

To answer **(2)**: 'Common defense' is the act of raising and supporting the national military and militia for the purpose of defending the United States of America against invasion, insurrection, duress, distress, and disaster. It is important to note that this is far different than raising and supporting a national military and organized militia (i.e., National Guard) for the express purpose of policing the majority of the world—that including our earthly atmosphere and outer space, as our national military, organized militia, and NASA presently are.

To answer **(3)**: 'General welfare' is the act of building, expanding, maintaining, promoting, and repairing necessary interstate infrastructures, such as: agriculture and irrigation; canals, potable water, and reservoirs; freeways, highways, and roadways; harbors, ports, and waterways; needful buildings; sewage and waste; managing the census, suffrage; etc. Again, the above are vastly different than providing "qualifying individuals" with nationalized health and medical care, social welfare, unemployment, or sustaining failing enterprises; all while ordaining a profusion of proliferating governmental bureaucracies to

dictate, micromanage, and regulate every course of private affair, as is the current agenda of our federal government and its presiding officers.

As noted in *South Carolina v. United States*, 199 U.S. 437, 450 (1905):

> "*To determine the extent of the grants of power, we must therefore place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants.*
>
> *By the first clause of section 8 of Article I of the Constitution, Congress is given the "power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."*
>
> *By this clause, the grant is limited in two ways:* ***the revenue must be collected for public purposes,*** *and all duties, imposts, and excises must be uniform throughout the United States.*"

And special consideration is not owed to those taxed, no such prospects ought to be expected, and preferential service or treatment by civil servants is not correlative to taxation, as in *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 521-523 (1937):

> "*Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.* [Footnote 14—omitted.]
>
> *A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. See Cincinnati Soap Co. v. United States, supra. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government -- that it exists primarily to provide for the common good. A corporation cannot object to the use of the taxes which it pays for the maintenance of schools because it has no children. Thomas v. Gay, 169 U. S. 264, 169 U. S. 280. This Court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him.* [Footnote 15—omitted.] [Citations omitted.]"

Still however, in *Murdock v. Pennsylvania*, 319 U.S. 105, 110-116 (1943) it noted that (which is, in principle, considerably analogous to indirectly taxing capitations, personal, and other direct taxes; e.g., it's one thing to indirectly tax the receipt of gains and profits or incomes as commercial activities of privilege, yet it's entirely another to indirectly tax livelihoods or its recompense as so):

> "*As we stated only the other day, in Jamison v. Texas, 318 U. S. 413, 318 U. S. 417, "The states can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such leaflets may have 'a civic appeal, or a moral platitude' appended.* [Citation omitted.] *They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes."*

But the mere fact that the religious literature is "sold" by itinerant preachers, rather than "donated," does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist, however misguided or intolerant he may be, ***does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him.*** *Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. As we have said, the problem of drawing the line between a purely commercial activity and a religious one will, at times, be difficult. On this record, it plainly cannot be said that petitioners were engaged in a commercial, rather than a religious, venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find that petitioners "sold" the literature. The Supreme Court of Iowa, in State v. Mead, 230 Iowa 1217, 300 N.W. 523, 524, described the selling activities of members of this same sect as "merely incidental and collateral" to their "main object, which was to preach and publicize the doctrines of their order."*

We do not mean to say that religious groups and the press are free from all financial burdens of government. [Citations omitted.] *We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.* [Citations omitted.] *Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.*

It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax -- a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce ([Citation omitted.]*), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory.* [Citations omitted.] *A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down.* [Citations omitted.] *It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax.* [Citations omitted.] *In that case, as in the present ones, we have something very*

different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases, the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expense of policing the activities in question. **[Footnote 8]** *It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion, and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution."* **[Footnote 9]** [Citation omitted.] *So it may not be said that proof is lacking that these license taxes, either separately or cumulatively, have restricted or are likely to restrict petitioners' religious activities. On their face, they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.*

The taxes imposed by this ordinance call hardly help but be as severe and telling in their impact on the freedom of the press and religion as the "taxes on knowledge" at which the First Amendment was partly aimed. [Citation omitted.] *They may indeed operate even more subtly. Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped.*

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers, and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. [Citations omitted.] *But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is guaranteed the people by the Federal Constitution.*

Considerable emphasis is placed on the kind of literature which petitioners were distributing -- its provocative, abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. [Citation omitted.] *But those considerations are no justification for the license tax which the ordinance imposes. Plainly, a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.*

Footnote 8—*The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce* ([Citation omitted.]*), it*

may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact that those regulations incidentally affect commerce.

"So long as they do not impede the free flow of commerce, and are not made the subject of regulation by Congress. they are not forbidden. [Citations omitted.]"

Footnote 9—*That is the view of most state courts which have passed on the question.* [Citations omitted.]"

§ 1.4. ***In a Nutshell: What are Constitutional Incomes.*** This persisting oversight lay in that the federal income tax is not in actuality imposing taxes directly upon the valuation of labor, investment, or estate; rather however, and correctly so, it is imposing taxes indirectly upon the income acquired though each's (positively) increased valuation between the time first possessed (or controlled) and thereafter transferred, sold, or exchanged; be it profited strategically either by an estate or one's labor, or gained fortuitously through investment or opportunity.

The underpinning distinction hinges between what is tangible capital or principal, being the determinable basis as to whatever contract, arrangement, or other such agreement, and what is actual gain or profit—from those very sources—ascending upon the receipt of financial wealth, success, prudence, or excess.
Without exception, all else (i.e., intangible capital or principal) is entirely precluded from consideration of the individual federal income tax, and as a consequence is wholly external to its legislated scope.

And in perhaps more unequivocally poetic terms, constitutional incomes are the ripening corollaries blossoming throughout the enlivening conversion of corpora.

§ 1.5. ***The distinction between 'direct' and 'indirect' taxation.*** The U.S. Constitution establishes only two categorical methods of taxation; those being 'direct' and 'indirect', with each categorical head containing several individual modes for levying such taxes.

'Direct taxes' are prescribed by the U.S. Constitution within both Article I, Section 2, Clause 3 and Article I, Section 9, Clause 4. Classes of direct taxes include two divisions, 'personal taxes'—v*iz.*, 'capitation' and 'poll' taxes; taxes on chattel or personalty—and 'other direct taxes'—*viz.*, assessments; land and realty taxes (as opposed to usage or transference.)

All direct taxes are required to be 'apportioned' among the populations of each perspective Union state according to the most recent census—census or 'enumeration' requirements are prescribed within Article I, Section 2, Clause 3. This means that according to the total population recorded within one's own state, each individual will pay without regard to personal financial ability, in the form of taxes, an exact portion or share of the allotment due into the Treasury. The allotment consigned unto each state by the Legislature is a percentage of each state's recorded population in consideration of the aggregate sum, being so necessary and proper.

"*Representatives and direct taxes* ***shall be apportioned*** *among the several states which may be included within this union, according to their respective numbers, …*"
—**Article I, Section 2, Clause 3**

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

'Indirect taxes' are prescribed by the U.S. Constitution within Article I, Section 8, Clause 1 and the Sixteenth Amendment. Classes of indirect taxes include two primary divisions, each having many subclasses: 'duties' (including 'imposts') and 'excises'—[including 'incomes'. Indirect taxes are required to be 'uniform' throughout the United States of America; thus, no matter which state you are within, the taxed item, event, or activity must be exactly identical to any other state, regardless.

"*The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises* ***shall be uniform*** *throughout the United States;*"
—**Article I, Section 8, Clause 1**

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

§ 1.6. ***'Incomes' as intended by the Sixteenth Amendment.*** The Congressional Research Services', *CRS Annotated Constitution* concerning the Sixteenth Amendment, denotes (through valid case law) under the heading "***Income Subject to Taxation***" the definition of 'income' as:

'Building upon definitions formulated in cases construing the Corporation Tax Act of 1909, the Court initially described income as the "gain derived from capital, from labor, or from both combined," inclusive of the "profit gained through a sale or conversion of capital assets". '

Still further clarifying is *Burnet v. Harmel*, 287 U.S. 103, 107-108 (1932):

"*In interpreting the Corporation Tax Law of 1909... That act imposed an excise tax on corporations, measured by their income. … It was argued that, since the net result of the mining operation is a conversion of capital investment as upon a sale, the money received by the corporate owner or lessor, being its capital in a changed form, could not rightly be deemed to be income. But that argument was rejected, both with respect to the proceeds of mining operations carried on by the corporate owner on its land,* [citations omitted] *and with respect to payments made by the lessee to the corporate lessor under the provisions of a mining lease* [citations omitted].

Although these cases arose under the Act of 1909, before the enactment of the capital gains provision in the 1921 Act, they established, for purposes of defining "income" in a tax measured by it that payments by lessees to lessors under mining leases were not a conversion of capital, as upon a sale of capital assets, but were income to the lessor, like payments of rent. And, before the 1921 Act, this Court had indicated (see Eisner v. Macomber, 252 U. S. 189, 252 U. S. 207), ***what it later held -- that "income," as used in the revenue acts taxing income adopted since the Sixteenth Amendment, has the same meaning that it had in the Act of 1909.*** [Citations omitted.] *. . . in the absence of explicit language indicating a different purpose, it cannot be taken to have intended that an oil and gas lease under the capital gains provision, any more than a mineral lease under the earlier acts, should be treated like an ordinary sale of land or chattels,*

resulting in a conversion of capital assets. Such a construction would have disregarded legislative and judicial history of persuasive force; it would have adopted a distorted, rather than the common, meaning of the term "sale," [citation omitted] *and would have tended to defeat, rather than further, the purpose of the Act.*"

Thereby 'incomes' as intended within the Sixteenth Amendment implies a strict sense within a specified application; the legalese term 'gross income' does not imply a meaning as otherwise comprehended through common verbiage. 'Gross income' is eloquently the resulting financial increase taken in from a monetary corpus, it is not, all revenue that was received throughout a tax period for whatever engagements one may have participated in, such as pursuing a livelihood, while aspiring to attain *happiness through life and liberty*.

The IRS itself acknowledges that it is the Sixteenth Amendment that restored its power to tax such forms of—constitutional—'incomes' after being affirmed unconstitutional in the Supreme Court watershed case: *Pollock v. Farmers' Loan & Trust Company*, 158 U.S. 601 (1895.)

The tax being levied upon 'incomes' as meant within the XVI Amendment is not upon the source itself (i.e., one's remuneration), but upon the realized 'gain', 'profit', or 'income' deriving therefrom.

§ 1.7. *Levying taxes upon 'gains' and 'profits'.*

A '**gain**' is in the context of a capital gain, the positive (realized) increase of an asset, such as in stocks or real estate, between the time purchased and sold. To gain is to fortuitously post profits, winnings, and to monetarily increase the value of one's capital or principal.

A '**profit**' is the excess of receipts over expenditures, that is, the pecuniary remaining after deducting, from the gross, the sum of the employed capital, labor, materials, rents, etc.; net profits or earnings. It is the compensation to entrepreneurs for assuming a risk in business enterprise, which is to be distinguished from the wages of labor.

Taxable incomes are associated in federal income tax statutes to gains and profits, stating in *Lukhard v. Reed*, 481 U.S. 368, 374-376 (1987) that: "*since both general and legal sources define "income" as involving gain, see, e.g., Webster's Third New International Dictionary 1143 (1976) ("a gain or recurrent benefit that is usu. measured in money . . ."); 42 C.J.S., Income, p. 531 (1944) ("In common speech income' generally is understood as gain or profit . . ." (footnote omitted)); Eisner v. Macomber, 252 U. S. 189, 252 U. S. 207 (1920) ("Income may be defined as the gain derived from capital, from labor, or from both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets . . ." (quoting Stratton's Independence, Ltd. v. Howbert, 231 U. S. 399, 231 U. S. 415 (1913); Doyle v. Mitchell Brothers Co., 247 U. S. 179, 247 U. S. 185 (1918))), respondents conclude that personal injury awards cannot fairly be characterized as income. But the premise that personal injury awards cannot involve gain is obviously false, since they often are intended in significant part to compensate for the loss of gain, e.g., lost wages. See Watkins v. Blinzinger, 789 F.2d at 476. Since the gain would have been income, surely at least that part of a personal injury award that replaces it must also be income.* **[Footnote 2]** *More importantly, however, as Lukhard and the Secretary point out, general and legal sources also commonly define "income" to mean "any money that comes in," without regard to any related expenses incurred and without any requirement that the transactions producing the money result in a net gain. See, e.g., 5 Oxford English Dictionary 162 (1933) ("That which comes in . . . (considered in reference to its amount, and commonly expressed in money); . . . receipts . . ."); 42 C.J.S., Income, p. 529 (1944) ("Generally or ordinarily the term means all that comes in; . . . something which is paid over and delivered to the recipient; . . . without reference to the outgoing expenditures . . ." (footnotes omitted));*

Heckler v. Turner, 470 U. S. 184 (1985) ("income" under the AFDC statute [i.e., Aid to Families with Dependent Children] *means gross income, without reference to expenses reasonably attributable to its earning). Heckler is particularly significant, since there we indicated that the part of an employee's salary that is allocated to work-related expenses -- clearly not a gain in the sense that term is used by respondents -- is properly treated as "income" under the AFDC statute. Id. at 470 U. S. 202. Although that conclusion was based in part on a provision not involved in this case, it demonstrates that the AFDC statute itself contradicts the theory that payments that do not constitute gain (as respondents use the term) to their recipients cannot reasonably be described as "income." Thus, contrary to respondents' assertion, Virginia's revised regulations are consistent with a perfectly natural use of "income."*
Footnote 2—*Moreover, as we discuss below, see infra at 481 U. S. 380-383, other typical components of personal injury awards, including compensation for pain and suffering, can reasonably be treated as gain under the AFDC statute.*"

So far as the federal income tax pertains to the whole revenue earned by subservient workforces, the term 'gross income' innocuously imposes an 'indirect tax' on the financial harvest that germinates out from the soil of capital, however cultivated or refined. It is not, however, seeking to tax the soil itself. Meaning that 'gross income' is to leave that which is its source unimpaired otherwise it's no longer taxing in consideration of Sixteenth Amendment 'incomes'.

What this clarifies is that the Sixteenth Amendment has no legal relevance, as it does not subjugate those within menial occupations; that is, so far as the remuneration—that is subsistence—received by the everyday laboring American citizen or resident is concerned. The prescribed embodiment of the Sixteenth Amendment is specific to ventures in franchise and entrepreneurship.

For the purposes of establishing such a form of individual federal 'income' taxation, merely earning a livelihood by way of common right (i.e., *natural law*), while remaining external to professionally privileged activities, enterprises, or pursuits and to federal offices, instrumentalities, or bureaucracies, is entirely outside the breadth of the Sixteenth Amendment. A careful review of the many relevant Supreme Court (SCOTUS/USSC) decisions serves to exemplify this relevant fact as it pertains to constitutional (*fundamental*) law.

It is one's subsistence earned through their own exertion that establishes the basis, the capital, to thereafter potentially acquire 'income' from whatever investment medium such as by assets, funds, and markets or through commodities, contracts, estates, lands, realty, and resources which may then emanate appropriate items of 'gross income' out from such capitalized arrangements.

The eminent 1895 *Pollock v. Farmer's Loan & Trust Co.* case, serves a pivotal point for the IRS as jurisprudence had found taxes upon realty rents to be indistinguishable from the property itself and thereby a 'direct tax', thus bringing about the necessity for the Sixteenth Amendment's ratification; so as to no longer lend a consideration to the source from which one's 'taxable income' had derived. Prevalently, it is through one's laboring that all forms of property and subsequently the 'gross income' therefrom are acquired.

§ 1.8. ***"… all duties, imposts and excises …"*** To briefly overview the precise distinction between the various class-modes of taxes within the category of 'indirect taxes', as originally prescribed within Article I, Section 8, Clause 1 of the U.S. Constitution, the following are their individual descriptions:

Duties: A tax levied upon the importation or exportation of commerce, commodities, goods, or merchandise; imports and exports; customs.

Imposts: A tax levied upon imported commerce, commodities, goods, or merchandise; tariffs; a tax levied in general, as in 'impositions'.

Excises: An internal tax (meaning taking place within the United States of America); a tax levied upon the consumption, manufacture, or sale of commodities, merchandise, or products; a tax imposed on federally sanctioned privilege; licenses and fees to pursue specified occupations, industries, enterprises, or activities; gifts or inheritances; public charges.

Assiduous is *United States v. Wells Fargo Bank*, 485 U.S. 351, 355 (1988) in clarifying the nuances of indirectly taxing privileges and the like:

> "[*T*]*he property was exempt from direct taxation, but certain privileges of ownership, such as the right to transfer the property, could be taxed. Underlying this doctrine is the distinction between an excise tax, which is levied upon the use or transfer of property even though it might be measured by the property's value, and a tax levied upon the property itself. The former has historically been permitted even where the latter has been constitutionally or statutorily forbidden. The estate tax is a form of excise tax. Greiner v. Lewellyn, 258 U.S. 384, 42 S.Ct. 324, 66 L.Ed. 676 (1922) (municipal bonds subject to federal estate taxation notwithstanding an intergovernmental tax immunity barring a direct tax on the bond)* [Citations omitted.]"

§ 1.9. ***Taxes on either your labor or its recompense.*** Economist Dr. Adam Smith (LL.D.), the founder of *free market economics* (e.g., free trade, laissez-faire) in his five part erudite work entitled "*An Inquiry into the Nature And Causes of the Wealth of Nations*" (1776), synthesized the present day understanding of national workforces, trade, economy, commerce, and governmental taxation for the generation of revenue. His impeccable logic and resulting book '*Wealth of Nations*' is largely what reasoned and influenced the understanding our Forefathers would later go on to institute within our U.S. Constitution in the year 1788, as concerning the implementation of America's own system of national taxation.

More specifically, Dr. Adam Smith had clarified that a tax levied in consideration of labor is a 'direct tax' and moreover that it is the business itself that is to justly pay such impositions as placed upon its own laborers, either from its books or through the raising of their workers' pay, thereby reimbursing them for that "direct" loss. Regardless, the business could simply recover these additional expenses in the same fashion as used to shift their burden of 'indirect taxes' onto their consumers—through relationally increasing the prices of their products or services. Dr. Smith wrote that:

> "*The wages of the inferior classes of workmen, … While the demand for labour and the price of provisions, therefore, remain the same, a direct tax upon the wages of labour can have no other effect than to raise them somewhat higher than the tax.*
>
> *A direct tax upon the wages of labour, therefore, though the labourer might perhaps pay it out of his hand, could not properly be said to be even advanced by him; …*" (See: Book Five, Chapter II, Article III, "*Taxes upon the Wages of Labour*".)

Dr. Adam Smith had discerned that 'capitation taxes' were the proper class of 'direct taxes' to be levied in consideration of labor. This was due to the 'capitations' levied in France as

opposed to the 'poll-taxes' levied in England, both directly upon proletariats (i.e., the inferior class or plebeian populace.) Furthermore, he deduced that in levying such taxes they were to remain indifferent up all, regardless of individual circumstance. Our Forefathers went on to prescribe that all such 'direct taxes' be levied by an 'apportionment' of the most current census/enumeration. In juxtaposition they prescribed the requirement that all 'indirect taxes' are to be levied according to a rule of 'uniformity'. Dr. Adam Smith further wrote:

"*The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes, and taxes upon consumable commodities. These must be paid indifferently from whatever revenue the contributors may possess; from the rent of their land, from the profits of their stock, or from the wages of their labour.*

Capitation taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at. His assessment, therefore, must in most cases depend upon the good or bad humour of his assessors, and must, therefore, be altogether arbitrary and uncertain.

Capitation taxes, if they are proportioned not to the supposed fortune, but to the rank of each contributor, become altogether unequal, the degrees of fortune being frequently unequal in the same degree of rank.

Such taxes, therefore, if it is attempted to render them equal, become altogether arbitrary and uncertain, and if it is attempted to render them certain and not arbitrary, become altogether unequal. Let the tax be light or heavy, uncertainty is always a great grievance. In a light tax a considerable degree of inequality may be supported; in a heavy one it is altogether intolerable. . . .

In the capitation which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people, according to what is supposed to be their fortune, by an assessment which varies from year to year. The officers of the king's court, the judges and other officers in the superior courts of justice, the officers of the troops, etc., are assessed in the first manner. The inferior ranks of people in the provinces are assessed in the second.

In France the great easily submit to a considerable degree of inequality in a tax which, so far as it affects them, is not a very heavy one, but could not brook the arbitrary assessment of an intendant. The inferior ranks of people must, in that country, suffer patiently the usage which their superiors think proper to give them. . . .

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

Capitation taxes are levied at little expense, and, where they are rigorously exacted, afford a very sure revenue to the state. It is upon this account that in countries where the ease, comfort, and security of the inferior ranks of people are little attended to, capitation taxes are very common.

It is in general, however, but a small part of the public revenue which, in a great empire, has ever been drawn from such taxes, and the greatest sum which they have ever afforded might always have been found in some other way much more convenient to the people." (See: Book Five, Chapter II, Article IV, "*Capitation Taxes*".)

§ 1.10. ***Capitation taxes v. poll-taxes.*** 'Capitation taxes', 'poll-taxes', and taxes on non-real property (i.e., chattel or personalty; tangible, moveable personal property) constitute what is referred to as 'personal taxes'. As clarified above there is but a subtle distinction between 'capitation taxes' and 'poll-taxes', making it imperative to note these two primary considerations:

Capitation taxes are: 'direct taxes' levied only with consideration to a person's industry or occupation, specifically upon their labor; their subsistence, livelihood, or competency. A tax upon what you do, as a person.

Poll-taxes are: 'direct taxes' levied without any consideration to one's property, be it real or personal or to their employments and is instead levied in consideration of one's social caste, class, rank, or standing; their personality or essence. A tax upon who you are, as a person.

As observed 'capitation taxes' and 'poll-taxes' closely relate to one another, which bears on them also being referred to as 'head taxes', as they are directly representative of the person. 'Direct taxation' is indicative of an assessment, which is unavoidable. 'Indirect taxation' is but an imposition upon specified participation, consumption, and expenditure; whereby individuals effectively tax themselves. All 'direct taxes' are to be assessed only to the extent as absolutely necessary (see: Federalist No. 36.) The following quotation solidifies the distinction, from *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429, 569-570 (1895):

> '*But Albert Gallatin, in his "Sketch of the Finances of the United States," published in November, 1796, said: "The most generally received opinion, however, is that, by direct taxes in the Constitution, those are meant which are raised on the capital or revenue of the people; by indirect, such as are raised on their expense. …"*
>
> *He then quotes from Smith's Wealth of Nations, and continues:*
>
> *"The remarkable coincidence of the clause of the Constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes, an acceptation of the word peculiar, it is believed, to Dr. Smith, leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from, and falling immediately on, the revenue, and, by indirect, those which are paid indirectly out of the revenue by falling immediately upon the expense." 3 Gallatin's Writings (Adams' ed.) 74, 75.*'

And still further discussion provides in *ibid* at 157 U.S. 429, 565-569, 573-574:

"*Luther Martin, in his well known communication to the legislature of Maryland in January, 1788, expressed his views thus:*

"By the power to lay and collect taxes, they may proceed to direct taxation on every individual, either by a capitation tax on their heads or an assessment on their property." 1 Elliot 34, 38, 369.

In Virginia, Mr. John Marshall said: "The objects of direct taxes are well understood; they are but few; what are they? Lands, slaves, stock of all kinds, and a few other articles of domestic property…" 3 Elliot 229, 235.

At that time, in Virginia, lands were taxed, and specific taxes assessed on certain specified objects. These objects were stated by Secretary Wolcott to be taxes on lands, houses in towns, slaves, stud horses, jackasses, other horses and mules, billiard tables, four-wheel riding carriages, phaetons, stage wagons, and riding carriages with two wheels, and it was undoubtedly to these objects that the future Chief Justice referred.

. . .
From these references, and they might be extended indefinitely, it is clear that the rule to govern each of the great classes into which taxes were divided was prescribed in view of the commonly accepted distinction between them and of the taxes directly levied under the systems of the States. ***And that the difference between direct and indirect taxation was fully appreciated is supported by the congressional debates after the government was organized.***
. . .
Mr. Sedgwick said that "a capitation tax, and taxes on land and on property and income generally were direct charges, as well in the immediate as ultimate sources of contribution. He had considered those, and those only, as direct taxes in their operation and effects. On the other hand, a tax imposed on a specific article of personal property, and particularly if objects of luxury, as in the case under consideration, he had never supposed had been considered a direct tax within the meaning of the Constitution."

Mr. Dexter observed that his colleague "had stated the meaning of direct taxes to be a capitation tax, or a general tax on all the taxable property of the citizens, and that a gentleman from Virginia (Mr. Nicholas) thought the meaning was that all taxes are direct which are paid by the citizen without being recompensed by the consumer; but that, where the tax was only advanced and repaid by the consumer, the tax was indirect. He thought that both opinions were just, and not inconsistent, though the gentlemen had differed about them. He thought that a general tax on all taxable property was a direct tax, because it was paid without being recompensed by the consumer." Annals 3d Congress 644, 646.
. . .
Mr. Madison wrote to Jefferson on May 11, 1794:

"And the tax on carriages succeeded, in spite of the Constitution, by a majority of treaty, the advocates for the principle being reinforced by the adversaries to luxuries. . . . ***Some of the motives which they decoyed to their support ought to premonish them of the danger. By breaking down the barriers of the Constitution, and giving sanction to the idea of sumptuary regulations, wealth may find a precarious defence in the shield of justice.*** *If luxury, as such, is to be taxed, the greatest of all luxuries, says Paine, is a great estate. Even on the present occasion, it has been found prudent to yield to a tax on transfers of stock in the funds and in the banks." 2 Madison's Writings 14.*
. . .
From the foregoing, it is apparent: 1. That the distinction between direct and indirect taxation was well understood by the framers of the Constitution and those who adopted it. 2. That, under the state systems of taxation, all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes. 3. That the rules of apportionment and of uniformity were adopted in view of that distinction and those systems."

§ 1.11. ***Why your remuneration is withheld each pay period.*** The reason your pay is withheld each pay period is chiefly attributed to the *Current Tax Payment Act of 1943*. This law is what implemented IRS 'wage withholdings' through the instrument of an IRS W-4 Form; as it was not until the initialization of the voluntary 'Victory Tax of 1942' and the IRS' subsequent practice of 'stoppage at the source' that the percentage of federal income tax filers began to dramatically rise. In 1943 alone the number of filers rose to 38%.

To clarify, even 29-years after the ratification of the *Revenue Act of 1913* ('Tariff Act') and the XVI Amendment not more than 15% of the U.S. population filed federal income tax returns for any given year and for most years this ranged between 3-8%—from 1913-1942, respectively.

How was this so? Inspired partly by the charismatic guise of movies and Donald Duck cartoons ("*Inflation*", "*The New Spirit*", and "*Spirit of 43*") individuals began paying federal income taxes voluntarily to brag their patriotic support by providing financial aid for the

war effort under what was dubbed the "Victory Tax", which was then hastily repealed in 1944. These increases in annual filings were attested to by President Truman himself in a 1952 'Message of the President' declaring: "*... In 1940, 19 million tax returns were filed; in 1951, 82 million. ...*"

During this 11-year span the population increased by only 22-million individuals to 154-million. At present with a relative population of 312-million, roughly 113-million individuals and couples file federal income tax returns annually.

During this period of time and continuing through the subsequent years it is most likely that the entirety of the truth in categorical taxation was ensconced from the populace, when combined with failing public education and complicity throughout the passing years, a recipe for absolute devastation and disaster quickly becomes realized. It remains that certified public accountants (CPA), tax attorneys, and other such "tax professionals" are taught that the Internal Revenue Code applies to all—that all are subject unto it—regardless. These individuals are indoctrinated that they need not look any further than the IRS' own distributed forms, manuals, publications, and schedules for legal verification concerning federal tax laws; such as the infamous Publications 15 – "*Employer's Tax Guide*" and 15-A – "*Employer's Supplemental Tax Guide*".

Such materials, as provided by the IRS presumes that the reader has already determined themselves to be subject to the content provided therein; such materials are merely representative of federal tax laws, they are not in and of themselves "the law". To fully comprehend federal tax laws, its proper legal application and context, one needs to thoroughly review the relevant statutes within Title 26 of the *United States Code* (U.S.C.) and cross-reference them with the *Federal Register*, *Parallel Table of Authorities and Rules* (PTOA), Title 26 of the *Code of Federal Regulations* (CFR), along with relevant case law.

§ 1.12. ***The immorality of defying individual competency.*** In conceiving present day status quo methodologies concerning the supposed governmental power to uniformly tax away the individual's private ability and motivations for establishing and achieving their own competency (*viz.*, through livelihoods), it is apparent that the individual within such heinously ill-conceived notions becomes legislatively compelled to forfeit their own lifelong advancement throughout society by those very methods—a blatant act of usurpation waged against individualist sustainability, progenies, and effervescence. Such an ascetic methodology, which is really a misconstruction of relative tax law (entirely fabricated so as to contraindicate freewill and humanness), commands individuals into a perpetuated rut of lifelong servitude and subjugation to those hegemonic powers that be; so much to the point that one might as well dedicate their life purpose and determent to stilling oceanic currents.

A tax is defined as a public charge demanded upon certain transactions, privileges, events, assessments, actions, and the like. While it might be reasonably arguable to assert that direct taxation is a means of lawful thievery or political extortion, this is not so much the case for indirect taxation; however, it is true that any direct means of taxation is effectively levied upon serfs, all indirect means of taxation however are not. To summarize from a historical perspective, gold is the money of kings; silver the money of nobles; barter the money of plebs; and debt the money of serfs, (a paraphrasing of economist Norman Franz' popular quotation.)

Effectively, under a tantamount system it becomes apropos for such a self-serving form of government, then, to simply tax away from what is to save the pockets of its citizenry at whatever percentage desired or deemed appropriate; be it a mere 1-percent or all 100-

percent and so asserted upon whichever wage-brackets determined financially viable solely to abet the coffers of its national treasury.

Regardless, while a tax assessed upon livelihoods—including its recompense—still requires apportionment, the imposition of a tax to be sought upon 'incomes' therefrom or elsewhere (albeit no longer requires apportionment, only uniformity) remains as a 'direct' form of taxation, and as such, may only be called upon during affirmed national exigencies. This point is prevalent, in that the individual income tax as determined by status quo methodology is wholly unconstitutional so far that it seeks to perpetually lay taxation upon the source—aside from the ominous realization that its established rates of percentage continue only to increase exponentially over time, as the value of dollars diminish; which is an inherent consequence of using nonconvertible "promise" backed dyed paper-print pecuniary, in-part bringing about its own debasement vis-à-vis rabid inflation.

Additionally, attempts to legislatively obscure the apparent form of a specific classification of taxation with its substance has been addressed by common law a myriad of times and is now a well-settled doctrine, relentlessly crystallizing that such tact is never and has ever been thought to be constitutional. Further on this matter, in following the great virtue of Dr. Adam Smith (i.e., his "*Wealth of Nations*"), is stated in *Brown v. Maryland*, 25 U.S. 419, 444 (1827).

The businessperson, capitalist, entrepreneur, or professional may readily and reasonably opt to increase the fees of their articles, capital, merchandise, stock, and services in exact proportion to the costs associated with their taxable receipts through such classifications of taxation, yet the average day-laborer may merely privately contract at convenience and mercy of those they seek their employ under.

Paraphrasing from both *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 581-582 (1895) and *Macallan Co. v. Massachusetts*, 279 U.S. 620, 626-627 (1929), wherein each of the following cases referenced had held:

- *Brown v. Maryland*, 12 Wheat. 419, 25 U.S. 444: A tax upon importers was a tax on imports and thereby void. Further noting that Chief Justice Marshall stated: "*It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition which is general as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article imported only for sale is a tax on the article itself.*"
- *Weston v. Charleston*, 2 Pet. 449: A tax upon income from U.S. securities was a tax on the securities themselves, and equally inadmissible.
- *Dobbins v. Commissioners/Erie County*, 16 Pet. 435: Income from an official position was not taxable if the office itself was exempt.
- *Almy v. California*, 24 How. 169: A duty on a bill of lading was the same thing as a duty on the laden articles. (And see 75 U.S. Parham, 8 Wall. 123, 75 U.S. 138.)
- *Railroad v. Jackson*, 7 Wall. 262: A tax upon interest payable bonds was a tax not upon the debtor, but upon the security.
- *Cook v. Pennsylvania*, 97 U.S. 566: A tax upon the amount of sales made by an auctioneer was a tax upon the goods sold.
- *Philadelphia Steamship Co. v. Pennsylvania*, 122 U.S. 326, and *Leloup v. Mobile*, 127 U.S. 640: A tax on income received from interstate commerce was a tax upon the commerce itself.
- *Indian Territory Illuminating Oil Co. v. Oklahoma*, 240 U.S. 522, 530: "[*A*] *tax upon oil leases of lands of Indians under the protection of the federal government, made by authority of such government, was held void as being in fact a tax upon the power to make the leases and capable of being used to destroy such power. . . . 'A tax upon the*

leases is a tax upon the power to make them, and could be used to destroy the power to make them. If they cannot be taxed as entities, they cannot be taxed vicariously by taxing the stock, whose only value is their value, or by taking the stock as an evidence or measure of their value, rather than by directly estimating them as the board of equalization and the referee did."

- *Federal Land Bank v. Crosland*, 261 U.S. 374: "[*T*]*his Court condemned, as beyond the constitutional power of the state, a statute subjecting mortgages executed to a Federal Land Bank to the payment of a recording tax, as being in effect a tax upon the mortgages.*"

In addition, expanding considerably further upon this well-conceived tenet is:

Northwestern Mut. Life Ins. Co. v. Wisconsin, 275 U.S. 136, 140 (1927) and **REAFFIRMED** in *National Life Ins. Co. v. United States*, 277 U.S. 508, 521 (1928):

"*Certainly since Gillespie v. Oklahoma, 257 U.S. 501, 257 U.S. 505, it has been the settled doctrine here that, where the principal is absolutely immune, no valid tax can be laid upon income arising therefrom. To tax this would amount practically to laying a burden on the exempted principal. Accordingly, if the challenged Act, whatever called, really imposes a direct charge upon interest derived from United States bonds, it is pro tanto void.*

The fundamental question often presented in cases similar to these is whether, by the true construction of the statute, the assessment must be regarded as a tax upon property or one on privileges or franchise of the corporation. Society for Savings v. Coite, 6 Wall. 594; Home Insurance Co. v. New York, 134 U.S. 594."

Alpha Portland Cement Co. v. Commonwealth, 268 U.S. 203, 217-218 (1925):

"*Cheney Bros. Co. v. Massachusetts, 246 U.S. 147, 246 U.S. 153-154, …the state demanded an excise of a foreign corporation which transacted therein only interstate business. The excise was laid upon the corporation, and the basis of it the same as in the present cause. This Court said: "We think the tax on this company was essentially a tax on doing an interstate business, and therefore repugnant to the commerce clause." Here also, the excise was demanded on account of interstate business. A new method for measuring the tax had been prescribed, but that cannot save the exaction. Any such excise burdens interstate commerce, and is therefore invalid without regard to measure or amount. [(4) citations omitted; 245 U.S. 178, 190; 246 U.S. 135, 142; 260 U.S. 245, 259; 264 U.S. 150.]*

International Paper Co. v. Massachusetts considered an excise upon a corporation doing both local and interstate business, measured by its capital stock. … Pertinent cases were cited and discussed, and the tax declared "unconstitutional and void as placing a prohibited burden on interstate commerce and laid on property of a foreign corporation located and used beyond the jurisdiction of the state." . . . It must now be regarded as settled that a state may not burden interstate commerce or tax property beyond her borders under the guise of regulating or taxing intrastate business. So to burden interstate commerce is prohibited by the commerce clause, and the Fourteenth Amendment does not permit taxation of property beyond the state's jurisdiction. The amount demanded is unimportant when there is no legitimate basis for the tax. So far as the language of Baltic Mining Co. v. Massachusetts, 231 U.S. 68, 231 U.S. 87, tends to support a different view, it conflicts with conclusions reached in later opinions, and is now definitely disapproved." See also: *Frick v. Pennsylvania*, 268 U.S. 473, 494-495 (1925).

National Life Ins. Co. v. United States, 277 U.S. 508, 520-521 (1928), therein acknowledging a realization that it is in error to make compulsory what is constitutionally exempt from taxation so to then become computationally included as exempted, deducted, or credited within an individual's determination of income taxes due or overpaid—for it forms "*no part of the estimate*" and "*cannot be excluded or deducted from the amount of his assets liable to taxation...*" "*…because that would, indirectly, make his income from such source liable to the taxation from which it is exempt; that to exhaust the exemption clause by taking the amount out of his official income would be to make it, in effect, subject to the revenue law…*" (*People, etc. v. Commissioners* (1870), 41 How. Prac. Reports 459; *United States v. Ritchie* (1872), Fed. Cas. No. 16168; *et al.*)

So much had been thoughtfully clarified by *Pollock v. Farmers' Loan & Trust Co.*, *supra*:

> "*If it be true that, by varying the form, the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizens of each State. But constitutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has indeed been established by repeated decisions of this court. . . . Nothing can be clearer than that what the Constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any State through a majority made up from the other States. …*" Quotation also referenced in: *Fairbank v. United States*, 181 U.S. 283, 296 (1901).

And successively in *United States v. Merriam*, 263 U.S. 179, 187-188 (1923):

> "*On behalf of the government, it is urged that taxation is a practical matter, and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But, in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful,* ***the doubt must be resolved against the government and in favor of the taxpayer.*** *Gould v. Gould, 245 U. S. 151, 245 U. S. 153. The rule is stated by Lord Cairns in Partington v. Attorney General, L.R. 4 H.L. 100, 122:*
>
> *"I am not at all sure that in a case of this kind -- a fiscal case -- form is not amply sufficient, because, as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."*
>
> *And see Eidman v. Martinez, 184 U. S. 578, 184 U. S. 583.*"

Additionally, as stated in *Postal Telegraph Co. v. Adams*, 155 U.S. 688, 155 U.S. 698 (1895): "*The substance, and not the shadow, determines the validity of the exercise of the power.*" And in *Nicol v. Ames*, 173 U.S. 509, 521 (1899): "*A tax upon the privilege of selling property at the exchange, and of thus using the facilities there offered in accomplishing the sale, differs radically from a tax upon every sale made in any place. The latter tax is really and practically upon property. It takes no notice of any kind of privilege or facility, and the fact of a sale is alone regarded.*"

Also in *Educational Films Corp. v. Ward*, 282 U.S. 379, 391 (1931): "*It is said that there is no logical distinction between a tax laid on a proper object of taxation, measured by a subject matter which is immune, and a tax of like amount imposed directly on the latter; but it may be said with greater force that there is a logical and practical distinction between a tax laid directly upon all of any class of government instrumentalities, which the Constitution impliedly forbids, and a tax such as the present* [i.e., an intrastate corporate franchise tax]*, which can in no case have any incidence unless the taxpayer enjoys a privilege which is a proper object of taxation and which would not be open to question if its amount were arrived at by any other nondiscriminatory method.*"

Furthermore, the enumerated powers granted to the Legislature under the constraint of constitutional taxation were afforded honor in *United States v. Butler*, 297 U.S. 1, 69-70 (1936):

> '*Said the court, in McCulloch v. Maryland, supra, 17 U.S. 421: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."*
>
> *The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible.*
>
> *"Congress is not empowered to tax for those purposes which are within the exclusive province of the States." Gibbons v. Ogden, 9 Wheat. 1, 22 U.S. 199. "There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would undoubtedly be an abuse of the [taxing] power if so exercised as to impair the separate existence and independent self-government of the States or if exercised for ends inconsistent with the limited grants of power in the Constitution."*

More to the point, stated in *supra*, at 297 U.S. 1, 70, was that: "*These decisions demonstrate that Congress could not, under the pretext of raising revenue, lay a tax on processors who refuse to pay a certain price for cotton, and exempt those who agree so to do, with the purpose of benefiting producers.*" In following:

- Both *Child Labor Tax Case—Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922) and *Hill v. Wallace*, 259 U.S. 44 (1922) held that the postulation of taxation is not constitutionally permissible as a compliance measure to regulate intrastate manufacturing and commerce (*viz.*, "*matters not within any power conferred upon Congress by the Constitution*").
- *Linder v. United States*, 268 U.S. 5 (1925) that the just empowerment of constitutional taxation does not stipulate a grant for intimating the raising of revenue as a pseudo end-means to regulate professions.
- *United States v. Constantine*, 296 U.S. 287 (1935) that Congress cannot sanction-thru-taxation upon violations of state (liquor sale) laws.

And in *Gibbons v. Ogden*, 22 U.S. 1, 191 (1824): "*It is a rule of construction acknowledged by all that the exceptions from a power mark its extent, for it would be absurd, as well as useless, to except from a granted power that which was not granted -- that which the words of the grant could not comprehend.*"

Efficaciously concluding this point is the holding of *Shapiro v. Thompson*, 394 U.S. 618, 631 (1969) quoting in-part (*infra* at 581) from *United States v. Jackson*, 390 U.S. 570, 581-582 (1968):

> "*If the provision had no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it would be patently unconstitutional. . . . Whatever might be said of Congress' objectives, they cannot be pursued by means that needlessly chill the exercise of basic constitutional rights. … The question is not whether the chilling effect is "incidental", rather than intentional; the question is whether that effect is unnecessary, and therefore excessive.*"

And even further stated in *Everson v. Board of Education*, 330 U.S. 1, 41 (1947):

> "*Tithes had been the lifeblood of establishment before and after other compulsions disappeared. Madison and his coworkers made no exceptions or abridgments to the complete separation they created. Their objection was not to small tithes. It was to any tithes whatsoever. "If it were lawful to impose a small tax for religion, the admission would pave the way for oppressive levies."* **[Footnote 2/30]** ***Not the amount, but "the principle of assessment, was wrong."*** *And the principle was as much to prevent "the interference of law in religion" as to restrain religious intervention in political matters.* **[Footnote 2/31]** *In this field,* ***the authors of our freedom would not tolerate "the first experiment on our liberties" or "wait till usurped power had strengthened itself by exercise, and entangled the question in precedents."*** *Remonstrance, Par. 3. Nor should we.*"
>
> **Footnote 2/30—**"*Eckenrode, 105, in summary of the Remonstrance.*"
>
> **Footnote 2/31—**"'*Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretention falsified by the contradictory opinions of Rulers in all ages, and throughout the world; the second an unhallowed perversion of the means of salvation.'*
>
> *Remonstrance, Appendix, Par. 5; II Madison 183, 187.*"

See additionally:

(a). *Murdock v. Pennsylvania*, 319 U.S. 105, 112-113 (1943): "*The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. . . . The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down.*"

(b). *A. Magnano Co. v. Hamilton*, 292 U.S. 40, 44-45 (1934): "*Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry.* [Citation omitted.] *Nor may a tax within the lawful power of a state be judicially stricken down under the due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses (*[Citations omitted.]*), unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state.*"

(c). *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819): "*That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one Government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.*

But all inconsistencies are to be reconciled by the magic of the word CONFIDENCE. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which would banish that confidence which is essential to all Government."

And more in: *Murdock v. Pennsylvania*, 319 U.S. 105, 110-116 (1943)—quoted *supra* in § 1.3; *Shelton v. Tucker*, 364 U.S. 479, 488-489 (1960); *United States v. Robel*, 389 U.S. 258, 262-265, 268 (1967).

Chapter II. An Empirical Overview on Taxation

§ 2.1. ***Origin and Evolution of the Income Tax: Genesis, Chapter 47.*** The biblical account within Genesis, Chapter 47 expresses a family of sheep ranchers, seeking to occupy the ruler's lands due to the unceasing hardships being experienced upon their own land, the ruler agrees to an arrangement and for them to tend to his cattle, with Joseph serving directly to their now tyrannical ruler—the Pharaoh.

Ultimately, they resolved in giving of all of their money, then all of their flocks and herds, then finally themselves and their estates; all in exchange for bread and seed (noting that at no point did they consider consuming any of their animals, be they, sheep, cows, horses, or jackasses, but only bread—thereby, symbolizing the piecemeal surrendering and reliance through the seemingly orchestrated capitulation unto their new governmental rulers.)

The people after sustaining this absolute loss were then moved into cities; further signifying the surrendering of their personal privacy, independence, and choice, for all aspects of a city is dictated or controlled by the local government or its rulers.

The priests, who were spared from enduring this disgrace, represent the "church", which even to date is largely exempt from taxation.

Joseph then effectively informs all that they will become farmers; that they now belong to the ruler— the Pharaoh—and shall all then be taxed by one-fifth of their harvest-stock.

And so it was thenceforth that all the good dependent servants were exuberant and pleased with this new arrangement, as magically all those several years of blight had just so suddenly passed.

In 14th century England during their prolonged war with France, around 1377 the first implementation of an income tax was crudely imposed upon only those wealthy, holding public offices, or serving as clergy.

The beginnings of a sordid income tax was hinted to in around 1789 by Gouverneur Morris ("*The Diary and Letters of Gouverneur Morris*, Vol. I", 1888; "**CHAPTER XIII.**", Para. 23):

> "*As to M. Necker [Chief (financial) Minister, Jacques Necker to King Louis XVI of France], he is one of those men who has obtained a much greater reputation than he had any right to. …*
>
> *Be that as it may, an unspotted integrity as minister, and serving at his own expense in an office which others seek for the purpose of enriching themselves, have acquired him very deservedly much confidence. … But what is most extraordinary is, that M. Necker is a very poor financier. This I know will sound like heresy in the ears of most people, but it is true. The plans he has proposed are feeble and ineptious. Hitherto he has been*

supported by borrowing from the Caissed'Escompte, which (being by means of what they call here an arrêt de surséance secured from all prosecution) has lent him a sum in their paper exceeding the totality of their capital by about four millions sterling.

Last autumn he came forward to the Assemblée with a dreadful tale of woe, at the fag end of which was a tax upon every member of the community of a fourth of his revenue, which he declared to be needful for saving the state. His enemies adopted it (declaring, what is very true, that it is a wretched, impracticable expedient) in the hope that he and his scheme would fall together.

This Assemblée, this patriotic band, took in a lump the minister's proposition, because of their confidence and the confidence of the people in them, as they said, but, in fact, because they would not risk the unpopularity of a tax. The plan thus adopted, M. Necker, to escape the snare which he had nearly got taken in, ***altered his tax into what they call the patriotic contribution****. By this every man is to declare, if he pleases, what he pleases to estimate as his annual income, and to pay one-fourth of it in three years. You will easily suppose that this fund was unproductive, and, notwithstanding the imminent danger of the state, here we are without any aid from the contribution patriotique. His next scheme was that of a national bank, or at least an extension of the Caissed'Escompte. It has been variously modelled since, and many capital objections removed, but at last it is good for nothing, and so it will turn out; at present it is just beginning. . . ."*

In 1799 England the method of income taxation had been refined by the Prime Minister of Britain, William Pitt the Younger, it was quickly realized a failure and repealed in 1802. Following in 1803 after additional modification to the newly devised income tax, then labelled 'Addington's Property and Income Tax' was put into effect until 1815. Still further modifications to the income tax were made by Sir Robert Peel in 1842 to include the below income classifications ("*Encyclopedia Americana*", 1919, pp. 742-745), which is representative of the federal income tax subsequently implemented in America:

a. Income arising from the ownership of lands and houses;
b. Income arising from the use or occupation of land;
c. Income from interest, annuities or dividends;
d. Income from any profession, trade, employment or vocation, and;
e. Income from public office or employment.

It is worth noting that William Pitt suffered lifelong ill-health, frequently turning to alcohol for escape; ultimately, passing away in 1806 at 46-years of age (just shortly after his revised income tax was repealed.) In his death (perhaps ironically, considering what income taxes are indicative of) Mr. Pitt left it to the Parliament to pay off his £40,000 (pounds) of personal debt—which with present day inflation amounts to $640,000 of unpaid debt, respectively. The income tax even though newly revised, was still economically considered an ineffectual tax that brought about only a small portion of what was expected from its application. Such a method of taxation also being highly unpopular, incidentally resulting in "justifying" Mr. Pitt (renowned as a despot) to require his personal approval before any articles or commentary pertaining to the financial interests of governing could be published to the masses.

In America implementation of the modernized income tax had been first debated during the War of 1812, but did not survive to become public law. That is until 1861 when the first income tax act was ratified under the '1861 Tax Act', although it was never actually implemented; however, that following year President Lincoln signed the '1862 Tax Act' into public law.

The U.S. Supreme Court had up until 1895, unanimously upheld several challenges favoring the constitutionality of federally imposed income taxes, when it then abruptly reversed its holdings in *Pollock v. Farmers' Loan & Trust Co.*, *supra*, finding this method (most notably, while excluding from the question *bona fide* employment gains and business profits) to be a direct form of taxation—consequently, paving the way for the ratification of the Sixteenth Amendment in 1913, the 'Underwood Tariff Act' of 1913, and the 'Federal Reserve Act' of 1913.

Thus, in openly addressing the likelihood that a "conspiracy" had occurred, it was Senator Nelson W. Aldrich (R-RI) of J.P. Morgan—who was also a Freemason-Treasurer—that acted as the primary driving force behind the establishing of both the Federal Reserve System and the Sixteenth Amendment (while also working with robber-baron elitists such as the Warburg family—through the infamous 1910 Jekyll Island, Georgia meeting—hypocritically, however, just a decade earlier he had made admissions that income taxes were communistic/socialistic); thereafter he promptly left from office in 1911, passing away in 1915. Further noting that his daughter Abby married into the Rockefeller family, having married John D. Rockefeller, Jr. in 1894, with their child the progressivist Nelson Aldrich Rockefeller later growing up to serve as Governor of New York, vice-president to President Gerald Ford, and served in various administrative positions for presidents: Franklin Roosevelt, Harry Truman, and Dwight Eisenhower.)

Additionally, his two sons, Richard Steere Aldrich served a term as Congressman (R-RI) and Winthrop W. Aldrich as the president and chairman to Chase Bank, later becoming U.S. Ambassador to the United Kingdom, and subsequently acquiring the honorary title of "Knight Grand Cross of the Order of the British Empire" from King George VI.

Still, it is perhaps even more curious that America's founders had at no time within their numerous debating and writings in address to their newly independent United States of America ever so much as entertained either a single thought nor word pertaining to an income tax scheme of any sort, even though various forms of income taxation have existed throughout history—and which is empirically considered a 'direct tax'. As was ventured in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 572 (1895): "*If the question had related to an income tax, the reference would have been fatal, as such taxes have been always classed by the law of Great Britain as direct taxes.*"

In summarizing the national ramifications of assessing direct taxes, such is emphasized within Congressional Records, therein clarifying: "*History, Mr. W.* [Representative Williams] *said, informed them of the annihilation of nations by means of direct taxation. He referred gentlemen to the situation of the Roman Empire in its innocence, and asked them whether they had any direct taxes? No. Indirect taxes and taxes upon luxuries and spices from the Indies were their sources of revenue; but, as soon as they changed their system to direct taxation, it operated to their ruin; their children were sold as slaves, and the Empire fell from its splendor. Shall we then follow this system? He trusted not.*" — *Annals of Congress*, House of Representatives, 4th Congress, 2nd Session, pp. 1897-1898, January 18, 1797

The progress evolution of the federal income tax has been historically confusing, ultimately to the benefit of certain classes of persons (that namely including businesses), while to the determent of others, as briefly revisited in *South Carolina v. Baker*, 485 U.S. 505, 517-518, 524-525 (1988)—yet still the USSC has yet to oblige the grant of *certiorari* upon the framing of federally taxed day-laborers:

> *"Rather, Pollock merely represented one application of the more general rule that neither the Federal nor the State Governments could tax income an individual directly derived from any contract with another government.* **[Footnote 10]** *Not only was it*

unconstitutional for the Federal Government to tax a bondowner on the interest he or she received on any state bond, but it was also unconstitutional to tax a state employee on the income earned from his employment contract, Collector v. Day, 11 Wall. 113 (1871), to tax a lessee on income derived from lands leased from a State, Burnet v. Coronado Oil,285 U. S. 393 (1932), or to impose a sales tax on proceeds a vendor derived from selling a product to a state agency, Indian Motocycle Co. v. United States,283 U. S. 570 (1931). Income derived from the same kinds of contracts with the Federal Government were likewise immune from taxation by the States. See Weston v. City Council of Charleston, 2 Pet. 449 (1829) (federal bond interest immune from state taxation); Dobbins v. Commissioners of Erie County, 16 Pet. 435 (1842) (federal employee immune from state tax on salary); Gillespie v. Oklahoma,257 U. S. 501 (1922) (income derived from federal lease immune from state tax); Panhandle Oil Co. v. Mississippi ex rel. Knox,277 U. S. 218 (1928) (vendor immune from sales tax on vendor's proceeds from sale to the United States). Cases concerning the tax immunity of income derived from state contracts freely cited principles established in federal tax immunity cases, and vice versa. See, e.g., Coronado Oil, supra, at 285 U. S. 398; Indian Motocycle, supra, at 283 U. S. 575-579; Pollock, supra, at 157 U. S. 586. See generally Indian Motocycle, supra, at 283 U. S. 575 (immunity of States from federal tax equal to immunity of Federal Government from state tax); Metcalf & Eddy v. Mitchell,269 U. S. 514, 269 U. S. 521-522 (1926); Collector v. Day, supra, at 78 U. S. 127.

This general rule was based on the rationale that ***any tax on income a party received under a contract with the government was a tax on the contract****, and thus a tax "on" the government, because it burdened the government's power to enter into the contract. The Court in Pollock borrowed its reasoning directly from the decision in Weston exempting federal bond interest from state taxation:*

"'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burthen on the operations of government. . . . The tax on government stock is thought by this court to be a tax on the contract, a tax on the [government's] power to borrow money . . . and consequently to be repugnant to the Constitution.'" . . . We thus confirm that subsequent case law has overruled the holding in Pollock that state bond interest is immune from a nondiscriminatory federal tax. We see no constitutional reason for treating persons who receive interest on government bonds differently than persons who receive income from other types of contracts with the government, and no tenable rationale for distinguishing the costs imposed on States by a tax on state bond interest from the costs imposed by a tax on the income from any other state contract.
Footnote 10—*Income indirectly derived from a contract with the government was treated differently. See, e.g., Willcuts v. Bunn, 282 U. S. 216, 282 U. S. 227-230 (1931) (constitutional to tax capital gain on sale of state bond because State not a party to the sale contract); see also Greiner v. Lewellyn, 258 U. S. 384 (1922) (constitutional to tax transfer of estate even though state bonds are included in determining the value of the estate).*"

§ 2.2. ***Biblical Quotations which Generally Pertain to Economics.*** The Bible itself provides testament to the subject-matter of honesty, laboring, taxes, and wages:

- Genesis 47:23-24: "*Joseph said to the people, 'Now that I have bought you and your land today for Pharaoh, here is seed for you so you can plant the ground. But when the crop comes in, give a fifth of it to Pharaoh. The other four-fifths you may keep as seed for the fields and as food for yourselves and your households and your children.'*"

- **Proverbs 22:16,22**: "*One who oppresses the poor to increase his wealth and one who gives gifts to the rich—both come to poverty.*" and "*Do not exploit the poor because they are poor and do not crush the needy in court.*"
- **Matthew 21:12**: "*Jesus entered the temple courts and drove out all who were buying and selling there. He overturned the tables of the money changers and the benches of those selling doves.*"
- **Luke 3:14**: "*Then some soldiers asked him, 'And what should we do?' He replied, 'Don't extort money and don't accuse people falsely—be content with your pay.'*"
- **Romans 2:6-8**: "*God 'will repay each person according to what they have done.' To those who by persistence in doing good seek glory, honor and immortality, he will give eternal life. But for those who are self-seeking and who reject the truth and follow evil, there will be wrath and anger.*"
- **Romans 4:4**: "*Now to the one who works, wages are not credited as a gift but as an obligation.*"
- **1 Timothy 5:18; Deut. 25:4; Luke 10:7**: "*For the Scripture says, 'You shall not muzzle an ox when it treads out the grain,' and, ' The laborer deserves his wages.'*"
- **James 5:4**: "*Look! The wages you failed to pay the workers who mowed your fields are crying out against you. The cries of the harvesters have reached the ears of the Lord Almighty.*"

§ 2.3. ***Statutory 'Income' Defined.*** All throughout the Internal Revenue Code the only clear definition providing useable context to the term 'income' is located at 26 USC § 643(b); concerning subject-matter for the (headnote) "General Rules for Taxation of Estates and Trusts":

> "For purposes of this subpart and subparts B, C, and D, the term "income", when **not** preceded by the words "**taxable**", "distributable net", "undistributed net", or "**gross**", means the amount of income of the estate or trust for the taxable year determined under the terms of the governing instrument and applicable local law. Items of **gross income** constituting extraordinary **dividends or taxable stock dividends** which the fiduciary, acting in good faith, determines to be allocable to corpus [the principal] under the terms of the governing instrument and applicable local law shall not be considered income."

The intended legislative context of using the term 'income' has been subsequently clarified in reference to the originating definition of 'net income' (§ 22(a)) as pertinent to its restatement as 'gross income' (§ 61(a)):

(a). H.R. 1337, Internal Revenue Code of 1954, House of Representatives Report of the Committee on Ways and Means:

> "*Section 61. Gross income defined*
> This section corresponds to section 22(a) of the 1939 Code. While the language in existing section 22(a) has been simplified, the all-inclusive nature of **statutory gross income** has not been affected thereby. Section 61(a) is as broad in scope as section 22(a). Section 61(a) provides that gross income includes "all income from whatever source derived." This definition is based upon the 16th Amendment and **the word "income" is used in its constitutional sense.** …"

(b). H.R. 1622, Internal Revenue Code of 1954, Senate Report of the Committee on Finance:

> "*Section 61. Gross income defined*
> . . . This section corresponds to section 22(a) of the 1939 Code. While the language in

existing section 22(a) has been simplified, the all-inclusive nature of **statutory gross income** has not been affected thereby. Section 61(a) is as broad in scope as section 22(a). Section 61(a) provides that gross income includes "all income from whatever source derived." This definition is based upon the sixteenth Amendment and **the word "income" is used as in section 22(a) in its constitutional sense.** It is **not intended to change** the concept of income that obtains under section 22(a). …"

Moreover, it has been prior stipulated within the 1939 Code of Federal Regulations at 26 CFR § 9.22(b)-1, (and similarly within the 1956 CFR at § 39.22(b)-1):

"**Exemptions; exclusions from gross income.** Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items may be excluded from gross income except (a) those items of income which are, under the Constitution, not taxable by the Federal Government; (b) those items of income which are exempt from tax on income under the provisions of any act of Congress still in effect; and (c) the income excluded under the provisions of the Internal Revenue Code (see particularly section 116)."

Additionally, at *ibidem*, § 29.21-1: "**Meaning of net income.** The tax imposed by chapter 1 is upon income. Neither income exempted by statute or fundamental law... enter into the computation of net income as defined by section 21."

And further still consequently in following:

(a). 26 CFR § 29.21-1 (p. 167, 1949 Ed.): "**Meaning of net income.** (a) The tax imposed by chapter 1 is upon income. Neither income exempted by statute or fundamental law, nor expenses incurred in connection therewith, other than interest, enter into the computation of net income as defined by section 21. … In the computation of the tax various classes of income must be considered: (1) Income (in the broad sense), meaning all wealth which flows in to the taxpayer other than as a mere return of capital. It includes the forms of income specifically described as gains and profits, including gains derived from the sale or other disposition of capital assets. **Cash receipts alone do not always accurately reflect income**…"

(b). 26 CFR § 29.22 (a)-1 (p. 168, 1949 Ed.): "**What included in gross income.** (a) Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets."

(c). 26 CFR § 29.22 (a)-2 (p. 168-169, 1949 Ed.): "**Compensation for personal services.** (a) Commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, pay of persons in the military or naval forces of the United States, retired pay of Federal and other officers, and pensions or retiring allowances paid by the United States (unless expressly exempt) or by private persons are income to the recipients; as are also marriage fees, baptismal offerings, sums paid for saying masses for the dead, and other contributions received by a clergyman, evangelist, or religious worker for services rendered. However, so-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and are not taxable. The salaries of Federal officers and employees are subject to tax. Amounts deducted and withheld pursuant to the Civil Service Retirement Act of May 29, 1930, 46 Stat. 468, 475, as amended (5 U. S. C., ch. 14), from the basic salary, pay, or compensation of the employees in the civil service of the United States are includible in gross income for the year in which deducted and withheld. As used in this section the term "Federal officers and employees" includes all judges of courts of the United States irrespective of when they took office. Compensation received for services rendered as an officer

or employee (including a member of a legislative body and a Judge or officer of a court) of a State or any political subdivision thereof, or any agency or instrumentality of anyone or more of the foregoing, is to be included in gross income, regardless of the nature of the office or employment."

And in *Commissioner of Internal Revenue v. Weisman, et al.*, 197 F.2d 221, 52-1 STC P 9353, No. 4621, (U.S. Court of Appeals First Circuit), (June 9, 1952):

> "*The Commissioner can get little support from the Treasury Regulations 111. Under Sec. 29.21-1(a), 26 CFR 29.21-1(1), income is defined in the broad sense as '* * * all wealth which flows in to the taxpayer other than as a mere return of capital * * *.' This is the crux of the problem as we see it and besets the issue with difficulties both constitutional and statutory as well as with difficulties presented by the very language of the regulations themselves as just indicated. Under Sec. 29.22(a)-5, 26 CFR 29.22(a)-5, 'Gross Income From Business * * * means the total sales, less the cost of goods sold, * * *.'*
>
> *It must be remembered that we are construing a tax measure and not a penal statute. Furthermore, it is a tax on income and* ***not a tax on gross receipts or capital*** *which is under consideration here.*"

Yet, furthermore in *Commissioner v. Sullivan*, 356 U.S. 27, 29 (1958): "*If we enforce as federal policy the rule espoused by the Commissioner in this case, we would come close to making this type of business taxable on the basis of its gross receipts, while all other business would be taxable on the basis of net income. If that choice is to be made, Congress should do it.*"

While presently the above context is still reflected within 26 CFR at § 1.312-6(b):

"**Effects on Corporation (Part 1)—Earnings and profits.** Among the items entering into the computation of corporate earnings and profits for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well as all items includible in gross income under section 61 or corresponding provisions of prior revenue acts."

Thus, there are three-rules determinable in establishing what is appropriately excludable from federal income taxation as not being within what is statutorily intended gross income: (1) 'incomes' explicitly numerated by tax statutes as being exempt; (2) 'incomes' explicitly enumerated by legislation (i.e., non-repealed acts of public law) as being exempt; and (3) 'income' which is constitutionally exempt.

Henry Black thoroughly addressed its contextual meaning with great detail within his "*A Treatise on the Law of Income Taxation Under Federal and State Laws*", (1913, 1915):

> "**§ 221. General Definitions of "Income"**
> *… Again, as this term is used in statutes relating to the nature and ownership of property, it includes the rents and profits of real estate, interest on money, dividends on stock, and other produce of personal property.* ***Particularly, when applied to a sum of money, or to money invested in public or corporate securities, income means interest.*** *But an important distinction must be noted in the signification of this word, according as it is used in the ordinary business affairs of the community (or in statutes relating thereto) or in a tax statute. In the former case, it is understood to mean "net" income or profit; in the latter case, it is equivalent to "gross" income or "gross receipts," unless otherwise specified in the statute. Thus, it is said that the word "income," as used in commerce and trade, means the balance of gain over loss in the fiscal year or other period of computation, or it is the ultimate profit of a business or trade, ascertained by*

placing the sum total of gains over against the sum total of losses. So, ***"the income of an estate means nothing more than the profit it will yield after deducting the charges of management, or the rent which may be obtained for the use of it. The rents and profits of an estate, the income or the net income of it, are all equivalent expressions."*** *. . . But on the other hand, in a statute imposing taxes, "income" means gross receipts, not net profits, unless it is so specified. Whenever the law means to tax the clear profits arising from the employment of capital or otherwise, the expression used is "net income" or "net annual income." And especially the phrase "whole income" means the aggregate of all receipts without any deduction for expenses or losses, that is, it means gross receipts and not net profits. But, as stated in an earlier section, if this word is associated with the term "profits," as in the phrase "gains, profits, and income,"* ***it may take color from the more restricted term and be limited by it. That is to say, in the phrase quoted, the word "income" should not be taken in its most extensive signification, but as meaning income which is in the nature of a profit, in other words, net income****. . . . But it cannot be too strongly insisted upon that the word "income," when properly used, is applicable only to receipts in cash. When a bond which was purchased at a discount reaches par in the market, the owner cannot properly be said to have made a profit; he is in a position where he can realize a profit if he sells the bond, but not otherwise. If he sells, then the sum gained may constitute a part of his income, but it cannot be so described while he continues to hold the security. So,* ***the farmer's crop is not his income; it is the source from which his income will be derived when it is converted into cash.*** *…but it is not properly described as income until it is received, that is, it is "income" when it comes in, but not while it remains outstanding. …*
But the principle is, as ruled in an English case, ***that nothing is to be considered as income except what represents value in money, that is, either money or something that is equivalent to money because it can be converted into money and the proceeds expended in any way the recipient may please.*** *In this case, speaking of the income tax of that country, it was said: "It is a tax on income in the proper sense of the word. It is a tax on what comes in, on actual receipts, not on what saves his pocket, but on what goes into his pocket." Of course it is entirely within the power of a legislature having jurisdiction to lay an income tax to make the word "income" include items which are not at all proper to be described under that name. But then those items are taxed, not because they constitute income, but because the legislature has said that they shall be taxed. And on the other hand,* ***when the word "income" is clearly defined in the act imposing the tax, it cannot be taken to include anything which is not within that definition.*** *We conclude therefore that, for the purpose of an income tax, a proper definition of the word "income" would be all that a man receives in cash during the year,* ***except such sums as are merely capital or principal in a changed form, that is, excluding sums which are merely the proceeds of some other form of capital converted into cash.***
This last point is emphasized in a recent decision of one of the federal courts, in which it was said: "What does the word 'income' mean? In ordinary speech, ***people recognize a difference between capital and income.*** *I believe that the ordinary meaning attached to income,* ***when it is not derived from personal exertion****, is that it is something produced by capital without impairing that capital, and which leaves the property intact, and that nothing can be called income, for the purpose of this act, which takes away from the property itself. If it does, then it ceases to be income and amounts to a sale of capital assets." … And where a traveling salesman is allowed a certain sum per month by his employers to cover his expenses, the money is properly included by the assessor as part of his taxable income."*

"§ 224. "Profits" and "Gains" Compared and Distinguished
… Or, according to a fuller description given by the Supreme Court of California, the word "profits" signifies an excess of the value of returns over the value of advances; the excess of receipts over expenditures; that is, net earnings. In commerce it means the advance in the price of goods sold beyond the cost of purchase. ***In distinction from the wages of labor****, it is well understood to imply the net return to the capital or stock*

employed after deducting all the expenses, including not only the wages of those employed by the capitalist, but the wages of the capitalist himself for superintending the employment of his capital stock. Profits are divided by writers on political economy into gross and net; the former being the entire difference between the value of advances and the value of returns, and the latter so much of this difference as arises exclusively from the capital employed. Profits cannot consist of earnings never yet received. … It is said, and with truth, that this term is often used as synonymous with "income" and as meaning the same thing, and particularly where the two words are couple in the same phrase. And one court has remarked that, when they are thus joined together, there is no difference in the meaning of the words, and the use of them both is only due to a lawyer-like fondness for using several words where one would be sufficient. ***But this is scarcely correct****. There is a substantial difference in the meaning of the two words.* *And it is more accurate to say that, when they are joined together in the same phrase,* ***the word "profits" is used to particularize and point out one kind of income, or income derived from a particular source****; and it will generally be found that their joinder is easily explained from their correlation with other descriptive words in the same sentence, as, for example, where "gains" may be correlated with* ***"sales or dealing in property,"*** *"income" with such words as* ***"salaries" and earnings from "professions and vocations,"*** *and "profits" with* ***"business, trade, and commerce."*** *Besides, "income" is clearly a word of larger import than "profits." The former may very properly include such items as the rent of houses, interest on investments, the earnings, of a* ***professional man****, or the salary of an* ***officer of a corporation****, but none of these could with any propriety be called "profits." In effect, the latter term is more appropriately confined to gains resulting from the operations of* ***trade or commerce****, and especially from* ***mercantile or manufacturing business*** *or* ***transportation****.* ***Moreover, it is important not to lose sight of the distinction that, while "income" means that which comes in or is received from any business or investment of capital****, without reference to the outgoing expenditures, "profit" means the gain which is made upon any business or investment when both receipts and payments are taken into account. … But it may properly be said that when a tax law employs the phrase "gains, profits, and income," to describe what is taxable, the term "gains" is inserted out of abundant caution, and intended to include an acquisition of the taxpayer which is not to be described as a "profit," and which might not be included in the term "income" if that word were taken in a narrow sense.* ***Properly speaking, "gain" means that which is acquired or comes as a benefit****, and in a statute laying an income tax it may mean money received within the year which is not the fruit of a business transaction* ***nor of the labor or exertion of the individual****, but something arising from fortuitous circumstances or conditions which he does not control. In this signification, the term would include* ***money received as a legacy or money won on a wager****."*

"§ 226. Change or Substitution of Capital Distinguished

Both in popular and legal parlance, "income" is distinguished from "capital" or "principal." ***Capital is the source of income. Income is the fruit of capital.*** *… But it would be* ***a misnomer to reckon the whole of each such return as "income"*** *simply because it is so much money coming into the possession of the owner. Out of the fund so returning there must first be deducted, in case there has been no loss, a sum sufficient to replace the capital originally invested, and the balance, in any, will be income. …"*

"§ 228. Rental Value of Residence

… "It is said," observed the [Wisconsin Supreme] *court, "that this is not income, and that calling it income does not make it income. It may be conceded that* ***things which are not in fact income cannot be made such by mere legislative fiat****, yet it must also be conceded, we think, that income in its general sense need not necessarily be money.* ***Clearly it must be money or that which is convertible into money.****" …"*

Further reaffirming this point are the following precedents:

(a). In *United States v. Gilmore*, 372 U.S. 39, 44 (1963): "*For income tax purposes, Congress has seen fit to regard an individual as having two personalities:*

"one is [as] a seeker after profit who can deduct the expenses incurred in that search; the other is [as] a creature satisfying his needs as a human and those of his family but who cannot deduct such consumption and related expenditures. **[Footnote 11]***"*

Footnote 11—*Surrey and Warren, Cases on Federal Income Taxation, 272 (1960).*"

(b). It was upheld in *United States v. Safety Car Heating & Lighting Co.*, 297 U.S. 88, 99 (1936) that: "*Income within the meaning of the Sixteenth Amendment* ***is the fruit that is born of capital****, not the potency of fruition. With few exceptions, if any, it is income as the word is known in the common speech of men. Lynch v. Hornby, supra, p. 247 U.S. 344. When it is that, it may be taxed, …*"

(c). Also stated within *Lynch v. Hornby*, 247 U.S. 339, 343-344 (1918): "*And we deem it equally clear that Congress was at liberty under the amendment to tax as income, without apportionment, everything* ***that became income,*** *in the ordinary sense of the word, . . . Hence, we construe the provision of the act that "the net income of a taxable person shall include gains, profits, and income derived from . . . interest, rent, dividends, . . . or gains or profits and income derived from any source whatever"*"

(d). The Court in *Lynch v. Turrish*, 247 U.S. 221, 227-228 (1918) had thoroughly observed the relational consistencies between capital and income, concluding that:

"*The government opposes both contentions by an elaborate argument containing definitions of capital and income drawn from legal and economic sources and given breadth to cover a number of other cases submitted with this. The argument, in effect, makes any increase of value of property income, emerging as such and* ***taxable at the moment of realization by sale or some act of separation,*** *as by dividend declared or by distribution, as in the instant case.*

To sustain the argument, these definition are presented:

"1. Capital is anything, material or otherwise, capable of ownership, viewed in its static condition at a moment of time, or the rights of ownership therein. 2. Income is the service or return rendered by capital during a period of time. . . . 4. Net income ('profits') is the difference between income and outgo. . . . 7. In the actual production and distribution of capital, there is a constant conversion of capital into income, and vice versa. 8. The attempt to conceal this conversion by treating 'income' as the standard return from intact 'capital' only leads to confusion of the value of capital with capital itself."

From these definitions are deduced the following propositions, which are said to be decisive of the problems in the cases:

"1. Income being derived from the use of capital, the conversion or transfer of capital always produces income. 2. Mere appreciation of capital value does not produce 'income,' nor mere depreciation 'outgo.' 3. Net income is the difference between actual 'income' and actual 'outgo.' 4. Income is not confined to money income, but includes anything capable of easy valuation in money."

It will be observed that the breadth of definition and the breadth of application are necessary to the refutation of the reasoning of the circuit court of appeals.

There is direct antagonism, the court basing its reliance, it says, upon what it asserts is the common sense and understanding of the words of the law, and the exposition of like laws by the decisions of this Court. The government's resource is the discussion of economists and the fact, concrete and practical, of wealth not only increased but come to actual hand. The instant case is an example. Turrish's stock doubled in value. He paid for it $79,975; he received $159,950. . . ."

Thusly, through such precedents the federal income taxing theme clearly establishes that:

1) 'Income' from whatever, whence received (i.e., being under one's control or custody), establishes itself as taxable when it has resulted through the use of capital;
2) 'Income' must be emanated into existence, that is, it must "become" or "derive";
3) A "source" is as capital, which is: "*anything, material or otherwise, capable of ownership, viewed in its static condition at a moment of time, or the rights of ownership therein*", and;
4) 'Taxable income' is the "*service or return rendered by capital during a period of time*" less the "*difference between income and outgo.*"

Had it been the statutory intent of the Legislature to indeed lay and collect such means income taxes directly upon whatever capitalistic sources, they certainly would have ratified an earlier drafting of the Sixteenth Amendment, rather than rejecting it (including a few other very similar revisions), as it was earlier drafted within Senate Joint Resolution (S.J.R.) No. 39—REJECTED: "The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population." (See: 44 Cong. Rec., p. 3377, (1909).)

§ 2.4. ***On Indirect Taxation—including Income Taxes.*** Poignant insight between the relational aspects of the various classes of *indirect taxation* and the 'Corporation Tax of 1909' was provided by *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151 (1911) in quoting *Thomas v. United States,* 192 U.S. 363, 370 (1904):

"*And in the same connection the Chief Justice, delivering the opinion of the court in Thomas v. United States, 192 U.S. 363, in speaking of the words "duties," "imposts," and "excises," said: "We think that they were used comprehensively, to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like." Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. 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."* Cooley, Const. Lim., 7th ed., 680.

The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, i.e., with the advantages which arise from corporate or quasi corporate organization; or, when applied to insurance companies, for doing the business of such companies. As was said in the Thomas case, 192 U.S. 363, supra, the requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute, no tax is payable."

In quoting legislative draftsman for the Treasury Department, F. Morse Hubbard, (page 2580 of the March 27th, 1943, House Congressional Record) for Amendment XVI:

"*… So the amendment made it possible to bring investment income within the scope of the 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. …"

The federal income tax (i.e., 'Underwood Tariff Act of 1913'), is conspicuously a tax designated upon one's realized 'gain' or 'profit' emanating—deriving—from a 'source' as income; being either monetarily intrinsic or readily convertible thereto, however so obtained, invested, or employed (and without regard to the legality of such.) So as to return a positive sum increase, dissevered therefrom one's base—source—pecuniary capital or principal, and without lending consideration to the originating 'source' from whence the positive increase had emanated (i.e., 'derived'.)

The federal income tax exists as a mode of *indirect taxation*, requiring national 'uniformity', being in the proper form of an internal *excise*; that is to say, it is meant to function as a financial excision upon capitalistic gains, profits, dividends, and entrepreneurship; commerce, trade, and denoted business, industrial, or professional privileges; and the like.

Moreover, the federal income tax, is an *indirect tax* upon the realized increase or conversion arising (so being severed) from an individual's acquired capital or principal.

Thereby, having resulted in a monetary growth, even when the case involves such—hence, "the source"—being directly obtained through or as a result of an individual's private contracting, exertion, laboring, or toiling. The distinction concerning the federal income tax is not a tax upon the 'source' itself; it is a tax upon what was positively brought in as a result of the wise, prudent, or enterprising application of that 'source'.

It is when one applies their acquired source-capital, so as to take in a financial growth or increase (i.e., gains or profits), ergo 'incomes', having so becomingly severed or converted therefrom that source—a financial corpus, that it realizes XVI Amendment 'incomes' and is thereby uniformly taxable, *indirectly*, under the federal income tax.

Additionally as provided on the IRS' very own Website:

"**Direct tax**—*A tax that cannot be shifted to others, such as the federal income tax.*" (Source URL: http://www.irs.gov/app/understandingTaxes/student/glossary.jsp#D)

"**Indirect tax**—*A tax that can be shifted to others, such as business property taxes.*" (Source URL: http://www.irs.gov/app/understandingTaxes/student/glossary.jsp#I)

And still further addressed within the IRS' IRM 4.10.12.1.2 (11-09-2007) — 'Authority and Responses to Common Frivolous Arguments':

"*8. Gross income, not "income", is the starting point for determining an individual's federal income tax liability.*"

And as also stated within 19 CFR § 351.102 [Customs Duties] Definitions:

"**(b) Definitions. (1) Act.** "Act" means the Tariff Act of 1930, as amended.
…
(16) Direct tax. "Direct tax" means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.
…
(28) Indirect tax. "Indirect tax" means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge."

§ 2.5. ***On Direct Taxation—including Personal Taxes.*** To tax an individual's basis in acquiring or establishing personal contracts, earnings, livelihood, payments, property, remuneration, sustenance, etc., correlates a *personal tax*, which is a *direct tax* levied in consideration of or with respect to conjoin any of: (1) one's social standing, class, or caste—as *poll taxes*; (2) one's occupation, industry, or labor—as *capitation taxes*; or (3) one's movable personal property—as *personalty*.

As to the above empirical facts and law pertaining to statutory 'incomes', being so well-established and supported by American jurisprudence, emphasizing specifically: *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399 (1913); *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916); *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179 (1918); *Lynch v. Turrish*, 247 U.S. 221 (1918); *Southern Pacific Co. v. Lowe*, 247 U.S. 330 (1918); *Lynch v. Hornby*, 247 U.S. 339 (1918); *Eisner v. Macomber*, 252 U.S. 189 (1920); *Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921)*;*

Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926); *Lucas v. Alexander*, 279 U.S. 573 (1929); *U.S. v. Safety Car Heating & Lighting Co.*, 297 U.S. 88 (1936); *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955); *South Carolina v. Baker*, 485 U.S. 505 (1988); *et al*.

Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 632 (1895) in quoting *Veazie Bank v. Fenno*, 75 U.S. 533, 543 (1869) elucidated the impropriety and fundaments in referencing the legislative history for 'direct' taxation: "*This review shows that personal property, contracts, occupations, and the like have never been regarded by Congress as proper subjects of direct tax. It has been supposed that slaves must be considered as an exception to this observation. … As persons, slaves were proper subjects of a capitation tax, which is described in the Constitution as a direct tax; as property, they were, by the laws of some, if not most, of the States classed as real property, descendible to heirs. …*"

This point, *idem*, was further emphasized at 157 U.S. 429, 633 and in the *Pollock* rehearing 158 U.S. 601, 653 (1895), in quoting Chief Justice Chase whom delivered the unanimous judgment, *supra*, in 75 U.S. 533, 544 (1869): "*… It may be rightly affirmed, therefore, that, in the practical construction of the Constitution by Congress, direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes. And this construction is entitled to great consideration, especially in the absence of anything adverse to it in the discussions of the convention which framed, and of the conventions which ratified, the Constitution.*"

By the by, so having been substantively explicated by the watershed case, *Pollock v. Farmers' Loan & Trust Company*, 158 U.S. 601, 625 (1895) in summary to the Hylton 'Carriage Tax' brief presented by our Forefather, a Federalist (moniker: Publius, which usage also included: James Madison and John Jay), Secretary of the Treasury, Alexander Hamilton [7 Hamilton's Works, 848; *The Works of Alexander Hamilton*, (Federal Edition), vol. 8, p. 239]: "*A tax upon one's whole income is a tax upon the annual receipts from his whole*

property, and as such falls within the same class as a tax upon that property, and is a direct tax in the meaning of the Constitution." See also, *infra*:

Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185 (1918): "*Whatever difficulty there may be about a precise and scientific definition of "income," it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax, conveying, rather, the idea of gain or increase arising from corporate activities.*"

Southern Pacific Co. v. Lowe, 247 U.S. 330, 335 (1918): "*We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 (Doyle v. Mitchell Brothers Co., ante, 247 U.S. 179, and Hays v. Gauley Mountain Coal Co., ante, 247 U.S. 189), the broad content on submitted in behalf of the government that all receipts -- everything that comes in -- are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income.*"

Further in *Wright v. United States*, 302 U.S. 583, 607 (1938): "*The Court has hitherto consistently held that a literal reading of a provision of the Constitution which defeats a purpose evident when the instrument is read as a whole is not to be favored. … "From whatever source derived," as it is written in the Sixteenth Amendment, does not mean from whatever source derived. …*"

***** Concerning the quotation from Wright, *supra*, it does not actually appear within any of the cases therein cited (i.e., *Evans v. Gore*, 253 U.S. 245; *Robertson v. Baldwin*, 165 U.S. 275, 281-282; *Gompers v. United States*, 233 U.S. 604, 610; *Bain Peanut Co. v. Pinson*, 282 U.S. 499, 501; and *United States v. Lefkowitz*, 285 U.S. 452, 467), thus it is likely intended as a combined paraphrasing from each, being in keen reference to the Knowlton and Brushaber cases as discussed in Evans, *supra*, at 259-263 (1920):

> "*In Knowlton v. Moore, supra, p. 178 U.S. 95, this Court said:*
>
> *'The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution, in order thereby to be enabled to correctly interpret its meaning.'*
>
> *This sound rule is as applicable to the amendments as to the provisions of the original Constitution. . . . In other words, the purpose of the amendment was to eliminate all occasion for such an apportionment because of the source from which the income came -- a change in no wise affecting the power to tax, but only the mode of exercising it. . . . Thus, the genesis and words of the amendment unite in showing that it does not extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on income, whether derived from one source or another. And we have so held in other cases. . . . In Brushaber v. Union Pacific R. Co., 240 U.S. 1, 240 U.S. 17-18, where the purpose and effect of the amendment were first drawn in question, the Chief Justice reviewed at length the legislative and judicial action which prompted its adoption, and then, referring to its text and speaking for a unanimous Court, said:*
>
> *'It is clear on the face of this text that it does not purport to confer power to levy income taxes in a generic sense -- an authority already possessed and never questioned -- or to limit and distinguish between one kind of income taxes and another, but that the whole purpose of the amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. Indeed, in the light of the history which we have given and of the decision in the Pollock*

case, and the ground upon which the ruling in that case was based, there is no escape from the conclusion that the Amendment was drawn for the purpose of doing away for the future with the principle upon which the Pollock case was decided -- that is, determining whether a tax on income was direct not by a consideration of the burden placed on the taxed income upon which it directly operated, but by taking into view the burden which resulted on the property from which the income was derived, since, in express, terms the amendment provides that income taxes, from whatever source the income was derived, shall not be subject to the regulation of apportionment."

Additionally, in *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (1897): "*The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the "Bill of Rights," were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had, from time immemorial, been subject to certain well recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law, there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. …*"

In *Gompers v. United States*, 233 U.S. 604, 610 (1914): "*But the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic, living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth.*"

In *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 113 (1916): "*In other words, we are here dealing solely with the restriction imposed by the Sixteenth Amendment on the right to resort to the source whence an income is derived in a case where there is power to tax for the purpose of taking the income tax out of the class of indirect, to which it generically belongs, and putting it in the class of direct, to which it would not otherwise belong, in order to subject it to the regulation of apportionment.*"

In *Peck & Co v. Lowe*, 247 U.S. 165, 172 (1918): "*But, as the act obviously could not impose a tax forbidden by the Constitution, we proceed to consider whether the tax, or rather the part in question, was forbidden by the constitutional provision on which the plaintiff relies.*"

In address of the larger principle, more from, *Eisner v. Macomber*, 252 U.S. 189, 206 (1920): "*A proper regard for its genesis, as well as its very clear language, requires also that this amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not to be overridden by Congress or disregarded by the courts.*"

In *Bain Peanut Co. v. Pinson*, 282 U.S. 499, 501 (1931): "*The interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints.*"

In *United States v. Lefkowitz*, 285 U.S. 452, 467 (1932): "*And this Court has always construed provisions of the Constitution having regard to the principles upon which it was established. The direct operation or literal meaning of the words used do not measure the purpose or scope of its provisions.*"

And in further quoting Mr. Hamilton, *supra*, 157 U.S. 429, 591; 158 U.S. 601, 626 (1895) [3 Hamilton's Works, 34]: "*This principle, which seems critically correct, would exempt as well the income as the capital of the property. It protects the use as effectually as the thing. What,*

in fact, is property but a fiction without the beneficial use of it? In many cases, indeed, the income or annuity is the property itself." Thus enlightenment is rendered unto the concept that money, mostly, exists as a form of personalty; and that when income exists also as the capital it is to be exempted, as such is likely an instance of personalty.

As an inclusionary means of *persuasive authority*, wholly in support to the above, such was pointedly rendered by dissent in *Helvering v. Gerhardt*, 304 U.S. 405, 430 (1938) [DISSENTING]: "*… As they stood when the cases now before us were in the Circuit Court of Appeals, our decisions required it to hold that the salaries paid by the Port Authority to respondents are not subject to federal taxation. I would affirm its judgments.*"

It was stated on behalf of President William Taft—himself being knowledgeable on matters of taxation—within his proposal for what would become the XVI Amendment, (pages 3344-3345 of the June 16, 1909, House Congressional Record) that:

> "*… 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. Farmer's 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. …*
>
> *… 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. …*
>
> *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.*
>
> *. . . 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.*
>
> *. . . 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. …*
>
> *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 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.*"

In addition a poignant article posted by the *New York Times* on February 26, 1911 entitled "*Gov. A. E. Willson on the Income Tax Amendment*" [i.e., Kentucky Governor Augustus E. Willson], provides:

"*The poor man does not regard his wages or salary as 'an income.'*

The Sixteenth or Income Tax Amendment to the United States Constitution, now before the State Legislatures for ratification, gives Congress the power to levy a tax on the profits of farms, factories, stores; on the earnings of all men and women in whatever work or calling, and on all other kinds of income.

Under our present system of taxation it is the mass of the people who bear the burden, not the multi-millionaires. Under a Federal Income tax the same condition would exist. . . . I earnestly believe in taxing incomes. Practically all taxes are paid out of incomes, and the only just way of calculating a man's proportion of Government expenses is to take a proportionate part of tithe out of his income. It is the oldest form of taxation—the tithe of the Scriptures [i.e., one-tenth of each individual's gross productivity]*—and the many efforts to improve on it in all the various taxing measures have been failures. . . . Of course, even with a Federal income tax the States would still have the legal right to levy a similar tax, but it would be an empty right, for no people would tolerate the imposition of a double income tax. . . . But the point to be made is that most of the people who favor this Federal income tax believe that under it it will be the Carnegies and Rockefellers and other multi-millionaires who pay for the running of the Government. The fellow out West thinks that the rich man in New York is the one who is going to pay this income tax; the man away from the rich centres thinks that the burden will fall exclusively upon the rich centres. … The poor man or the man of moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system. . . . I reiterate that in my opinion the Government ought to have the power to lay an income tax for war purposes or other great emergencies, and this need could be satisfied by preparing an amendment to give that power in such contingencies only; . . . In expounding this Constitution 'every word must have its due force and appropriate meaning, for it is evident from the whole instrument that no word was unnecessarily used or needlessly added."*

Most notably that the federal income tax was packaged and sold to the populace only as an indirect tax upon the 'unearned income' of those financially wealthy (e.g., millionaires), who were at the time, by and large, left to avoid taxation, while further as a means for curbing the need for continuously laying heavy tariffs. It is highly intriguing that throughout the discussions of the below included excerpts from legislative records that the government was consistently referred to not as a "democracy" (i.e., a corrupted means of governance that is ruled through the fleeting emotions of largely misdirected masses), but correctly as a *republic*.

44 Cong. Rec. Senate, 3988-3989, June 30, 1909: "*The history of taxation is well worthy of the attention of those who believe that in order to maintain a republic, we must always have at the base of our civilization an intelligent, free, and, to some extent, an unburdened citizenship.*"

44 Cong. Rec. House, 4414, July 12, 1909: "*Mr. BARTLETT of Georgia. Therefore the decision, [Pollock] in effect, puts the dollar of the millionaire beyond the pale of being equitably taxed according to his wealth, unless a constitutional amendment be invoked... However, there should be some method by which the untold wealth and riches of this Republic may be compelled to bear their just burdens of government and contribute an equitable share of their incomes to supply the Treasury with needed taxes. "As I see it, the fairest of all taxes is of this nature [a tax on gains, profits and unearned income], laid according to wealth, and its universal adoption would be a benign blessing to mankind. The door is shut against it, and the people must continue to groan beneath the burdens of tariff taxes and robbery under the guise of law.*"

44 Cong. Rec. House, 4420, July 12, 1909: "*The income tax seeks to reach the unearned wealth of the country and to make it pay its share.*"

44 Cong. Rec. House, 4423, July 12, 1909: "*Senator John Sherman, of Ohio, on the 22d day of June, 1870, while in the Senate, speaking against the repeal of the then income-tax law, said, in part: … The income tax is simply an assessment upon a man according to his ability to pay—according to his annual gains. What tax could be more just in theory? . . .*

*Senator Morton, of Indiana, in the second session of the Forty-first Congress, speaking against the repeal of the income tax, said: … * * * The income tax is, of all others, the most just and equitable, because it is the truest measure that has yet been found of the productive property of the country. * * * But, sir, when you tax a man on his income, it is because his property is productive. He pays out of his abundance because he has got the abundance. If to pay his income tax is a misfortune, it is because he has the misfortune to have the income upon which it is paid. * * **"

And further still this point has been entirely validated by Henry Black within his "*A Treatise on the Law of Income Taxation Under Federal and State Laws*", (1913, 1915):

> "**§ 191. Income Tax as Direct Tax**
> *In general usage, and according to the terminology of political economy, a direct tax is one demanded of the person who is expected to pay it and bear the expense of it without recoupment, while an indirect tax is demanded from one person in the expectation that he will indemnify himself at the expense of others.*
>
> *When the question of the difference between direct and indirect taxes first came before the Supreme Court of the United States, in connection with the constitutional provision that "representatives and direct taxes shall be apportioned among the several states," it was held that the term "direct," as here used, was to be taken in a narrower sense than that above indicated; and it was ruled that only two classes of taxes could be considered as coming under this designation, namely, taxes on land and capitation taxes. But these decisions have been overruled, and it is now held that income taxes, whether levied on the issues and profits of real estate or on the gains and interest from personal property, are also direct taxes within the meaning of the constitution.*
>
> *The celebrated case in which this decision was made was twice before the Supreme Court, and in the course of the opinion filed on the second hearing it was said: "Our previous decision was confined to the consideration of the validity of the tax on the income from real estate, and on the income from municipal bonds.*
>
> *The question thus limited was whether such taxation was direct or not in the meaning of the Constitution; and the court went no further, as to the tax on the income from real estate, than to hold that it fell within the same class as the source whence the income was derived,—that is, that a tax upon the realty and a tax upon the receipts therefrom were alike direct; while, as to the income from municipal bonds, that could not be taxed because of want of power to tax the source, and no reference was made to the nature of the tax, as being direct or indirect. We are now permitted to broaden the field of inquiry, and to determine to which of the two great classes a tax upon a person's entire income—whether derived from rents or products, or otherwise, of real estate, or from bonds, stocks, or other forms of personal property—belongs, and we are unable to conclude that the enforced subtraction from the yield of all the owner's real or personal property, in the manner prescribed, is so different from a tax upon the property itself that it is not a direct, but an indirect, tax in the meaning of the Contitution." For this reason, and by this decision, the income tax law of 1894 was pronounced unconstitutional. Since that time the Sixteenth Amendment to the Constitution has been adopted. But that amendment does not purport to declare that an income tax shall not be a direct tax. It only dispenses with the necessity of apportionment among the several states, so far as concerns a tax on incomes from whatever source derived. The decision of the Supreme Court above referred to has never been overruled, and* ***it remains an authoritative***

declaration that a tax upon incomes is as much a direct tax as one laid upon land or personal property."

The totality of apportioning taxation was touched upon in *Marrita Murphy and Daniel J. Leveille v. Internal Revenue Service and United States of America*, **REHEARING** No. 05-5139, D.C. Cir., (2007): "*That said, neither need we adopt the Government's position that direct taxes are only those capable of satisfying the constraint of apportionment. In the abstract, such a constraint is no constraint at all; virtually any tax may be apportioned by establishing different rates in different states. See Pollock II, 158 U.S. at 632-33, 15 S.Ct. 912.*"

Chapter III. Statutory Background, Interpretive Scope, and Rules

Chronologically, the term 'GROSS INCOME', 26 USC § 61(a) of the 1954-2002 IRC—initially termed: 'NET INCOME'—derives from: **(1)** Sec. 22(a) of the 1928 IRC; **(2)** Sec. 213 of the 1917/1918 IRC; **(3)** Sect. 2(a) of the 1916 IRC; and **(4)** Sect. II B. of the 1913 IRC.

It is a binding principle in statutory interpretation that *pari materia* establishes the intended context and breadth of a statute as ratified by the Legislature with relevant consideration to its prior forms in concurrency to its now present form, as has been succinctly stated by American jurisprudence:

> "[*I*]*n interpreting a statute a court should always turn first to one cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.*"—*Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992)—(See, e.g., *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241-242 (1989);
>
> "*The construction put on a statute by the agency charged with administering it is entitled to deference by the courts, and ordinarily that construction will be affirmed if it has a 'reasonable basis in law.'* [Citations omitted.] *But the courts are the final authorities on issues of statutory construction,* [Citation omitted.]*, and 'are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute."—SEC v. Sloan*, 436 U.S. 103, 118 (1978);
>
> *United States v. Goldenberg*, 168 U.S. 95, 102-103 (1897); *Oneale v. Thornton*, 6 Cranch 53, 68. "*When the words of a statute are unambiguous, then this first canon is also the last: "judicial inquiry is complete.*"" *Rubin v. United States*, 449 U.S. 424, 430 (1981); see also *Ron Pair Enterprises*, *supra*, at 241.)

So was it also stated in *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 (1984): "*When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.* **[Footnote 9]** *If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute,* **[Footnote 10]** *as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.* **[Footnote 11]**" See also: *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). **Footnote 9 —**"*The judiciary is the final authority on issues of statutory construction, and must reject administrative constructions which are contrary to clear congressional intent. … If a*

court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law, and must be given effect."
Footnote 10 —"*See generally R. Pound, The Spirit of the Common Law 174-175 (1921).*"
Footnote 11 —"*The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. …*"

And on subordinate regulations in *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 282, 291-292 (1988): "*In determining whether a challenged regulation is consistent with the statute it implements, courts must ascertain the statute's plain meaning by looking to the particular language at issue and the language and design of the statute as a whole. If the statute is clear and unambiguous, courts must give effect to Congress' unambiguously expressed intent, and cannot pay deference to a contrary agency interpretation. However, if the statute is silent or ambiguous with respect to the specific issue addressed by the regulation, a reviewing court must give deference to the agency's interpretation if it does not conflict with the statute's plain meaning. Pp. 486 U. S. 291-292.*
. . .
In determining whether a challenged regulation is valid, a reviewing court must first determine if the regulation is consistent with the language of the statute.

"If the statute is clear and unambiguous 'that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.' . . . The traditional deference courts pay to agency interpretation is not to be applied to alter the clearly expressed intent of Congress." [Citations omitted.]

In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole. [Citations omitted.] *If the statute is silent or ambiguous with respect to the specific issue addressed by the regulation, the question becomes whether the agency regulation is a permissible construction of the statute.* [Citations omitted.] *If the agency regulation is not in conflict with the plain language of the statute, a reviewing court must give deference to the agency's interpretation of the statute.* [Citations omitted.]"

As well in *United States v. Vogel Fertilizer Co.*, 455 U.S. 16 (1982): "*Since the Regulation was promulgated only under the Commissioner of Internal Revenue's general authority to prescribe all needful rules and regulations, it is owed less deference than a regulation issued under a specific grant of authority to define a statutory term. Moreover, the Regulation purports to do no more than add a clarifying gloss on a term already specifically defined by Congress.*"

Legislative history that including reports by Congress are persuasive in their authority as admissible evidence, so as in *Train v. Colorado Pub. Int. Research Group, Inc.*, 426 U.S. 1, 9-10 (1976): "*To the extent that the Court of Appeals excluded reference to the legislative history of the FWPCA* [i.e., Federal Water Pollution Control Act] *in discerning its meaning, the court was in error. As we have noted before:*

"When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'"

[Citations omitted.] *See generally Murphy, Old Maxims Never Die: The "Plain-Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts, 75 Col.L.Rev. 1299 (1975). In this case, as we shall see, the legislative history sheds considerable light on the question before the Court."*

Also clarified in *Foster v. United States*, 303 U.S. 118, 120-121 (1938): "*… Courts should construe laws in harmony with the legislative intent and seek to carry out legislative purpose. With respect to the tax provisions under consideration, there is no uncertainty as to the legislative purpose to tax post-1913 corporate earnings. We must not give effect to any contrivance which would defeat a tax Congress plainly intended to impose. …*"

And further clarified by Henry Black within his "*A Treatise on the Law of Income Taxation Under Federal and State Laws*", (1913, 1915):

> "**§ 218. Statutes in Pari Materia**
> *It is a fundamental rule that the interpretation of statutes that acts in pari materia are to be read and construed together. The reasons for this rule have been explained by the present writer in another volume, as follows: 'All the enactments of the same legislature on the same general subject-matter are to be regarded as parts of one uniform system. Later statutes are considered as supplementary or complementary to the earlier enactments. In the course of the entire legislative dealing with the subject we are to discover the progressive development of a uniform and consistent design, or else the continued modification and adapation of the original design to apply it to changing conditions or circumstances. In the passage of each act, the legislative body must be supposed to have had in mind and in contemplation the existing legislation on the same subject and to have shaped its new enactment with reference thereto. Hence the same principle which requires us to study the context for the meaning of a particular phrase or provision, and which directs us to compare all the several parts of the same statute, only takes on a broader scope when it bids us read together, and with refence to each other, all statutes in pari materia. Whatever is ambiguous or obscure in a given statute will be best explained by a consideration of analogous provisions in other acts relating to the same subject, or by a study of the general policy which pervades the whole system of legislation. Secondly, the rule derives support from the principle which requires that the interpretation of a statute shall be such, if possible, as to avoid any repugnancy or inconsistency between enactments of the same legislature.*
>
> *To achieve this result it is necessary to consider all previous acts relating to the same matters, and to construe the act in hand so as to avoid, as far as it may be possible, any conflict between them. Hence, for example, where the legislature has used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using the word in the same sense, unless there is something in the context or in the nature of things to indicate that it intended a different meaning thereby.' And it is said that the rule of construction by the aid of statutes in pari materia is especially applicable in the case of revenue laws, which, though made up of independent enactments, are regarded as one system, in which the construction of any separate act may be aided by the examination of other provisions which compose the system.* (Black, Interpretation of Laws (2d edn.) pp. 332-334) …"

On *pari materia* see also: "*A Treatise on the Federal Income Tax law of 1913*", Thomas Gold Frost, Ph.D., 1913, p. 2; *U.S. v. Smith*, 1 Saw. 277.

Legislative scope and its construction were addressed in *Phelps v. United States*, 274 U.S. 341, 344 (1927): "*Acts of Congress are to be construed and applied in harmony with, and not to thwart, the purpose of the Constitution. …*" See also: *Nigro v. United States*, 276 U.S. 332, 341 (1928). Additionally, it was stated in *Rhode Island v. Massachusetts*, 37 U.S. 657, 658 (1838): "*In the construction of the Constitution, we must look to the history of the times and examine the state of things existing when it was framed and adopted to ascertain the old law, the mischief, and the remedy.*" And further: "*The fundamental principle of constitutional construction is that effect must be given to the intent of the framers of the organic law and of the people adopting it. This is the polestar in the construction of constitutions, all other*

principles of construction are only rules or guides to aid in the determination of the intention of the constitution's framers." — *American Jurisprudence*, Vol. 16, 2d Constitutional Law (1992 ed., pp. 418-19, Para./Sec. 92, Intent of framers and adopters as controlling)

And also within *Everson v. Board of Education*, 330 U.S. 1, 8 (1947):

> "*Whether this New Jersey law is one respecting an "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again,* **[Footnote 4]** *therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.*"
> **Footnote 4**—"*See Reynolds v. United States, 98 U.S. 145, 98 U.S. 162; cf. Knowlton v. Moore, 178 U.S. 41, 178 U.S. 89, 106.*"

Most exacting, the legislative intent of the XVI Amendment was made clear in *Eisner v. Macomber*, 252 U.S. 189, 206 (1920):

> "*As repeatedly held, this did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income. …*
>
> *A proper regard for its genesis, as well as its very clear language, requires also that this amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not to be overridden by Congress or disregarded by the courts.*
>
> *In order, therefore, that the clauses cited from Article I of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income," as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. …*"

As a relative principle so being antecedently upheld within *Hassett v. Welch*, 303 U.S. 303, 314 (1938), see also: *Everson v. Board of Education*, 330 U.S. 1, 8 (1947); 263 U.S. 179, 187-188 (1923); 245 U.S. 151, 153 (1917); *et al*: "*In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the government and in favor of the citizen.*"

Further in Pollock, *supra*, at 158 U.S. 601, 618: "*In Gibbons v. Ogden, Mr. Chief Justice Marshall, with his usual felicity, said: 'As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said.'* And still more in *United States v. Sprague*, 282 U.S. 716, 731 (1931): "*The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary, as distinguished from technical, meaning; where the intention is clear, there is no room for construction and no excuse for interpolation or addition.*"

And Justice Scalia's **DISSENTING** opinion in *O'Gilvie Minors v. United States*, 519 U.S. 79, 90 (1996): "*We add that, in any event, the view of a later Congress cannot control*

the interpretation of an earlier enacted statute. United States v. Price, 361 U.S. 304 (1960); Higgins v. Smith, 308 U.S. 473 (1940)."

In addition, as per: "*A Treatise on the Law of Income Taxation Under Federal and State Laws*", Henry Black, (1913, 1915):

> "**§ 219. Associated Words and Phrases**
> *It is another ancient and fundamental rule in the construction of statutes that the meaning of a doubtful word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated, and that, where several things are referred to, they are presumed to be of the same class, when connected by a copulative conjunction, unless a contrary intent plainly appears.*
>
> *For example, all the acts of Congress on the subject of income taxation, from 1862 to the present time, have associated together the words "gains," "profits," and "income" as descriptive of the subject taxed, and the same is true of the income tax laws of some of the states. These words may be traced far back in the history of English taxation.*
>
> *The original income tax law of that country, enacted in 1799, imposed a tax on "income" by that name, but the acts of 1842 and 1853 introduced the associated terms "profits and gains," whence they were apparently borrowed by Congress in framing the act of 1862, and have since persisted in use.*
>
> *Applying the rule above stated, we are justified in asserting the following principles as applicable to the interpretation of the phrase in question: If it is doubtful whether or not a particular fund or acquisition is taxable as "income," under the statute, it is not taxable unless it is income in the nature of "gain" or "profit." If any item is clearly included in the description of "gains"* ***yet it is not taxable unless it is a gain in the nature of "income" or "profit."*** *And although the disputed item may be certainly a "profit," in one sense of the word,* ***yet it is not taxable unless it be a profit accruing by way of "gain" or "income."***"

Noting further, Justice Scalia's **DISSENTING** opinion in *ibid*, 519 U.S. 79, 96 (1996): "*That is not sound textual interpretation. "[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." 2A N. Singer, Sutherland on Statutory Construction §46.07 (5th ed. 1992 and Supp. 1996). See, e.g., Russello v. United States, 464 U.S. 16, 23 (1983). This principle of construction has its limits, of course: Use of different terminology in differing contexts might have little significance.*" And more within *Brown v. Gardner*, 513 U.S. 115, 118, 120-122 (1994):

> "*But the Government cannot plausibly make even this claim here. Ambiguity is a creature not of definitional possibilities but of statutory context,* [citation omitted] *("[T]he meaning of statutory language, plain or not, depends on context"), . . . "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."* [Citation omitted.] *. . . In sum, the text and reasonable inferences from it give a clear answer against the Government, and that, as we have said, is "'the end of the matter.'"*
>
> *There is an obvious trump to the reenactment argument, however, in the rule that "[w]here the law is plain, subsequent reenactment does not constitute an adoption of a previous administrative construction."* [Citations omitted] *(congressional reenactment has no interpretive effect where regulations clearly contradict requirements of statute).*
>
> *As we have recently made clear, congressional silence "'lacks persuasive significance,'"* [citations omitted], *particularly where administrative regulations are inconsistent with*

the controlling statute, [citation omitted] *("Congressional inaction cannot amend a duly enacted statute").* [Citation omitted.] *("The verdict of quiescent years cannot be invoked to baptize a statutory gloss that is otherwise impermissible .... Congressional inaction frequently betokens unawareness, preoccupation, or paralysis").*

A regulation's age is no antidote to clear inconsistency with a statute, and the fact, again, that § … flies against the plain language of the statutory text exempts courts from any obligation to defer to it. [Citations omitted.]"

It is worthwhile to acknowledge that the federal income tax presents many variations of tax all throughout its statutory language (generally, having been divided into 'Sections' (§§ 1-9,834) that span throughout many focused 'Subtitles' (A through K)—and also conjugates the whole subject-matter prior provided for with Title 27 of the *United States Code*– 'Intoxicating Liquors' into its own content), which include:

(a). Title 26 USC, Federal Income Tax Classifications:

- Class 0: Employee Plans Master File (EPMF)
- Class 1: Withholding; Social Security Insurance (SSI); Federal Insurance Contributions Act (FICA)
- Class 2: Individual Income; Fiduciary; Partnership
- Class 3: Corporation Income
- Class 4: Excises
- Class 5: Information Returns Processing (IRP); Estates and Gifts
- Class 6: Non-Master File (NMF)
- Class 7: Railroad Retirement Tax Act (RRTA)
- Class 8: Federal Unemployment Tax Act (FUTA)
- Class 9: Mixed

Further noting the distinction made between numerated Class-2 taxes as by 26 USC § 61(a)(1) "Compensation for services, including fees, commissions, fringe benefits, and similar items" and Class-3 taxes as by, *ibidem*, § 61(a)(2) "Gross income derived from business".

(b). Overview of the *Subtitles* and *Sections* provided for within Title 26:

- Subtitle A—Income Taxes (§§ 1–1564)
- Subtitle B—Estate and Gift Taxes (§§ 2001–2801)
- Subtitle C—Employment Taxes (§§ 3101–3510)
- Subtitle D—Miscellaneous Excise Taxes (§§ 4001–5000C)
- Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes (§§ 5001–5891)
- Subtitle F—Procedure and Administration (§§ 6001–7874)
- Subtitle G—The Joint Committee on Taxation (§§ 8001–8023)
- Subtitle H—Financing of Presidential Election Campaigns (§§ 9001–9042)
- Subtitle I—Trust Fund Code (§§ 9500–9602)
- Subtitle J—Coal Industry Health Benefits (§§ 9701–9722)
- Subtitle K—Group Health Plan Requirements (§§ 9801–9834)

(c)(1). Outline of the subordinating *Code of Federal Regulations* procedural regulations for Title 26, 'CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY':

- Subchapter A—Income Tax (Volumes 1-13, Parts 1 to 19)
- Subchapter B—Estate and Gift Taxes (Volume 14, Parts 20 to 27)
- Subchapter C—Employment Taxes and Collection of Income Tax at Source (Volume 15, Parts 30 to 37)

- Subchapter D—Miscellaneous Excise Taxes (Volumes 16-17, Parts 40 to 158)
- Subchapter E—[Reserved]
- Subchapter F—Procedure and Administration (Volume 18, Parts 300 to 421)
- Subchapter G—Regulations Under Tax Conventions (Volume 19, Parts 500 to 521)
- Subchapter H—Internal Revenue Practice (Volume 20, Parts 600 to 802)

(c)(2). Outline of the subordinating *Code of Federal Regulations* procedural regulations for Title 27, 'CHAPTER I—ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, DEPARTMENT OF THE TREASURY':

- Subchapter A—Alcohol (Volume 1, Parts 1 to 39)
- Subchapter B—Tobacco (Volume 2, Parts 40 to 46)
- Subchapter C—Firearms (Volume 2, Part 53)
- Subchapter D-E—[Reserved] (Volume 2)
- Subchapter F—Procedures and Practices (Volume 2, Parts 70 to 73)
- Subchapter G-L—[Reserved] (Volume 2)
- Subchapter M—Alcohol, Tobacco and Other Excise Taxes (Volume 2; Parts 194 to 399 [Reserved])

(c)(3). *Ibidem*, Title 27, 'CHAPTER II—BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES, DEPARTMENT OF JUSTICE':

- Subchapter A—[Reserved] (Volume 3)
- Subchapter B—Firearms and Ammunition (Volume 3, Parts 400 to 479; Parts 400 to 446 [Reserved])
- Subchapter C—Explosives (Volume 3, Part 555)
- Subchapter D—Miscellaneous Regulations Relating to Alcohol and Tobacco (Volume 3, Part 646)

§ 3.1. ***Justitia Omnibus not Statutory Ambiguity.*** Tax statutes operate under the rule of *strict construction*; and in cases where interpretive doubt prevails upon relative inference or analogous examination then all such doubt shall most strongly favor the citizen's position over the arguments so maintained on behalf of their government. Evermore luminating, is *Black on Taxation* (cited *supra*), at § 217. Rule of Strict Construction:

> "*... And this view is further strengthened by the consideration that the same rule has come to be accepted and applied in the case of the laws taxing inheritances and successions, which furnish the nearest analogy to an income tax law. Such a statute, it is held, must be construed strictly against the state or the government and in favor of the taxpayer, and a doubt as to the taxability of a particular fund should be resolved in favor of the citizen.* [*Eldman v. Martinez*, 184 U.S. 578, 22 Sup. Ct. 515, 46 L. Ed. 697; *In re Harbeck's Will*, 161 N. Y. 211, 55 N. E. 850; *In re Kimberly's Estate*, 27 App. Div. 470, 50 N. Y. Supp. 586; *People v. Koenig*, 37 Colo. 283, 85 Pac. 1129; *State v. Bazllle*, 97 Minn. 11, 106 N. W. 93.]"

Moreover, this matter is further exemplified by the following authoritative *case law*:

Within *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926), **REAFFIRMING** *Collins v. Kentucky*, 234 U.S. 634, 638 (1914) and *International Harvester Co. v. Kentucky*, 234 U.S. 216, 221 (1914): "*That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law, and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at*

its meaning and differ as to its application violates the first essential of due process of law. [Citations omitted.]"

In dissent, Circuit Court of Appeals Judge Gray as quoted within the holdings of *Spreckels Sugar Refining Co. v. McClain*, 192 U.S. 397, 416 (1904) stated: "*Keeping in mind the well settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that, where the construction of a tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid, I cannot assent to the affirmance of the judgment of the court below in this respect. I do not think that the income derived from such investment of funds is in any proper sense receipts in the business of sugar refining. The very term 'gross receipts' in 'the business,' would seem to exclude all such receipts as the interest upon investments here referred to.*"

Both *Benziger v. United States*, 192 U.S. 38, 55 (1904) and *Eidman v. Martinez*, *infra*, **REAFFIRMING** *American Net & Twine Co. v. Worthington*, 141 U.S. 468, 474 (1891): "*We think the intention of Congress that these goods should be classified as "gilling twine" is plain, but were the question one of doubt, we should still feel obliged to resolve that doubt in favor of the importer, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language. ...*"

Eidman v. Martinez, 184 U.S. 578, 583, 591 (1902): "*It is an old and familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty,* [Citations omitted.]*, though the rule regarding exemptions from general laws imposing taxes may be different. Cooley on Taxation 146; In re Enston, 113 N.Y. 174, 177.*

We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language. [Citations omitted.]

. . .

To say that we recognize by comity the law of a foreign domicil as controlling the transmission or succession of personal property because it thereby becomes our law (and the property therefore taxable), as is indicated in some cases, notably in Alvany v. Powell, 2 Jones Eq. 51, is misleading, and little more than a play upon words. When we speak of our laws, we mean to be understood as referring to our own statutory laws, or the common law we inherited from the mother country, and when we apply the laws of a foreign domicil, we do so not because they are our laws, but because, upon principles of comity, we recognize those laws as applicable to the particular case."

In *Treat v. White*, 181 U.S. 264, 267 (1901) **REAFFIRMING** *United States v. Isham*, 84 U.S. 496, 504 (1873): "*If there is a doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption, because, in the language of Pollock, C.B., in Girr v. Scudds, 11 Exchequer 191, 'a tax cannot be imposed without clear and express words for that purpose."* And in *United States v. Isham*, *supra*, "*These principles are based in good sense, and are sustained by the authorities.*"

Hartranft v. Wiegmann, 121 U.S. 609, 616 (1877) **REAFFIRMING** *United States v. Isham and Gurr v. Scudds*, *supra*: "*We are of opinion that the decision of the circuit court was correct. But if the question were one of doubt, the doubt would be resolved in favor of the importer, "as duties are never imposed on the citizen upon vague or doubtful interpretations." ...*"

United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,-690: "*It is a general rule, in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend*

their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statute expressly and clearly imports."

Parkview Building & Loan Ass'n v. Herold, 203 Fed. 876: "*If the consideration thus given to the case still leaves the matter in doubt, there should be applied the well-settled rule that the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that, if there is a fair doubt as to the construction of an act imposing taxation, the doubt should be resolved in favor of those upon whom the tax is sought to be laid.*"

Missouri, K. & T. Ry. Co. v. Meyer, 204 Fed. 140: it's a "*conceded principle that taxes must be imposed by law, and that the law should be construed favorably to the taxpayer and not extended by implication beyond its clear intent.*"

Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199: "[*A*]*t the outset it may be remarked that a statute providing for the imposition of taxes is to be strictly construed, and all reasonable doubts in respect thereto resolved against the government and in favor of the citizen. This principle is so well established that the citation of any considerable number of authorities in its support is unnecessary.*"

Furthermore, stipulated within 26 USC § 31(a)(1) is that all W-4 withholdings (i.e., *stoppage at the source*) commenced under the statutory authority of Chapter—24 ("COLLECTION OF INCOME TAX AT SOURCE ON WAGES") of the Internal Revenue Code are lawfully allowable as a valid credit for establishing *claims of refund* (see: 26 CFR §§ 301.6401-1(b); 301.6402-(1-4); 601.102(b)(3); 601.103(c)(3); 601.105(a),(b)(1-2,4),(c)(1),(d)(1),(e)(1-3); *et seq.*) upon the excess of all such withholdings against taxes, whether or not such taxes are duly imposed upon an individual by Subtitle—A ("Income Taxes") of the Internal Revenue Code.

For the purposes of qualifying for the *earned income credit* within 26 USC § 32(c)(2)(A)(i),(ii) 'earned income' is defined in-part as being all: "wages, salaries, tips, and other employee compensation, but **only if such amounts are includible in gross income** for the taxable year," in addition to that individual's *bona fide* small business or self-employment (SB/SE) 'gains' and 'profits' less all lawfully permissible deductions.

Therefore, it is reasonably deducible that not every classification of "wages, salaries, tips, and other employee compensation" is statutorily inclusive within the term 'gross income' for the purposes of establishing an individual's tax liabilities under the Internal Revenue Code. Ergo, there are in-fact qualifying classifications of "wages, salaries, tips, and other employee compensation" that are—constitutionally—precluded from federal income taxation.

Additionally, with respect to common day laborers, the reference to "compensation" within 26 USC § 61(a)(1) generally includes items such as—albeit providing for explicit statutory inclusion (*ibid.*, §§ 71-90); exemption (*ibid.*, §§ 101-140); or personal deduction inclusions (*ibid.*, §§ 151-153, 161-199, 211-224) and exclusions (*ibid.*, §§ 261-280H)) either in-whole or in-part to certain items, circumstances, or arrangements: accident, injury, or sickness pay; accommodations, meals, per diems, stipends, or reimbursements; accrual or time-bank payouts; alimony or divorce maintenance fees; awards, gifts, prizes, or rewards; bonuses or fringe benefits; child care or service pay; court awarded punitive damages; holiday or vacation pay; jury duty pay; pensions; property; retirement allowances or pay; scholarship

or fellowship grants; service commissions or fees; severance or termination pay; stocks; tips; trusts; etc.

§ 3.2. ***'Tis not "Gains, profits, or income", but "Gains, profits, and income".*** Additional considerations to statutory interpretation are as well to be lent to the following rules:

- ***Clear statement rule***: Serves to standardize the courts so as to avoid creating conflicts within law by only ever interpreting statutes within its absolute or proper context.
- ***Ejusdem generis***: To be or consist of, or include, the same classes, kinds, nature, or types (e.g., "automobiles, including motorcycles, passenger trucks, and motor powered vehicles", intends to exclude trains, self-propelled lawnmowers, electric wheelchairs, boats, commercial big-rigs, bicycles, and airplanes, yet would serve to also include motorized scooters, golf carts, go-karts, and dune buggies.)
- ***Generalia specialibus non derogant***: Generalizations do not detract from the specific; hence, the use of universal provisions or statements must concede to the therein detailed usage of specified provisions or statements.
- ***Noscitur a sociis***: Meaning that "a word is known by the company it keeps"; thereby, in cases of ambiguous or convoluted term presence, the intended meaning of such terms are to be referenced by its contextual association therein the statute.

These rules aid to beset the intentions being comported or expressed by the courts so as to maintain what has been clearly stated by publicly written statute.

And yet to provide further example, in regards to the Eleventh Amendment (XI Amend.), the Court within *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985) had stated that: "*We … affirm that Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.*"

Also within *Vera Cruz*, 10 App. Cas. 59 (1884), therein finding: "*Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any evidence of a particular intention to do so.*"

And in *Boos v. Barry*, 485 U.S. 312, 330-331 (1988): "*Petitioners protest that the Court of Appeals was without authority to narrow the statute. According to petitioners, § 22-1115 must be considered to be state legislation, which brings it within the sweep of prior decisions indicating that federal courts are without power to adopt a narrowing construction of a state statute unless such a construction is reasonable and readily apparent. See, e.g., Grayned v. Rockford, 408 U.S. 104, 408 U.S. 110 (1972); Gooding v. Wilson, 405 U.S. 518, 405 U.S. 520-521 (1972). Even assuming that the District of Columbia could be considered a State for this purpose, the argument overlooks the fact that § 22-1115 was enacted by Congress, not by the District of Columbia Council. Cf. Whalen v. United States, 445 U.S. 684, 445 U.S. 687-688 (1980). It is well settled that federal courts have the power to adopt narrowing constructions of federal legislation. See, e.g., New York v. Ferber, 458 U.S. 747, 458 U.S. 769, n. 24 (1982); United States v. Thirty-seven Photographs, 402 U.S. 363, 402 U.S. 368-370 (1971).* ***Indeed, the federal courts have the duty to avoid constitutional difficulties by doing so if such a construction is fairly possible.*** *See, e.g., Ferber, supra, at 458 U.S. 769, n. 24; Thirty-seven Photographs, supra, at 402 U.S. 369; Schneider v. Smith, 390 U.S. 17, 390 U.S. 26-27 (1968).*"

Further noting: "*…that a particular result can be achieved only if the text (and not legislative history) says so in no uncertain terms.*" (Popkin, *Statutes in Court* 201 (1999).)

This distinction ultimately clarified in *Commissioner of Internal Revenue v. Groetzinger*, 480 U.S. 23, 35 (1987):

> "*The income tax law, almost from the beginning, has distinguished between a business or trade, on the one hand, and "transactions entered into for profit but not connected with . . . business or trade," on the other. See Revenue Act of 1916, §5(a), Fifth, 39 Stat. 759. Congress "distinguished the broad range of income or profit producing activities from those satisfying the narrow category of trade or business."*
>
> *Whipple v. Commissioner, 373 U.S. at 373 U. S. 197. We accept the fact that, to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity, and that the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity, a hobby, or an amusement diversion does not qualify.*
>
> *It is suggested that we should defer to the position taken by the Commissioner and by the Solicitor General, but, in the absence of guidance, for over several decades now, through the medium of definitive statutes or regulations, we see little reason to do so. We would defer, instead, to the Code's normal focus on what we regard as a common-sense concept of what is a trade or business. Otherwise, as here, in the context of a minimum tax, it is not too extreme to say that the taxpayer is being taxed on his gambling losses,* **[Footnote 15]** *a result distinctly out of line with the Code's focus on income.*
>
> **Footnote 15**—*"The more he lost, the more minimum tax he had to pay." Boyle, 39 Tax Lawyer, at 754. The Commissioner concedes that application of the goods-or-services-test here "visits somewhat harsh consequences" on taxpayer Groetzinger, Brief for Petitioner 36, and "points to . . . perhaps unfortunate draftsmanship." Ibid. See also Reply Brief for Petitioner 11.*"

§ 3.3. ***The Sixteenth Amendment: the Intent of 'Gross Income'.*** The established legal context and breadth of 26 USC § 61(a), was last, clearly depicted in Section 22(a) termed 'GROSS INCOME' of the IRC of 1939 (and preceding statutes), stating in part: ""gross income" includes **gains, profits, and income derived from** salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. …" Similarly as from the repealed Revenue Acts of 1861 (Sec. 90) and 1894 (Sec. 27).

The post-1939 IRC for 26 USC § 61(a) wholly collaborates the above, rendering full consideration to the XVI Amendment, stating in-part: "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: …" See additional clarification: IRM at 4.10.12.1.2(8).

Pollock v. Farmers' Loan & Trust Company, 158 U.S. 601, 628, 637 (1895), established *in pari materia* that to tax the source (including its shadow [see: 155 U.S. 688, 698 (1895)] — hence, the necessity thereafter for the XVI Amendment language), was to be achieved only through apportionment by the direct taxing clauses of the U.S. Constitution. As the court had inferred summarily that a tax levied upon real estate, or rents or incomes deriving

from real estate, or upon personal property, or incomes deriving from personal property, were likewise 'direct taxes'; thereby requiring apportionment.

Brushaber v. Union Pacific R. Co., 240 U.S. 1, 19 (1916), clarified the well-intended breadth of the XVI Amendment, stating its ratified purpose: "*… that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself, and thereby to take an income tax out of the class of excises, duties, and imposts, and place it in the class of direct taxes.*"

The perceptual breadth of the XVI Amendment was zealously postulated in *Eisner v. Macomber*, 252 U.S. 189, 207-208 (1920): "*Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy.*

The government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "Derived from capital;" "the gain derived from capital," etc. Here, we have the essential matter: not a gain accruing to capital; not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being "derived" -- that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal -- that is income derived from property. Nothing else answers the description.

The same fundamental conception is clearly set forth in the Sixteenth Amendment -- "incomes, from whatever source derived" -- the essential thought being expressed with a conciseness and lucidity entirely in harmony with the form and style of the Constitution."

Eisner v. Macomber, *supra*, was **REAFFIRMED** within *Goodrich v. Edwards*, 255 U.S. 527, 535 (1921); *et al*, while having further elaborating that:

"*. . . It is thus very plain that the statute imposes the income tax on the proceeds of the sale of personal property to the extent only that gains are derived therefrom by the vendor, and we therefore agree with the Solicitor General that, since no gain was realized on this investment by the plaintiff in error, no tax should have been assessed against him.*"

With the foregoing being further upheld in *South Carolina v. Baker*, 485 U.S. 505, 522-523 (1988) [Footnote 13]—further considering how the underlined portion would apply to an individual day-laborer, for instance: "*The only premodern tax immunity for parties to government contracts that has so far avoided being explicitly overruled is the immunity for recipients of governmental bond interest.* **[Footnote 13]** *That this Court has yet to overrule Pollock explicitly, however, is explained not by any distinction between the income derived from government bonds and the income derived from other government contracts, but by the historical fact that Congress has always exempted state bond interest from taxation by statute, beginning with the very first federal income tax statute. Act of Oct. 3, 1913, ch. 16, § II(B), 38 Stat. 168.*

In sum, then, under current intergovernmental tax immunity doctrine, the States can never tax the United States directly, but can tax any private parties with whom it does business, even though the financial burden falls on the United States, as long as the tax does not discriminate against the United States or those with whom it deals. See Washington, supra, at 460 U.S. 540; County of Fresno, supra, at 429 U.S. 460-463; City of Detroit, supra, at 355 U.S. 473; Oklahoma Tax Comm'n, supra, at 336 U.S. 359-364. A tax is considered to be directly on the Federal Government only "when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities."

Footnote 13—*We disagree. The legislative history merely shows that the words "from whatever*

source derived" of the Sixteenth Amendment were not affirmatively intended to authorize Congress to tax state bond interest or to have any other effect on which incomes were subject to federal taxation, and that the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable. 45 Cong. Rec. 2245-2246 (1910); id.at 2539; see also Brushaber v. Union Pacific R. Co., 240 U.S. 1, 240 U.S. 17-18 (1916). Indeed, if the Sixteenth Amendment had frozen into the Constitution all the tax immunities that existed in 1913, then most of modern intergovernmental tax immunity doctrine would be invalid."

As 'gross income', 26 USC § 61(a), pertains to the core of remuneration earned by menial or subservient workforces, the federal income tax is intended only as a tax to be assessed with apparent consideration to the monetary fruit that has germinated out from the soil of financial capital, however, cultivated or refined; it is not, however, a tax upon the soil itself, (paraphrased as from *Eisner v. Macomber*, 252 U.S. 189, 206 (1920).)

'Gross income' is to leave the monetary source—that is to say the corpus—unimpaired, as otherwise the federal income tax is, *ultra vires*, no longer taxing with consideration to XVI Amendment 'incomes', thereby rendering the tax wholly unconstitutional and void. Concerning enumerated powers of national taxation, the Legislature may neither provide itself nor the Executive Branch (including its bureaucracies) circumvention from constitutional constraints by creatively morphing a stated method of taxation in form only; i.e., a tax assessed upon the core of personalty an individual has acquired through the course of their livelihood is indifferent to a tax assessed upon that very livelihood itself, regardless if whether the imposition of whatever tax is waged upon the property itself or the menial performance exerted in order to justify the acquisition. As to seek taxes from either course results in the same affliction—for without exception, both means are relative only to the 'direct' methods of taxation, i.e., *capitation*, *personal*, or *poll* taxes and thereby requiring 'apportionment'. With such being inherent to the prudent construction of our U.S. Constitution and thusly clarified in the following cases:

In *South Carolina v. Baker*, 485 U.S. 505, 516 (1988): "*The United States cannot convert an unconstitutional tax into a constitutional one simply by making the tax conditional. Whether Congress could have imposed the condition by direct regulation is irrelevant; Congress cannot employ unconstitutional means to reach a constitutional end. Under Pollock, a tax on the interest income derived from any state bond was considered a direct tax on the State, and thus unconstitutional. 157 U.S. at 157 U. S. 585-586.*"

In *United States v. Butler*, 297 U.S. 1, 61 (1936): "*… A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government.*

The word has never been thought to connote the expropriation of money from one group for the benefit of another. … The exaction cannot be wrested out of its setting, denominated an excise for raising revenue, and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do ***this would be to shut our eyes*** *to what all others than we can see and understand. Child Labor Tax Case, 259 U.S. 20, 259 U.S. 37.*"

As in *Eisner v. Macomber*, 252 U.S. 189, 206 (1920): "*In order, therefore, that the clauses cited from Article I of the Constitution may have proper force and effect, save only as modified by the amendment, and that the latter also may have proper effect, it becomes essential to distinguish between what is and what is not "income," as the term is there used, and to apply the distinction, as cases arise, according to truth and substance, without regard to form. …*"

This principle, *idem*, further, having been extensively recounted in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 581-583 (1895). See also: *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 38 (1922).

And moreover directly stated by *Postal Telegraph Cable Co. v. Adams*, 155 U.S. 688, 698 (1895): "*… The substance, and not the shadow, determines the validity of the exercise of the power.*"

The *CRS Annotated Constitution*, a project of the Congressional Research Service (CRS) and Government Printing Office (GPO), regarding the XVI Amendment has concluded the following:

(a). Under the heading "**History and Purpose of the Amendment**", so stating:

> "… [*T*]*he Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged.*" [13]
> [13—*Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916)]

(b). Under the heading "**Income Subject to Taxation**", so stating:

> "*Building upon definitions formulated in cases construing the Corporation Tax Act of 1909,* **[14]** *the Court initially described income as the "gain derived from capital, from labor, or from both combined," inclusive of the "profit gained through a sale or conversion of capital assets";* **[15]** *…*"
> [**14**—*Stratton's Independence v. Howbert*, 231 U.S. 399 (1913); *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179 (1918)]
> [**15**—*Eisner v. Macomber*, 252 U.S. 189 (1920); *Bowers v. Kerbaugh– Empire Co.*, 271 U.S. 170 (1926)]

The IRS within its own published employee's manual (IRM at 4.10.7.2.9.8(2) — 'Importance of Court Decisions') has sought to assert that decisions rendered by SCOTUS establishes "*the law of the land and takes precedence over decisions of lower courts.*" Moreover stating (*ibid.*, IRM at 4.10.7.2.9.8(3)) that "[*d*]*ecisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated.*"

Even more studious are the following insightful persuasive resources:

(a). *Regulations 45 Relating to the Income Tax and War Profits and Excess Profits Tax under the Revenue Act of 1918*, House Document 1826, 65th Congress, 3d Session, Vol. 8, December 2, 1918-March 4, 1919, pp. 11, 17-18, 29:

> "**ART. 1. Income Tax on Individuals**.—The tax is upon net income, as defined in the statute, after deducting from gross income, as defined in the statute, the allowable deductions.
>
> **ART. 21. Meaning of net income.**—Though taxable net income is wholly a statutory conception it follows, subject to certain modifications as to exemptions and as to some of the deductions, the lines of commercial usage. Statutory "net-income" is, subject to these modifications, commercial "net income".

ART. 71. What exclude from gross income.—Gross income excludes the items of income specifically exempted by the statute and also certain other kinds of income by statute or fundamental law free from tax."

(b). *Congressional Record*—House, Vol. 50, April 26, 1913, p. 506:

"*Mr. HULL. * * * The proposed law should be construed as similar laws have been construed by the courts with respect to the application of the tax, and that is that the income in question shall be the measure of the tax and not the specific fund out of which the tax is necessarily payable: the bill takes as the measure of the tax the net income of the preceding year. Paragraph B defines the net income of a taxable individual or person. Income as thus defined does not embrace capital or principle, but only such gains or profits as may be realized from rent, interest, salaries, trade, commerce, or sales of any kind or property, and so forth, or profits or gains derived from any other source. * * **"

(c). *Congressional Record*—Senate, 63rd Congress, Vol. L, Part IV, August 28, 1913, p. 3845:

"*Mr. STERLING. If in the definition of the word "income" as given in a standard dictionary the words "gains and profits" are also given as synonymous with the term "income" would there be anything wrong in the use of those words in the section to which the Senator refers? . . .*
*Mr. CHILTON. Well, so far as the Senator gone. Let me offer this suggestion: On page 167, beginning in line 3, it is provided that the "income derived from salaries, wages," and so forth, shall be included. It has to be income before it can be taxed, no matter how it is derived. We could say that only income **from** salaries or income **from** property or income **from** interest, should be taxed. We have simply mentioned certain things: but they must be income before they can be taxed. We use the very language of the Constitution.*"

(d). "*The Federal Income Tax*", Edwin Robert Anderson Seligman, LL.D., "*Political Science Quarterly*", Vol. XXIX, Number I, March, 1914, pp. 1, 7-8, 12:

"*The chief argument which was responsible for the passage of the Sixteenth Amendment and for the enactment of the law was, as we have elsewhere pointed out* [Seligman, The Income Tax, 1911, p. 640]*, that wealth is escaping its due share of taxation. … It is true that some of the more extreme supporters of the income tax based their advocacy on the ground of opposition to the tariff alone; but the more influential legislators did not tire of stating that, far from purposing to make an attack on wealth as such, their aim was solely to redress the inequality of taxation which was a predominate feature of the American fiscal system as a whole.* [*Cf. Congressional Record*, 63rd Congress, 1st sess., pp. 4260-4261, Aug. 28, 1913.] . . .

In the discussion of the present bill Mr. Cordell Hull, its framer, stated: "In construing all these laws . . . unless the unearned increment is expressly made income, it is not considered income in any sense of the word, but simply increase of value or capital." [Congressional Report, April 26, 1913.] *When pressed still further, he added: "My judgment would be that as to the occasional purchase of real estate not by a dealer or one making the buying and selling a business, this bill would only apply to profits on sales where the land was purchased and sold during the same year."* [Such a provision, it will be remembered, was contained in the law of 1864.]

As this section was adopted in the light of Mr. Hull's explanation, it is not unlikely that it will be so interpreted as to carry out the evident intention of its framers. If so, the same rule will apply also to profits from the sales of securities or other personal property. This would seem to be a fairly satisfactory solution of an undoubted difficulty.

One of the congressman ingenuously asked, in reply to a proposition to reduce the exemption [i.e., $3,000/4,000]*; "Does the gentleman not think it would defeat every member who would*

vote for this amendment if the fact were known at home?" [*Congressional Record*, p. 1215, May 6, 1913] *And another member said:*

> *I venture the assertion that if Congress at the first opportunity which it has had of levying a direct tax upon the people without apportionment, should levy a tax which would fall upon every citizen of the land, that tax would not stay upon the statute book longer than the first election which followed the first call of the tax collector.* [*Ibid.*, p. 1218]

In justice, however, to the majority, we must quote the statement made by Mr. Murray, of Oklahoma:

> *There are those who would say that we should begin at $1000, in lieu of $4000. They forget the principle upon which this tax is founded, and that is that every man who is making no more than a living should not be taxed upon living earnings, but should be taxed upon the surplus that he makes over and above that amount necessary for good living. We also recognize the assumption that $4000 will reach the highest grade of good living. . . . The purpose of this tax is nothing more than to levy a tribute upon that surplus wealth which requires extra expense, and in doing so, it is nothing more than meting out evenhanded justice.* [*Congressional Record*, p.1219]"

(***** Noting that $3,000/4,000 in 1913 is equal in purchasing power to $72,315/96,420 in 2015.)

Still, providing even further support is an article from the Sunday Review of the New York Times (*New York Times*, Sunday Review, Elizabeth W. Dunn and Michael Norton, July 7, 2012, Source URL: http://www.nytimes.com/2012/07/08/opinion/sunday/dont-indulge-be-happy.html):

> "*Is it crazy to question how much money you need to be happy? The notion that money can't buy happiness has been around a long time — even before yoga came into vogue. But it turns out there is a measurable connection between income and happiness; not surprisingly, people with a comfortable living standard are happier than people living in poverty.*
>
> *The catch is that additional income doesn't buy us any additional happiness on a typical day once we reach that comfortable standard. The magic number that defines this "comfortable standard" varies across individuals and countries, but in the United States, it seems to fall somewhere around $75,000. Using Gallup data collected from almost half a million Americans, researchers at Princeton found that higher household incomes were associated with better moods on a daily basis — but the beneficial effects of money tapered off entirely after the $75,000 mark.*"

§ 3.4. Revisiting *Hylton* and *Springer*. The blatant assertion that the individual federal income tax was devised from its very beginnings to provide for an indirect tax upon all laborers in general, and that such is only further affirmed by the cases of *Hylton v. United States* (3 U.S. 171 (1796)) and *Springer v. United States*, (102 U.S. 586 (1881)), which under common law theory, upheld an unapportioned tax upon all private property, is in reality, not such a clear cut matter. There are several key factors that its proponents willfully dismiss, which include:

- Both Hylton and Springer have been greatly narrowed in scope by subsequent decisions of the U.S. Supreme Court, including—most notably—*Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895) and its rehearing, 158 U.S. 601 (1895).

- A compelling counterargument proposing that the advancing of the Hylton case had been conspired by the Federalists (also potentially involving shades of perjury and witness tampering), with Alexander Hamilton representing a covert agenda intent on establishing the necessary legal backing for ever-expanding the Nation's general powers of taxation; and it further considers that Mr. Hylton had willingly complied with the Federalist's wishes to bring his case before the U.S. Supreme Court, while himself likely being deceitful about owning 125-carriages—that he only actually owned 1-carriage. (Noting that this counterargument is likely plausible, as it seems unreasonable that an individual would own so many carriages for non-business use; and raises many other concerns as well, such as: the large amount of space needed to store the carriages; carriages would not likely be a very good long-term investment choice, e.g., metal parts rust and corrode, paint fades, wood dries, cracks and warps, canvas and fabric becomes brittle and tattered; the prolonged period of time it would have taken to acquire so many man-made carriages; the ongoing maintenance fees involved; etc.)

- With little consideration the Court conveniently dismissed the objections made by James Madison (i.e., the Father of our U.S. Constitution), in favor of the arguments of Alexander Hamilton—who had angrily dismissed himself early on from the Constitutional Convention (and would later go on to cause great political dissention resulting in the taking of his life after losing a duel initiated by a bitterly insulted Vice President Aaron Burr.) While, Mr. Madison noted his objections to such a tax, and even more than that his suspicions upon its true motives, so quoted within *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 569 (1895):

> "*At a subsequent day of the debate, Mr. Madison objected to the tax on carriages as 'an unconstitutional tax, …' Annals 730.*
>
> *Mr. Madison wrote to Jefferson on May 11, 1794: 'And the tax on carriages succeeded, in spite of the Constitution, by a majority of treaty, the advocates for the principle being reinforced by the adversaries to luxuries. . . . Some of the motives which they decoyed to their support ought to premonish them of the danger. By breaking down the barriers of the Constitution, and giving sanction to the idea of sumptuary regulations, wealth may find a precarious defence in the shield of justice. If luxury,* as such, *is to be taxed, the greatest of all luxuries, says Paine, is a great estate.' 2 Madison's Writings 14.*"

- Further, in Pollock (*ibid*, 157 U.S. 429, 569 (1895)) quoting Fisher Ames in regard to the Hylton case had "*declared that he had satisfied himself that it was not a direct tax, as 'the duty falls not on the possession, but on the use.' Annals 730.*" Thusly, the imposition of the carriage tax was never intended to be upon the property itself or its ownership; however, ultimately that logic fails and has since been clarified in a host of U.S. Supreme Court cases (e.g., "*The substance, and not the shadow, determines the validity of the exercise of the power.*" *Postal Telegraph Cable Co. v. Adams*, 155 U.S. 688, 698 (1895); *ibid*, 157 U.S. 429, 581-582; *Macallan Co. v. Massachusetts*, 279 U.S. 620, 625-631 (1929); *et al.*)

- Although not specifically argued within the Hylton case, the tax being levied upon carriages was actually devised to be a tax upon the use of luxury items and not the use of items of necessity. Even still, clarified within Hylton was a single reference to items of luxury (*ibid*, at180-181), in quoting a passage from Dr. Adam Smith's "*Wealth of Nations*"—to which further exception for carriages as luxury items had been made for by the Carriage Act of 1794 itself:

> "*Consumable commodities, whether necessaries or luxuries, may be taxed in two different ways:… the coach tax and plate tax are examples of the former method* [i.e., *"the consumer may either pay an annual sum on account of his using or consuming goods of a certain kind"*] *of imposing…*"

- While not overtly discussed within Hylton, the appropriate context of the 'Carriage Act' appears to of been inadvertently overlooked; "*An Act Laying Duties Upon Carriages for the Conveyance of Persons*", House of Representatives, 3rd Congress, 1st Session,1 Stat. 373, June 5, 1794, Chap. XLV, p. 374:

> "SECTION 1. . . . Provided always, That nothing herein contained shall be construed to charge with a duty, any carriage usually and chiefly employed in husbandry, or for the transporting or carrying of goods, wares, merchandise, produce or commodities."

- Additionally, the legislative record itself relieves whatever remaining doubt on this matter:

> "*He [Mr. Sedgwick] said [concerning the carriage duty of June 5, 1794, 1 Stat. 373, c. 45] that, in forming a Constitution for a National Government, ... To Congress it was expressly granted to impose taxes, duties, imposts, and excises. It had been universally concluded, and never, to his knowledge, denied, but that the Legislature, by those comprehensive words, had authority to impose taxes on every subject of revenue. . . . He observed, that, to obviate certain mischiefs, the Constitution had provided that capitation and other direct taxes should be apportioned according to the ratio prescribed in it.*
>
> *If, then, the Legislature be authorized to impose a tax on every subject of revenue, (and surely pleasure carriages, as objects of luxury, and, in general, owned by those to whom contributions would not be inconvenient, were fair and proper subjects of taxation,) and a tax on them could not be apportioned by the Constitutional ratio, it would follow irresistibly that such a tax, in this sense of the Constitution, is not 'direct."* (p. 644)
>
> "*According to these opinions, a capitation tax and taxes on land and on property and income generally, were direct charges, as well in the immediate as ultimate sources of contribution. He had considered those, and those only, as direct taxes in their operation and effect. On the other hand, a tax imposed on a specific article of personal property, and particularly if objects of luxury, as in the case under consideration, he had never supposed had been considered a direct tax, within the meaning of the Constitution. The exaction was indeed directly of the owner, but, by the equalizing operation, of which all taxes more or less partook, it created an indirect charge on others besides the owners.*
>
> *He said it would astonish the people of America to be informed that they had made a Constitution by which pleasure carriages and other objects of luxury were excepted from contributing to the public exigencies, which was undoubtedly the case if the reasoning of gentlemen who opposed the resolution was well founded.*" (pp. 644-645)
>
> "*If the imposition of a duty on pleasure carriages was a direct tax, it must then be apportioned…*" (p. 645)
>
> "*He* [Mr. DEXTER] *said his colleague [Mr. SEDGWICK] had stated the meaning of direct taxes to be a capitation tax, or a general tax on all the taxable property of the citizens; and that a gentleman from Virginia [Mr. NICHOLAS] thought the meaning was, that all taxes are direct which are paid by the citizen without being recompensed by the consumer; but that, where the tax was only advanced and repaid by the consumer, the tax was indirect.*
>
> *He thought that both opinions were just, and not inconsistent, though the gentleman had differed about them. He though that a general tax on all taxable property was a direct tax, because it was paid without being recompensed by the consumer.*" (p. 646)

- See also as reiterated in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 568-569 (1895).

Finally, concerning the Springer case, *supra*, it is no less than pure desperation to even dare compare William M. Springer to average laborers. Mr. Springer led a privileged, well-traveled lifestyle. Starting out as a young attorney and deeply involved in politics, he worked in various state and federal positions throughout his life; and at the time of his case challenging the income tax during the Civil War before the U.S. Supreme Court, he had being serving as a congressman for over a decade and for several additional years afterward. The relevant figure pertaining to his income tax filing from 1865 was $50,798, which in today's inflated dollars is the equivalent of more than $750,000, respectively. Not even remotely comparable to the average laborers annual wages, certainly not then and definitely not now.

§ 3.5. ***Eisner v. Macomber not Overturned, merely Focused.*** There is a prevailing misconception with concern to the general rule of severing incomes (i.e., gains and profits) from its capital as remedied by the *Eisner v. Macomber*, 252 U.S. 189 (1920) decision and subsequently overturned (in part) by *Helvering v. Bruun*, 309 U.S. 461 (1940)—and further touched upon within *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

In essence, *Helvering v. Bruun*, *supra*, did not wholly overturn those findings of *Eisner v. Macomber*, *supra*, it merely provided further clarification into the necessity of literally "severing" the 'gain' or 'profit' as 'income' apart from its capitalistic 'source'.

This misconception involves feeble attempts through adjudication to strenuously concatenate physical forms of capital (e.g., individual assets or property) amongst the monetary conversion of capital, whatever. Really, the preceding confusion pertains to severing monetary capital from certain classifications of physical property, such as real estate.

The rule of severing as it pertains to establishing a person's taxable liabilities does not literally mean that a physical separation (i.e., 'severing') must take place or otherwise no such tax liabilities are to be realized by that person.

On the contrary, the foregoing concern, simply provides that either an apparent distinction or marketable realization must exist between what is (or was) the physical capital and its subsequent gain or profit—otherwise referred to as 'gross income'.

In effect, *Helvering v. Bruun*, *supra*, addressed only the perspective of "severing" the 'source', but not of 'deriving' gains, profits, or incomes (i.e., 'gross income') from capital (i.e., the 'source'), as such had been poignantly clarified by *Eisner v. Macomber*, *supra*.

Still this point was yet further crystallized by *Commissioner v. Glenshaw Glass Co.*, *supra* (as from *Helvering v. Bruun*, *supra*, at 309 U.S. 469): "[*T*]*he* [*Eisner v. Macomber*, *supra*] *definition served a useful purpose. But it was not meant to provide a touchstone to all future gross income questions.*"

Additionally, the Congressional Research Service (CRS) cites to *Eisner v. Macomber*, *supra*, within its Annotated Constitution in discussion of the Sixteenth Amendment to the U.S. Constitution. Further noting that documents and the like, which are provided on behalf of governmental authorities are self-authenticating; see: *Federal Rules of Evidence*, Rule 902(5).

§ 3.6. ***Judicial Pomp and Lawmaker's Legalese.*** As to the matter of statutory legalese, in *Nix v. Hedden*, 149 U.S. 304, 306-307 (1893) a tomato was held to be a vegetable—at least from a purely legal standpoint. Even still such a determination being made into our Nation's *common law* did not fundamentally redefine what has always existed as an empirical truth; thenceforth compelling an object to become other than what it had always existed as. Effectively, a tomato is still just as much a fruit as it had been hitherto; however, the *Nix v. Hedden*, *supra*, decision serves to confirm the potentiality for arrogant ineptness upon such discrepancies in public law (e.g., purporting *substantive law* through *judicial activism*) within the findings of our most supreme judiciary. Hence, the statutorily crafted 'gross income' includes only *constitutional income* within its rightful breadth and not all income—in general.

Appropriately, *Carter v. Carter Coal Co.*, 298 U.S. 238, 289 (1936) had determined that: "*While the lawmaker is entirely free to ignore the ordinary meanings of words and make definitions of his own, Karnuth v. United States, 279 U.S. 231, 279 U.S. 242; Tyler v. United States, 281 U.S. 497, 281 U.S. 502, that device may not be employed so as to change the nature of the acts or things to which the words are applied.*"

§ 3.7. ***Deciphering Taxes, Penalties and Fines.*** Incidentally, all existing confusion on the nuances of 'taxes', 'penalties' and 'fines' had long ago vanquished in *Lipke v. Lederer*, 259 U.S. 557, 561-562 (1922), *et seq*, with *United States v. La Franca*, 282 U.S. 568, 572 (1931) therein reaffirming: "*A "tax" is an enforced contribution to provide for the support of government; a "penalty," as the word is here used, is an exaction imposed by statute as punishment for an unlawful act. The two words are not interchangeable one for the other. No mere exercise of the art of lexicography can alter the essential nature of an act or a thing, and if an exaction be clearly a penalty, it cannot be converted into a tax by the simple expedient of calling it such.*" See additionally: *Regal Drug Corp. v. Wardell*, 260 U.S. 386, 390-392 (1922); *United States v. One Ford Coupe Automobile*, 272 U.S. 321, 328-329 (1926); and *Murphy v. United States*, 272 U.S. 630, 631-632 (1926).

Further on the findings of *Lipke v. Lederer*, 259 U.S. 557, 561-562 (1922): "*The mere use of the word "tax" in an act primarily designed to define and suppress crime is not enough to show that within the true intendment of the term a tax was laid. Child Labor Tax Case. ante, 259 U.S. 20. When, by its very nature the imposition is a penalty, it must be so regarded. Helwig v. United States, 188 U.S. 605, 188 U.S. 613. Evidence of crime (§ 29) is essential to assessment under § 35. It lacks all the ordinary characteristics of a tax, whose primary function "is to provide for the support of the government," and clearly involves the idea of punishment for infraction of the law -- the definite function of a penalty. O'Sullivan v. Felix, 233 U.S. 318, 233 U.S. 324.*"

United States v. Constantine, 296 U.S. 287, 294 (1935) confers this matter as a general rule: "*If in reality a penalty, it cannot be converted into a tax by so naming it, and we must ascribe to it the character disclosed by its purpose and operation, regardless of name. Disregarding the designation of the exaction, and viewing its substance and application, we hold that it is a penalty for the violation of state law, and as such beyond the limits of federal power.*"

In *Carter v. Carter Coal Co.*, 298 U.S. 238, 289 (1936), the concern of coercing consent is addressed: "*It is very clear that the "excise tax" is not imposed for revenue, but exacted as a penalty to compel compliance with the regulatory provisions of the act. The whole purpose of the exaction is to coerce what is called an agreement -- which, of course, it is not, for it lacks the essential element of consent. One who does a thing in order to avoid a monetary penalty does not agree; he yields to compulsion precisely the same as though he did so to avoid a term in jail.*

The exaction here is a penalty, and not a tax, within the test laid down by this court in numerous cases." See additionally: *Bailey v. Drexel Furniture Co.*, 259 U.S. 20, 37-39 (1922)—*Child Labor Tax Case*; *Hill v. Wallace*, 259 U.S. 44, 62 (1922); *Terrace v. Thompson*, 263 U.S. 197, 215 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 536 (1925); *United States v. La Franca*, 282 U.S. 568, 572 (1931); *United States v. Constantine*, 296 U.S. 287, 293-294 (1935); and *United States v. Butler*, 297 U.S. 1, 69-70 (1936).

And still more in *Commissioner v. Tellier*, 383 U.S. 687, 691-692 (1966):

> "*We start with the proposition that the federal income tax is a tax on net income, not a sanction against wrongdoing. That principle has been firmly imbedded in the tax statute from the beginning. One familiar facet of the principle is the truism that the statute does not concern itself with the lawfulness of the income that it taxes. Income from a criminal enterprise is taxed at a rate no higher and no lower than income from more conventional sources. "[T]he fact that a business is unlawful [does not] exempt it from paying the taxes that if lawful it would have to pay." United States v. Sullivan, 274 U. S. 259, 274 U. S. 263. See James v. United States, 366 U. S. 213.*
>
> *With respect to deductions, the basic rule, with only a few limited and well defined exceptions, is the same. During the Senate debate in 1913 on the bill that became the first modern income tax law, amendments were rejected that would have limited deductions for losses to those incurred in a "legitimate" or "lawful" trade or business. Senator Williams, who was in charge of the bill, stated on the floor of the Senate that "[T]he object of this bill is to tax a man's net income; that is to say, what he has at the end of the year after deducting from his receipts his expenditures or losses. It is not to reform men's moral characters; that is not the object of the bill at all. The tax is not levied for the purpose of restraining people from betting on horse races or upon 'futures,' but the tax is framed for the purpose of making a man pay upon his net income, his actual profit during the year. The law does not care where he got it from, so far as the tax is concerned, although the law may very properly care in another way." 50 Cong. Rec. 3849.* **[Footnote 9]**
> **Footnote 9**—*In challenging the amendments, Senator Williams also stated: "In other words, you are going to count the man as having money which he has not got, because he has lost it in a way that you do not approve of." 50 Cong.Rec. 3850.*" See also: *Commissioner v. Heininger*, 320 U.S. 467, 474 (1943); *Lilly v. Commissioner*, 343 U.S. 90, 94, 97 (1952)."

In concluding the whole of this issue, it needn't be emphasized the degree to which these realizations, as provided above (also see: *United States v. Butler*, 297 U.S. 1, 69-70 (1936)), utterly devastate the largess of most all existing "social justice" programs—such as the recently enacted, H.R. 3590, *Patient Protection and Affordable Care Act* (PPACA)—including the Supreme Court's finding in *National Federation of Independent Business et al. v. Sebelius, Secretary of health and Human Services, et al.* 648 F. 3d 1235, No. 11–393 (2012). Hence, the government's imposition of taxes or taxation is never to be used as a political tool to gain favor within certain sects of its population, while at the financial expense and pride of those others, dejected, and castaway indignant.

§ 3.8. ***Transferring Property in Connection with Performing Services.*** While the statutory exemption of 'wages' is not explicitly stipulated within 26 USC § 83(a)—with noted exception to plain transfers of money being excluded from the term 'property' within its subordinate regulation 26 CFR § 1.83-3(e); to wit, no such delimited prescribing clause or definition has been provided for within its controlling statute—therein reckoning items of potentially 'taxable income' as transferred property that is to be generally included within 'gross income' when so connected with the performance of services; neither is the matter

concerning 'wages' (or even competency or livelihood) therein explicitly excluded or included (this point being only further substantiated by the through and through context of Sections 71-140 of the Internal Revenue Code.)

Thereby, the proper context of this statute must take into account all generalized classifications of transferable property received in the course of performing services—whatever and without restriction (i.e., *infra*, "determined without regard to any restriction")—realizing only as 'gross income' the financial excess above its established or determinable fair market value (i.e., only the *bona fide* 'gain' or 'profit' of 'incomes' coming into existence beyond an intrinsically acknowledged financial corpus) as being constitutionally taxable upon the legislative intent and breadth of the Internal Revenue Code. It therefore withstands scrutiny that 'wages', as a form of tangible property and readily transferable in the medium of dollars (albeit may also be in the form of room and board, bullion, baskets of fruits or vegetables, and the like), itself serves as a precise means of measuring the fair market value of the *quid pro quo* property-in-exchange (i.e., competence, livelihood, money, pay, recompense, remuneration, etc.) from having labored for another person, and is further a proper classification of transferable property. Ergo, what is ever-more financially relevant is that capitalistic portion which yields beyond the *quid pro qu*o event and not merely the value of the fair market exchange in itself.

Further clarifying, is the following, in paraphrasing 26 USC § 83(a):

> "**If**, in connection with the performance of services [e.g., contractually laboring], property [e.g., hourly pay] is transferred to any person [e.g., an employee] other than the person [e.g., one's employer or agent] for whom such services are performed, **the excess of**—
> **(1)** the fair market value [e.g., the determined worth of exchanging (i.e., converting) one's personal capital for financial capital—as acquired through contractually laboring for another] of such property [e.g., hourly pay] (determined without regard to any restriction other than a restriction which by its terms will never lapse) …, **over**
> **(2)** the amount (if any) paid for such property [e.g., that precise value established by that very contract to labor for another person on the premise of receiving payment for them having expended or utilized their own time, skill, ingenuity, knowledge, exertion, effort, creativity, or ability to the sole profit of their employer], **shall be included in the gross income** of the person who performed such services [e.g., contractual labor] in the first taxable year…"

***** It is considerably important to realize that while referencing this statute (i.e., 26 USC § 83(a)), it is not intended to provide resolution on this very subject of individual income taxation all unto its own, serving, rather, as a—telltale—key in unlocking the greater truth that their government negligently conceals from the public; explicitly, this statute aids to encapsulate the underlying mechanics involved in determining what is factually 'gross income' from that which is not.

The controlling sum that sets forth the amount of associative (26 USC, Subtitle C) individual taxes due, as pertinent to SSI, FICA, ACA, and further includes FUTA, is determinable by the lawful scope of Subtitle A of the Internal Revenue Code; for such additional taxes are coupled through formulated percentages, which are respective to the individual federal income tax. See: 26 USC §§ 1, 3402(n)(1),(2). While, the lawful context of the Internal Revenue Code, in its entirety, needs not to explicitly exempt what is otherwise known to be unconstitutionally taxable, as such methods of taxation may only consider what is constitutionally 'taxable income' within its contextual authority and jurisdiction. Furthermore, it is not for the Legislature to preordain the constitutionally of its public laws; that function is reserved to the courts—that is once a dispute or material concern reaches *ripeness*, while refraining *mootness*.

Clarifying explanation on the associative connection between Subtitles A and C of the Internal Revenue Code and on the distinction between wages and income is provided by *Central Illinois Public Service Co. v. United States*, 435 U.S. 21, 24-25, 31-32 (1978):

> "*The income tax issue is not before us in this case. … These withholding statutes are in Subtitle C of the Code. The income tax provisions constitute Subtitle A.*
>
> *The income tax is imposed on taxable income. 26 U.S.C. § 1. Generally, this is gross income minus allowable deductions. 26 U.S.C. § 63(a). Section 61(a) defines as gross income "all income from whatever source derived" including, under § 61(a)(1), "[c]ompensation for services." The withholding tax, in some contrast, is confined to wages, § 3402(a), and § 3401(a) defines as "wages," . . . The two concepts -- income and wages -- obviously are not necessarily the same. Wages usually are income,* **[Footnote 5]** *but many items qualify as income and yet clearly are not wages. Interest, rent, and dividends are ready examples.*
>
> *Decided cases have made the distinction between wages and income and have refused to equate the two in withholding or similar controversies.* [Citations omitted.] *. . . An expansive and sweeping definition of wages, such as was indulged in by the Court of Appeals, 540 F.2d at 302, and is urged by the Government here, is not consistent with the existing withholding system. As noted above, Congress chose simplicity, ease of administration, and confinement to wages as the standard in 1942.* ***This was a standard that was intentionally narrow and precise. It has not been changed by Congress since 1942, although, of course, as is often the case, administrative and other pressures seek to soften and stretch the definition.*** *Because the employer is in a secondary position as to liability for any tax of the employee, it is a matter of obvious concern that, absent further specific congressional action, the employer's obligation to withhold be precise and not speculative.* [Citations omitted.]
> **Footnote 5—***There are exceptions. E.g., 26 U.S.C. § 911(a).*"

(Additionally—as to provide a simplistic example, supposing that as an employee, a skilled machinist is hired to labor 40-hours weekly, while earning $1,500 fortnightly from their employer as they had each privately agreed upon, then that employee when receiving their paycheck every two-weeks from their employer has realized zero excess over the privately contracted fair market value of their personal laboring (be it in a skilled or menial capacity); however, should that same machinist-for-hire receive an additional award, bonus, tip, or the like of say $500, then that employee would have realized an excess over their determinable labor worth of exactly $500—while it is only such latter and similar sums that could ever be appropriately taxable without constitutional apportionment.)

Further on the matter of establishing the cost basis of labor, such is empirically, in-fact determinable by the legally binding contractual arrangements of the parties involved (the respective value for which is largely predicated upon what local economical markets will bear, respective contractual arrangements, and most predominately each individual employee's determined worth, value, training, skill, marketability, or education), such is part and parcel of *consideration* that is so requisite in contract law (e.g., one highly specialized attorney might charge $500 hourly for representation and another less proficient $200—without lending consideration to the associated personal costs incurred while actually performing those services or labor (as is prohibited by 26 USC § 262 (a)); and certainly if one can account for the latter, they can most certainly determine the former.) Still further, the Congress has been provided zero constitutional authority to regulate what is itself impalpable, be it through intrastate contracts, fair market values, private affairs, personal arrangements, or *quid pro quo*.

The principle was thoroughly discussed throughout *Marrita Murphy and Daniel J. Leveille v. Internal Revenue Service and United States of America*, No. 05-5139, D.C. Cir., (2006), **VACATED** in *ibid.*, (2007); however, see also: Justice Scalia **DISSENTING** in *O'Gilvie Minors v. United States*, 519 U.S. 79 (1996):

"*The Government of the United States is a government of limited powers: "Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution."* [Citation omitted.]

The Supreme Court has held the word "incomes" in the Amendment and the phrase "gross income" in § 61(a) of the IRC are coextensive. …the Court added that under the IRC-and, by implication, under the Sixteenth Amendment-the Congress may "tax all gains" or "accessions to wealth." [Citation omitted.]

. . .

Broad though the power granted in the Sixteenth Amendment is, the Supreme Court, as Murphy points out, has long recognized "the principle that a restoration of capital [i]s not income; hence it [falls] outside the definition of 'income' upon which the law impose[s] a tax." [Citations omitted] *(return of capital not income under IRC or Sixteenth Amendment). By analogy, Murphy contends a damage award for personal injuries-including nonphysical injuries-is not income but simply a return of capital-"human capital," as it were.* [Citations omitted.]

According to Murphy, the Supreme Court read the concept of "human capital" into the IRC in Glenshaw Glass. There, in holding that punitive damages for personal injury were "gross income" under the predecessor to § 61, the Court stated:

The long history of … holding personal injury recoveries nontaxable on the theory that they roughly correspond to a return of capital cannot support exemption of punitive damages following injury to property …. Damages for personal injury are by definition compensatory only. Punitive damages, on the other hand, cannot be considered a restoration of capital for taxation purposes. 348 U.S. at 432 n. 8, 75 S.Ct. 473. In Murphy's view, ***the Court thereby made clear that the recovery of compensatory damages for a "personal injury"-of whatever type-is analogous to a "return of capital" and therefore is not income under the IRC or the Sixteenth Amendment.***

. . .

In support of her reading of the caselaw, Murphy contends the IRC, as drafted shortly after "passage of the [Sixteenth] Amendment demonstrates that compensatory damages designed to make a person whole are excluded from the definition of 'income.'" She focuses upon the three sources the Supreme Court quoted in O'Gilvie, 519 U.S. at 84-87, 117 S.Ct. 452, to wit, an Opinion of the Attorney General, a Decision of the Department of the Treasury, and a Report issued by the Ways and Means Committee of the House of Representatives-each of which predates the first version of § 104(a)(2), namely, § 213(b)(6) of the Revenue Act of 1918. See 40 Stat. 1057, 1066 (1919).

In an opinion rendered to the Secretary of the Treasury on the question whether proceeds from an accident insurance policy were income under the IRC as it stood prior to the 1918 Act, the Attorney General stated:

Without affirming that the human body is in a technical sense the "capital" invested in an accident policy, in a broad, natural sense the proceeds of the policy do but substitute, so far as they go, capital which is the source of future periodical income. They merely take the place of capital in human ability which was destroyed by the accident. They are therefore "capital" as distinguished from "income" receipts. 31 Op. Att'y. Gen. 304, 308 (1918).

In a revenue ruling, the Department of the Treasury then reasoned that upon similar principles … an amount received by an individual as the result of a suit or compromise for personal

injuries sustained … through accident is not income [that is] taxable. T.D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918).

. . .

She observes that [citation omitted] *the court concluded upon the basis of the House Report that the "Congress first enacted the personal injury compensation exclusion … **when such payments were considered the return of human capital, and thus not constitutionally taxable 'income' under the 16th amendment."** Id. at 685.*

The Government attacks Murphy's constitutional argument on all fronts. . . . Noting that the power of the Congress to tax income "extends broadly to all economic gains," [citations omitted]*, the Government next maintains that compensatory damages "plainly constitute economic gain, for the taxpayer unquestionably has more money after receiving the damages than she had prior to receipt of the award." . . . In addition, the Government challenges the coherence of Murphy's analogy between a return of "human capital or well-being" and a return of "financial capital," the latter of which it acknowledges does not constitute income under the Sixteenth Amendment.* [Citations omitted.] *. . . The Government then observes that "[b]ecause people do not pay cash or its equivalent to acquire their well-being, they have no basis in it for purposes of measuring a gain (or loss) upon the realization of compensatory damages." Nor is there any corresponding theory of "human depreciation," which would permit "an offsetting deduction for the exhaustion of the taxpayer's physical prowess and mental agility."* [Citation omitted.] *Finally, the Government points to the Ninth Circuit's dictum in Roemer v. Commissioner, 716 F.2d 693 (1983), suggesting that "[s]ince there is no tax basis in a person's health and other personal interests, money received as compensation for an injury to those interests might be considered a realized accession to wealth." Id. at 696 n. 2.*

At the outset, we reject the Government's breathtakingly expansive claim of congressional power under the Sixteenth Amendment upon which it founds the more far-reaching arguments it advances here. The Sixteenth Amendment simply does not authorize the Congress to tax as "incomes" every sort of revenue a taxpayer may receive. As the Supreme Court noted long ago, the "Congress cannot make a thing income which is not so in fact." [Citation omitted.] *Indeed, because the "the power to tax involves the power to destroy,"* [citation omitted]*, it would not be consistent with our constitutional government, and the sanctity of property in our system, merely to rely upon the legislature to decide what constitutes income.*

Fortunately, we need not rely solely upon the wisdom and beneficence of the Congress for, when the Sixteenth Amendment was drafted, the word "incomes" had well understood limits. To be sure, the Supreme Court has broadly construed the phrase "gross income" in the IRC and, by implication, the word "incomes" in the Sixteenth Amendment, but it also has made plain that the power to tax income extends only to "gain[s]" or "accessions to wealth." [Citation omitted.] ***That is why, as noted above, the Supreme Court has held a "return of capital" is not income.*** [Citations omitted.] *The question in this case is not, however, about a return of capital-except insofar as Murphy analogizes human capital to physical or financial capital; the question is whether the compensation she received for her injuries is income.*

To determine whether Murphy's compensation is income under the Sixteenth Amendment, we are instructed by the Supreme Court first to consider whether the taxpayer's award of compensatory damages is "a substitute for [a] normally untaxed personal … quality, good, or 'asset.'" [Citations omitted.] *… Here, if the $70,000 Murphy received was "in lieu of" something "normally untaxed,"* [citation omitted]*, then her compensation is not income under the Sixteenth Amendment; it is neither a "gain" nor an "accession[] to wealth."* [Citation omitted.] *. . . Under this analysis, therefore, the compensation she received in lieu of what she lost cannot be considered income and, hence, it would appear the Sixteenth Amendment does not empower the Congress to tax her award.*

. . .

We concur in Murphy's view, however, that the Attorney General's 1918 opinion and the Treasury Department's ruling of the same year strongly suggest that the term "incomes" as used in the Sixteenth Amendment does not extend to monies received solely in compensation for

a personal injury and unrelated to lost wages or earnings. . . . Because, as we have seen, the term "incomes," as understood in 1913, clearly did not include damages received in compensation for a physical personal injury, we infer that it likewise did not include damages received for a nonphysical injury and unrelated to lost wages or earning capacity.

The IRS itself reached the same conclusion when it first addressed the question, expressly affirming that personal injuries included nonphysical personal injuries:

[T]here is no gain, and therefore no income, derived from the receipt of damages for alienation of affections or defamation of personal character .... If an individual is possessed of a personal right that is not assignable and not susceptible of any appraisal in relation to market values, and thereafter receives either damages or payment in compromise for an invasion of that right, it can not be held that he thereby derives any gain or profit.

[Citations omitted] *(holding "compensation for injury to [plaintiff's] personal reputation for integrity and fair dealing" was not income because it was "an attempt to make the plaintiff whole as before the injury").* ***Note that the Service regarded such compensation not merely as excludable under the IRC, but more fundamentally as not being income at all.***

In sum, every indication is that damages received solely in compensation for a personal injury are not income within the meaning of that term in the Sixteenth Amendment. First, as compensation for the loss of a personal attribute, such as well-being or a good reputation, the damages are not received in lieu of income. Second, the framers of the Sixteenth Amendment would not have understood compensation for a personal injury-including a nonphysical injury-to be income.

Albert Einstein may have been correct that "[t]he hardest thing in the world to understand is the income tax," [citation omitted], *but it is not hard to understand that not all receipts of money are income. Murphy's compensatory award in particular was not received "in lieu of" something normally taxed as income; nor is it within the meaning of the term "incomes" as used in the Sixteenth Amendment.*
Footnote—*In any event, the Government's quarrel with Murphy's analogy, based upon Glenshaw Glass, of "human capital" to financial or physical capital is not persuasive. To be sure, the analogy is incomplete; personal injuries do not entail an adjustment to any basis, nor are human resources, such as reputation, depreciable for tax purposes. But nothing in Murphy's argument implies a need to account for the basis in or to depreciate anything. Her point, rather, is that as with compensation for a harm to one's financial or physical capital, the payment of compensation for the diminution of a personal attribute, such as reputation, is but a restoration of the status quo ante, analogous to a "restoration of capital,"* [citation omitted]; *in neither context does the payment result in a "gain" or "accession[] to wealth,"* [citation omitted]."

And in summary of the above **VACATED** verdict, *Marrita Murphy and Daniel J. Leveille v. Internal Revenue Service and United States of America*, **REHEARING** No. 05-5139, D.C. Cir., (2007):

> "*In Murphy v. IRS, 460 F.3d 79 (2006), we concluded Murphy's award was not exempt from taxation pursuant to § 104(a)(2), id. at 84, but also was not "income" within the meaning of the Sixteenth Amendment, id. at 92, and therefore reversed the decision of the district court. The Government petitioned for rehearing en banc, arguing for the first time that, even if Murphy's award is not income, there is no constitutional impediment to taxing it because a tax on the award is not a direct tax and is imposed uniformly. In view of the importance of the issue thus belatedly raised, the panel sua sponte vacated its judgment and reheard the case. . . . For the foregoing reasons, we conclude (1) Murphy's compensatory award was not received on account of personal physical injuries, and therefore is not exempt from taxation pursuant to § 104(a)(2) of*

the IRC; (2) the award is part of her "gross income," as defined by § 61 of the IRC; and (3) the tax upon the award is an excise and not a direct tax subject to the apportionment requirement of Article I, Section 9 of the Constitution. The tax is uniform throughout the United States and therefore passes constitutional muster. The judgment of the district court is accordingly Affirmed."

And more in *O'Gilvie Minors v. United States*, 519 U.S. 79, 84-86 (1996):

"*We also find the Government's reading more faithful to the history of the statutory provision as well as the basic tax related purpose that the history reveals. That history begins in approximately 1918. At that time, this Court had recently decided several cases based on the principle that a restoration of capital was not income;* ***hence it fell outside the definition of "income" upon which the law imposed a tax.*** *E.g., Doyle v. Mitchell Brothers Co., 247 U.S. 179, 187 (1918); Southern Pacific Co. v. Lowe, 247 U.S. 330, 335 (1918). The Attorney General then advised the Secretary of the Treasury that proceeds of an accident insurance policy should be treated as nontaxable because they primarily "substitute . . . capital which is the source of future periodical income . . . merely tak[ing] the place of capital in human ability which was destroyed by the accident. They are therefore [nontaxable] 'capital' as distinguished from `income' receipts." 31 Op. Atty. Gen. 304, 308 (1918).*

The Treasury Department added that "upon similar principles . . . an amount received by an individual as the result of a suit or compromise for personal injuries sustained by him through accident is not income [that is] taxable. . . ." T. D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918).

...

This history and the approach it reflects suggest there is no strong reason for trying to interpret the statute's language to reach beyond those damages that, making up for a loss, seek to make a victim whole, or, speaking very loosely, "return the victim's personal or financial capital."

We concede that the original provision's language does go beyond what one might expect a purely tax policy related "human capital" rationale to justify. That is because the language excludes from taxation not only those damages that aim to substitute for a victim's physical or personal well being--personal assets that the Government does not tax and would not have taxed had the victim not lost them."

Chapter IV. Prudently Acquisitioning Revenue

§ 4.1. ***Heads of Taxation: Direct and Indirect.*** The historical intent and empirical context of both *direct* and *indirect taxation* empowered to the Legislature by our Forefathers through our Nation's framing are further depicted, *infra*:

Direct taxation, (*viz*, capitation, poll, and land or realty taxes) are federally enforceable, only through state-by-state 'apportionment', under A.I,S.2,C.3 and A.I,S.9,C.4 of the U.S. Constitution as pertaining to the several enumerated powers of taxation granted to the Congress over the several states of the Union by A.I,S.8,C.1, *supra*, explicitly for: (1) paying debts in provision of either the (2) common defense or (3) general welfare of the United States of America.

In *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 563 (1895): "*Mr. Martin said that direct taxation should not be used but in cases of absolute necessity, and then the States would be the best judges of the mode. 5 Elliot (Madison Papers) 451, 453.*"

And further in Pollock, *supra*, at 157 U.S. 429, 566, addressing the intended application of 'direct taxes', it was noted: "*Id. 93. And John Adams, Dawes, Sumner, King, and Sedgwick all agreed that a direct tax would be the last source of revenue resorted to by Congress.*" Reflected upon further throughout 157 U.S. 429, 565-567 and *ibid* at 574:

"*That the original expectation was that the power of direct taxation would be exercised only in extraordinary exigencies…*" And moreover noted at *ibid*, 157 U.S. 429, 564; 158 U.S. 601, 606 (1895); 3 U.S. 171, 180 (1796). See also, Alexander Hamilton's statements within Federalist Papers: No. 36, Para. 16 and No. 79, Para. 1; and John Mill's *Principles of Political Economy* (1885), pg. 556 (**§ 5.—on Income.**); also a position further held by Dr. James McHenry at Maryland's Constitutional Convention Delegates Address the State House of Delegates, November 29, 1787, Para. 17: "*The power given to Congress to lay taxes contains nothing more than is comprehended in the Spirit of the eigth article of the Confederation. …*" And as stated within Article XIII of the *Articles of Confederation* [United States to pay for defense; taxes]: "*All* ***charges of war****, and all other expenses that shall be incurred for the* ***common defense*** *or* ***general welfare****, and* ***allowed by the*** *United States in* ***Congress assembled****, shall be defrayed out of a common treasury, …*" See also, Mr. King, *ibid*, 157 U.S. 429, 566; 2 Elliot 36, in-part: "*the sums for the* ***general welfare and defence*** *should be apportioned.*"

Efficiently elucidated in *Knowlton v. Moore*, 178 U.S. 41, 47 (1900) as: "*… This view of the inheritance and legacy tax conforms to the official definition of indirect taxes, among which inheritance and legacy taxes are classed, which prevails in France at the present day. The definition is as follows: "****Direct taxes bear immediately upon persons, upon the possession and enjoyments of rights;*** *indirect taxes are levied upon the happening of an event or an exchange.*"" See also: *Tyler v. United States*, 281 U.S. 497, 502 (1930).

As expertly deduced by Mr. Albert Gallatin in his work entitled "*Sketch of the Finances of the United States*" (1796), so being excerpted in the eminent *Pollock* case (157 U.S. 429, 569 (1895)), (Mr. Gallatin among many titles served in the 4th-6th Congresses, becoming Party Leader—also being elected into the Senate though immediately lost his seat after being challenged as to his citizenship; is the longest serving Secretary of the Treasury, serving from 1801-1814 as the 4th Treasury Secretary, and is the name-designation of the highest service achievement award available to civil servants working for the Department of the Treasury, titled the "Gallatin Award"):

> "*"The most generally received opinion, however, is that,* ***by direct taxes in the Constitution, those are meant which are raised on the capital or revenue of the people****; by indirect, such as are raised on their expense. …that a fixed interpretation should be generally adopted, it will not be improper to corroborate it by quoting the author from whom the idea seems to have been borrowed."*
>
> *He then quotes from Smith's Wealth of Nations, and continues: "The remarkable coincidence of the clause of the Constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes, an acceptation of the word peculiar, it is believed, to Dr. Smith, leaves little doubt that the framers of the one had the other in view at the time,* ***and that they, as well as he, by direct taxes, meant those paid directly from, and falling immediately on, the revenue****, and, by indirect, those which are paid indirectly out of the revenue by falling immediately upon the expense."* 3 Gallatin's Writings (Adams' ed.) 74, 75." See additionally: the *Pollock* rehearing at 158 U.S. 601, 628 (1895).

As Alexander Hamilton had so stated in his brief for the government concerning *Hylton v. United States*, 3 U.S. 171 (1796); quoted, *supra*, 157 U.S. 429, 572; 158 U.S. 601, 625 (1895) [*ibid*, 7 Hamilton's Works, 332]:

"*The following are presumed to be the only direct taxes.* ***Capitation or poll taxes****. Taxes on lands and buildings.* ***General assessments****, whether on* ***the whole property of individuals****, or on* ***their whole real or personal estate****; all else must of necessity be considered as indirect taxes.*"

Retaining perspective in that the above is with consideration to only the taxable period for which such assessments would be levied and collected; *idem*, *Pollock v. Farmers' Loan & Trust Company*, 158 U.S. 601, 625 (1895) [7 Hamilton's Works, 848]. Otherwise the intent renders itself ambivalent or ambiguous.

In *Hylton v. United States*, 3 U.S. 171, 180-181 (1796) quoting from Dr. Adam Smith's "*Wealth of Nations*" (1776) the crisp distinction and tenets between the prescribed constitutional 'apportionment' of *direct taxes* and 'uniformity' of *indirect taxes* had been provided worthwhile insight:

"*Apportionment is an operation on states, and involves valuations and assessments which are arbitrary and should not be resorted to but in case of necessity. Uniformity is an instant operation on individuals, without the intervention of assessments or any regard to states, and is at once easy, certain, and efficacious. All taxes on expenses or consumption are indirect taxes. …*

Indirect taxes are circuitous modes of reaching the revenue of individuals, who generally live according to their income. *In many cases of this nature the individual may be said to tax himself. I shall* ***close the discourse with reading a passage or two from Smith's Wealth of Nations****.*

"The impossibility of ***taxing people in proportion to their revenue by any capitation*** *seems to have given occasion to the invention of taxes upon consumable commodities; the state, not knowing how* ***to tax directly and proportionally the revenue of its subjects****, endeavors to tax it indirectly by taxing their expense, which it is supposed in most cases will be neatly in proportion to their revenue. Their expense is taxed by taxing the consumable commodities upon which it is laid out."* Vol. 3, p. 331.

*"****Consumable commodities, whether necessaries or luxuries****, may be taxed in two different ways: the consumer may either pay an annual sum on account of his using or consuming goods of a certain kind or the goods may be taxed while they remain in the hands of the dealer, and before they are delivered to the consumer.*

The consumable goods, which last a considerable time before they are consumed altogether, are most properly taxed in the one way, those of which the consumption is immediate or more speedy in the other; the coach tax and plate tax are examples of the former method of imposing; the greater part of the other duties of excise and customs of the latter." Vol. 3, p. 341."

Objections to the adoption of the U.S. Constitution as raised by the Anti-Federalists, written by Samuel Bryan (moniker: Centinel), after the Pennsylvania Convention, entitled "*The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents*" [December 12, 1787], these contentions of which were not objected to nor denied by the Federalists within any of their myriad of rebuttals or exchanges, stated in-part:

"*The power of* ***direct taxation applies to every individual****, as congress, under this government, is expressly vested with the authority of laying a capitation or poll tax upon every person to any amount. This is a tax that, however oppressive in its nature, and*

unequal in its operation, is certain as to its produce and simple in its collection; it cannot be evaded like the objects of imposts or excise, and will be paid, ***because all that a man hath will he give for his head.*** *…*

The power of ***direct taxation will further apply to every individual, as congress may tax land, cattle, trades, occupations, etc.*** *in any amount, and every object of internal taxation is of that nature, that however oppressive, the people will have but this alternative except to pay the tax, or let their property be taken, for all resistance will be in vain. The standing army and select militia would enforce the collection.*"

See additionally: *Elliot's Debates, Volume 1*, Luther Martin's Letter on the Federal Convention of 1787, Baltimore, MD, January 27, 1788, Para. 52:

"*… By the power to lay excises, a power very odious in its nature, since it authorizes officers to go into your houses, your kitchens, your cellars, and to examine into your private concerns, the Congress may impose duties on every article of use of consumption, on the food that we eat, on the liquors that we drink, on the clothes that we wear, the glass which enlightens our houses, or the hearths necessary for our warmth and comfort. By the power to lay and collect taxes, they may proceed to direct taxation on every individual, either by a capitation tax on their heads, or an assessment on their property. By this part of the section, therefore, the government has power to lay what duties they please on goods imported; to lay what duties they please, afterwards, on whatever we use or consume; to impose stamp duties to what amount they please, and in whatever case they please; afterwards, to impose on the people direct taxes, by capitation tax, or by assessment, to what amount they choose, and thus to sluice them at every vein as long as they have a drop of blood, without any control, limitation, or restraint; while all the officers for collecting these taxes, stamp duties, imposts, and excises, are to be appointed by the general government, under its directions, not accountable to the states; nor is there even a security that they shall be citizens of the respective states in which they are to exercise their offices. At the same time, the construction of every law imposing any and all these taxes and duties, and directing the collection of them, and every question arising thereon, and on the conduct of the officers appointed to execute these laws, and to collect these taxes and duties, so various in their kinds, is taken away from the courts of justice of the different states, and confined to the courts of the general government, there to be heard and determined by judges holding their offices under the appointment, not of the states, but of the general government.*"

As poignantly synthesized by economist Dr. Adam Smith (founder of *free market economics*, i.e., free trade, laissez-faire), within Book Five, Chapter II, Article III – "Taxes upon the Wages of Labour" of his five-part erudite works entitled "*An Inquiry into the Nature And Causes of the Wealth of Nations*" (1776):

"***The wages of the inferior classes of work men,*** *… While the demand for labour and the price of provisions, therefore, remain the same,* ***a direct tax upon the wages of labour*** *can have no other effect than to raise them somewhat higher than the tax. …* ***A direct tax upon the wages of labour****, therefore, though the labourer might perhaps pay it out of his hand, could not properly be said to be even advanced by him; …*"

And *ibidem*, within Book Five, Chapter II, Article IV – "Capitation Taxes": "***Capitation taxes****, so far as they are levied upon the lower ranks of people,* ***are direct taxes upon the wages of labour****, and are attended with all the inconveniences of such taxes."*

Mr. Justice Sutherland in delivering the opinion of the Court in *Macallan Co. v. Massachusetts*, 279 U.S. 620, 626 (1929), referenced *Brown v. Maryland*, 25 U.S. 419, 444 (1827)—wherein it was argued that the "*tax was not upon the article, but upon the person*":

"*Answering the contention that a state may tax an occupation, and that this tax was nothing more, Chief Justice Marshall said:*

'It is impossible to conceal from ourselves that this is varying the form without varying the substance. It is treating a prohibition which is general as if it were confined to a particular mode of doing the forbidden thing. All must perceive that a tax on the sale of an article imported only for sale is a tax on the article itself. It is true the state may tax occupations generally, but this tax must be paid by those who employ the individual or is a tax on his business. The lawyer, the physician, or the mechanic must either charge more on the article in which he deals or the thing itself is taxed through his person. This the state has a right to do because no constitutional prohibition extends to it. So a tax on the occupation of an importer is in like manner a tax on importation. It must add to the price of the article and be paid by the consumer or by the importer himself in like manner as a direct duty on the article itself would be made. This the state has not a right to do, because it is prohibited by the Constitution."
***** The above is also quoted in-part "*in words that have been repeatedly approved in subsequent decisions of this Court*" as the **DISSENTING** opinion of Mr. Justice Sutherland in *Bromley v. McCaughn*, 280 U.S. 124, 140 (1929).

Justice Sutherland stated further, *ibid*, at 625-626, 629, 631: "*As it many times has been decided, neither state courts nor legislatures, by giving the tax a particular name or by using some form of words, can take away our duty to consider its nature and effect. Choctaw & Gulf R. Co. v. Harrison, 235 U.S. 292, 235 U.S. 298; Galveston, Harrisburg, etc., Ry. Co. v. Texas, 210 U.S. 217, 210 U.S. 227. … If, by varying the form -- that is to say, if, by using one name for a tax instead of another, or imposing a tax in terms upon one subject when another is in reality aimed at -- the substance and effect of the imposition may be changed, constitutional limitations upon powers of taxation would come to naught. . . . These constitute special and compelling reasons why courts, in scrutinizing taxing acts like that here involved, should be acute to distinguish between an exaction which, in substance and reality, is what it pretends to be and a scheme to lay a tax upon a nontaxable subject by a deceptive use of words.. . . A liberal application of the foregoing principles, which find confirmation especially in the later decisions of this Court, is essential to the preservation of the constitutional limitations imposed upon the taxing power of the states. Let it once be conceded that such limitations may be evaded by the adoption of a delusive name to characterize the tax or form of words to describe it, and the destruction of the vitality of these necessary safeguards will soon follow.*"

Also a point specifically addressed in *Macallan Co. v. Massachusetts*, 279 U.S. 620, 629 (1929): "*The fact that a tax ostensibly laid upon a taxable subject is to be measured by the value of a nontaxable subject at once suggests the probability that it was the latter, rather than the former, that the lawmaker sought to reach. If inquiry discloses persuasive grounds for the conclusion that such is the real purpose and effect of the legislation, the tax cannot be upheld without subverting the well established rule that ". . . what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result. . . . Constitutional provisions, whether operating by way of grant or limitation, are to be enforced according to their letter and spirit, and cannot be evaded by any legislation which, though not in terms trespassing on the letter, yet in substance and effect destroy the grant or limitation." Fairbank v. United States, 181 U.S. 283, 181 U.S. 294, 181 U.S. 30. . . . It necessarily follows that the legislature may not, by an artful use of words, deprive this Court of its authority to look beyond the words to the real legislative purpose. And the power and the duty of the court to do so is of great practical importance.*"

In "*Reflections on the Formation and Distribution of Wealth*" (1766), authored by: Anne-Robert-Jacques Turgot, it was clarified that contractual competitiveness amongst proletariats—the ignoble—do not realize such 'gains' nor 'profits', but only what is necessary to subsist:

"***§6.*** *The wages of the workman is limited by the competition among those who work for a subsistence. He only gains a livelihood.*

The mere workman, who depends only on his lands and his industry, has nothing but such part of his labour as he is able to dispose of to others. He sells it at a cheaper or a dearer price; but this high or low price does not depend on himself alone; it results from the agreement he has made with the person who employs him.

The latter pays him as little as he can help, and as he has the choice from among a great number of workmen, he prefers the person who works cheapest. The workmen are therefore obliged to lower their price in opposition to each other. In every species of labour it must, and, in effect, it does happen, that the wages of the workman is confined merely to what is necessary to procure him a subsistence."

In *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 558-559 (1895), the historical appreciation for such writings as by the French baron, comptroller general, and economist Anne-Robert-Jacques Turgot and Adam Smith, LL.D., was acknowledged:

"*The Federalist demonstrates the value attached by Hamilton, Madison, and Jay to historical experience, and shows that they had made a careful study of many forms of government. Many of the framers were particularly versed in the literature of the period, Franklin, Wilson, and Hamilton, for example.*

Turgot had published in 1764 his work on taxation, and in 1766 his essay on "The Formation and Distribution of Wealth," while Adam Smith's "Wealth of Nations" was published in 1776. …" Also, Thomas Jefferson kept a bust of Turgot in his Monticello home and Dr. Smith's great work was well influenced by Turgot.

"*Black's Law Dictionary 3rd Edition*", (1933) defines the following relative legal terms as:

i. CAPITATION TAX.
[1] "A poll tax. An imposition levied upon the person simply, without any reference to his property, real or personal, or to any business in which he may be engaged, or to any employment which he may follow."
[2] "A tax or imposition raised on each person in consideration of his labor, industry, office, rank, etc."
[*] "It is a very ancient kind of tribute and answers to what the Latins called "tributum," by which taxes on persons are distinguished from taxes on merchandise called "vectigalia." Wharton."

ii. PERSONAL TAX.
"[E]ither a tax imposed on the person without reference to property, as a capitation or poll tax, or a tax imposed on personal property, as distinguished from one laid on real property."

iii. POLL-TAX.
"A capitation tax; a tax of a specific sum levied upon each person within the jurisdiction of the taxing power and within a certain class (as, all males of a certain age, etc.) without reference to his property or lack of it."

§ 4.2. ***The Illegitimacy of Legitimizing Income Taxation upon Capital.*** The *status quo* misapplication of the Internal Revenue Code (coupled along with its hidden taxes: FICA, PPACA, SSI, etc.), consistently—through willfully blatant fraud—seeks to *criminally convert* $2.3-trillion from individual "taxpayers" into the U.S. Treasury, annually. While, present day economists largely agree that the federal government might reasonably

function on a mere $400 to $600-billion per annum; thusly, it is to be realized that the tenth enumerated "FACT" within our *Declaration of Independence*—leading to our American Revolution—now exists in eerie semblance to the sprawl of present day federal bureaucracies (e.g., DOJ, DOD, EPA, FAA, FCC, FDA, DHS, IRS, USDA, *et al*), alleging that: "*He* [King George III] *has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.*"

Further enlightenment on matters of capital, labor, property, sustenance, and various classifications of taxation is provided by the below *persuasive authorities*:

In John Locke's *Second Treatise of Civil Government*, (Hollis ed., 1689):

i. Book I, Of Government, "*Chap. IV. Of Adam's Title to Sovereignty by Donation, Gen. i. 28*":

"***Sec. 45.*** *… God sets him to work for his living, and seems rather to give him a spade into his hand, to subdue the earth, than a sceptre to rule over its inhabitants. In the sweat of thy face thou shalt eat thy bread, says God to him, ver. 19. This was unavoidable, may it perhaps be answered, because he was yet without subjects, and had nobody to work for him; but afterwards, living as he did above 900 years, he might have people enough, whom he might command, to work for him; no, says God, not only whilst thou art without other help, save thy wife, but as long as thou livest, shalt thou live by thy labour, In the sweat of thy face, shalt thou eat thy bread, till thou return unto the ground, for out of it wast thou taken, for dust thou art, and unto dust shalt thou return, v. 19. It will perhaps be answered again in favour of our author, that these words are not spoken personally to Adam, but in him, as their representative, to all mankind, this being a curse upon mankind, because of the fall.*"

ii. Book II, Of Civil-Government, "*Chap. V. Of Property*":

"**Sec.26.** *God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being. And tho' all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, …yet being given for the use of men, there must of necessity be a means to appropriate them some way or other, before they can be of any use, or at all beneficial to any particular man. …*

Sec.27. *Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. ...for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.*

Sec.28. *He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? … That labour put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say, he had no right to those acorns or apples, he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged*

to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use. And the taking of this or that part, does not depend on the express consent of all the commoners. Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my property, without the assignation or consent of any body. The labour that was mine, removing them out of that common state they were in, hath fixed my property in them.

Sec. 29. *… Though the water running in the fountain be every one's, yet who can doubt, but that in the pitcher is his only who drew it out? His labour hath taken it out of the hands of nature, where it was common, and belonged equally to all her children, and hath thereby appropriated it to himself.*

Sec. 32. *But the chief matter of property being now not the fruits of the earth, and the beasts that subsist on it, but the earth itself; as that which takes in and carries with it all the rest; I think it is plain, that property in that too is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, inclose it from the common. Nor will it invalidate his right, to say every body else has an equal title to it; and therefore he cannot appropriate, he cannot inclose, without the consent of all his fellow-commoners, all mankind. God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, i. e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.*

Sec. 44. *From all which it is evident, that though the things of nature are given in common, yet man, by being master of himself, and proprietor of his own person, and the actions or labour of it, had still in himself the great foundation of property; and that, which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniencies of life, was perfectly his own, and did not belong in common to others.*

Sec. 45. *Thus labour, in the beginning, gave a right of property, wherever any one was pleased to employ it upon what was common, which remained a long while the far greater part, and is yet more than mankind makes use of.*

Sec. 46. *The greatest part of things really useful to the life of man, and such as the necessity of subsisting made the first commoners of the world look after, as it doth the Americans now, are generally things of short duration; such as, if they are not consumed by use, will decay and perish of themselves: gold, silver and diamonds, are things that fancy or agreement hath put the value on, more than real use, and the necessary support of life. Now of those good things which nature hath provided in common, every one had a right (as hath been said) to as much as he could use, and property in all that he could effect with his labour; all that his industry could extend to, to alter from the state nature had put it in, was his.*

Sec. 47. *And thus came in the use of money, some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life.*

Sec. 50. *But since gold and silver, being little useful to the life of man in proportion to food, raiment, and carriage, has its value only from the consent of men, whereof labour yet makes, in great part, the measure, it is plain, that men have agreed to a disproportionate and unequal possession of the earth, they having, by a tacit and voluntary consent, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor.*

Sec. 51. *And thus, I think, it is very easy to conceive, without any difficulty, how labour could at first begin a title of property in the common things of nature, and how the spending it upon our uses bounded it. So that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of.*"

British political economist (and businessman) David Ricardo, and the formulator of the *law of comparative advantages*—as initially conceptualized by Dr. Adam Smith—had written on the subject-matter of labor and wages within his highly valued work, *On the Principles of Political Economy and Taxation* (1817):

"**CHAPTER V, ON WAGES** [p. 52]

LABOUR, like all other things which are purchased and sold, and which may be increased or diminished in quantity, has its natural and its market price. The natural price of labour is that price which is necessary to enable the labourers, one with another, to subsist and to perpetuate their race, without either increase or diminution.

The power of the labourer to support himself, and the family which may be necessary to keep up the number of labourers, does not depend on the quantity of money which he may receive for wages, but on the quantity of food, necessaries, and conveniences become essential to him from habit which that money will purchase. The natural price of labour, therefore, depends on the price of the food, necessaries, and conveniences required for the support of the labourer and his family. With a rise in the price of food and necessaries, the natural price of labour will rise; with the fall in their price, the natural price of labour will fall. . . . [p. 53]

The market price of labour is the price which is really paid for it, from the natural operation of the proportion of the supply to the demand; labour is dear when it is scarce and cheap when it is plentiful. However much the market price of labour may deviate from its natural price, it has, like commodities, a tendency to conform to it.

It is when the market price of labour exceeds its natural price that the condition of the labourer is flourishing and happy, that he has it in his power to command a greater proportion of the necessaries and enjoyments of life, and therefore to rear a healthy and numerous family.

When, however, by the encouragement which high wages give to the increase of population, the number of labourers is increased, wages again fall to their natural price, and indeed from a reaction sometimes fall below it.

When the market price of labour is below its natural price, the condition of the labourers is most wretched; then poverty deprives them of those comforts which custom renders absolute necessaries. It is only after their privations have reduced their number, or the demand for labour has increased, that the market price of labour will rise to its natural price, and that the labourer will have the moderate comforts which the natural rate of wages will afford. . . .

CHAPTER XVI, TAXES ON WAGES [p. 140]

TAXES on wages will raise wages, and therefore will diminish the rate of the profits of stock. We have already seen that a tax on necessaries will raise their prices, and will be followed by a rise of wages. The only difference between a tax on necessaries and a tax on wages is, that the former will necessarily be accompanied by a rise in the price of

necessaries, but the latter will not; towards a tax on wages, consequently, neither the stockholder, the landlord, nor any other class but the employers of labour will contribute. A tax on wages is wholly a tax on profits; a tax on necessaries is partly a tax on profits and partly a tax on rich consumers. The ultimate effects which will result from such taxes, then, are precisely the same as those which result from a direct tax on profits. . . ."

Karl Marx, made amongst many points within his *Economic & Philosophic Manuscripts* (1844) to clarify that labor, including its objectives: capital and wages, are but various forms of private property, to wit, are necessary for the sustaining of humanity; and that in the process of laboring, the worker becomes effectively alienated. Furthermore, that the *gains and profits of capital* are altogether different from the *wages of labor*:

"*… The capitalist can live longer without the worker than can the worker without the capitalist. … Besides, the landowner and the capitalist can make use of industrial advantages to augment their revenues; the worker has neither rent nor interest on capital to supplement his industrial income. . . . In general we should observe that in those cases where worker and capitalist equally suffer, the worker suffers in his very existence, the capitalist in the profit on his dead mammon* [i.e., wealth and possessions]*. The worker has to struggle not only for his physical means of subsistence; he has to struggle to get work, i.e., the possibility, the means, to perform his activity. . . . Let us put ourselves now wholly at the standpoint of the political economist, and follow him in comparing the theoretical and practical claims of the workers. He tells us that originally and in theory the whole product of labour belongs to the worker. But at the same time he tells us that in actual fact what the worker gets is the smallest and utterly indispensable part of the product–as much, only, as is necessary for his existence, not as a human being, but as a worker, and for the propagation, not of humanity, but of the slave class of workers. The political economist tells us that everything is bought with labour and that capital is nothing but accumulated labour; but at the same time he tells us that the worker, far from being able to buy everything, must sell himself and his humanity. . . . Whilst according to the political economists … labour is man's active possession, according to this same political economy the landowner and the capitalist, who qua landowner and capitalist are merely privileged and idle gods, are everywhere superior to the worker and lay down the law to him. . . . In theory, rent of land and profit on capital are deductions suffered by wages. In actual fact, however, wages are a deduction which land and capital allow to go to the worker, a concession from the product of labour to the workers, to labour. . . . The profit or gain of capital is altogether different from the wages of labour. . . . The capitalist thus makes a profit, first, on the wages, and secondly on the raw materials advanced by him. . . . "To hire out one's labour is to begin one's enslavement. To hire out the materials of labour is to establish one's freedom.... Labour is man; the materials, on the other hand, contain nothing human."* (*Pecqueur, Théorie sociale*, etc.) *. . . "… Everyone is free to exchange what belongs to him as he thinks fit, without considering anything other than his own interest as an individual"* (*op. cit.* p. 413.) *. . . But just as nature provides labor with [the] means of life in the sense that labor cannot live without objects on which to operate, on the other hand, it also provides the means of life in the more restricted sense, i.e., the means for the physical subsistence of the worker himself. . . . Thus the more the worker by his labor appropriates the external world, sensuous nature, the more he deprives himself of the means of life in two respects: first, in that the sensuous external world more and more ceases to be an object belonging to his labor–to be his labor's means of life; and, second, in that it more and more ceases to be a means of life in the immediate sense, means for the physical subsistence of the worker. In both respects, therefore, the worker becomes a servant of his object, first, in that he receives an object of labor, i.e., in that he receives work, and, secondly, in that he receives means of subsistence. This enables him to exist, first as a worker; and second, as a physical subject. The height of this servitude is that it is only as a worker that he can maintain himself as a physical*

subject and that it is only as a physical subject that he is a worker. . . . We also understand, therefore, that wages and private property are identical. Indeed, where the product, as the object of labor, pays for labor itself, there the wage is but a necessary consequence of labor's estrangement. Likewise, in the wage of labor, labor does not appear as an end in itself but as the servant of the wage. . . . For when one speaks of private property, one thinks of dealing with something external to man. When one speaks of labor, one is directly dealing with man himself. . . . But the worker has the misfortune to be a living capital, and therefore an indigent capital, one which loses its interest, and hence its livelihood, every moment it is not working. . . . The wages of labour have thus exactly the same significance as the maintenance and servicing of any other productive instrument, or as the consumption of capital in general, required for its reproduction with interest, like the oil which is applied to wheels to keep them turning. . . . The subjective essence of private property–private property as activity for itself, as subject, as person-is labour. It is therefore evident that only the political economy which acknowledged labour as its principle–Adam Smith–and which therefore no longer looked upon private property as a mere condition external to man … and on the other hand, as a force which has quickened and glorified the energy and development of modern industry and made it a power in the realm of consciousness. . . . Just as landed property is the first form of private property, with industry at first confronting it historically merely as a special kind of property-or, rather, as landed property's liberated slave-so this process repeats itself in the scientific analysis of the subjective essence of private property, labour. Labour appears at first only as agricultural labour, but then asserts itself as labour in general."

***** See chapters: "Wages of Labour", "Profit of Capital", "Estranged Labour", "Antithesis of Capital and Labour", and "Private Property and Labour"

And addressed further in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 393-394, 399 (1937):

"*In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression.* [Citation omitted.]

The point that has been strongly stressed that adult employees should be deemed competent to make their own contracts was decisively met nearly forty years ago in Holden v. Hardy, supra, where we pointed out the inequality in the footing of the parties. We said (Id. 169 U. S. 397):

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases, self-interest is often an unsafe guide, and the legislature may properly interpose its authority."

And we added that the fact "that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself."

"The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer."

. . .

There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power, and are thus relatively defenceless against the denial of a living wage, is not only detrimental to their health and wellbeing, but casts a direct burden for their support upon the community. What these workers lose in wages, the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved."

The fundaments of contracting was comprehensively addressed concerning the earlier Minimum Wage Act of Sept.19, 1918 within the District of Columbia in *Adkins v. Children's Hosp.*, 261 U.S. 525, 544-546, 548-551, 554-555, 558-559, 561 (1923) **OVERRULED** in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937):

"*This Court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt. But if, by clear and indubitable demonstration, a statute be opposed to the Constitution, we have no choice but to say so. The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority, and, if it conflict with the Constitution, must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power -- that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case, there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law.*

The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause, is settled by the decisions of this Court and is no longer open to question. [Citations omitted.] *Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining.*

In Adair v. United States, supra, Mr. Justice Harlan (pp. 208 U. S. 174, 208 U. S. 175), speaking for the Court, said:

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. . . . ***In all such particulars, the employer and employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.***"

In Coppage v. Kansas, supra, (p. 236 U. S. 14), this Court, speaking through Mr. Justice Pitney, said: [Full quotation provided *infra*.]

"An interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary unless it be supportable as a reasonable exercise of the police power of the State."

There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule, and restraint the exception, and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances.
. . .
That this constituted the basis of the decision is emphasized by the subsequent decision in Lochner v. New York, 198 U. S. 45, reviewing a state statute which restricted the employment of all persons in bakeries to ten hours in anyone day. The Court referred to Holden v. Hardy, supra, and, declaring it to be inapplicable, held the statute unconstitutional as an unreasonable, unnecessary and arbitrary interference with the liberty of contract, and therefore void under the Constitution.

Mr. Justice Peckham, speaking for the Court (p. 198 U. S. 56), said:

"It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise, the Fourteenth Amendment would have no efficacy, and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext -- become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint."

And again (pp. 198 U. S. 57-58):

"It is a question of which of two powers or rights shall prevail -- the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor."

Coming then directly to the statute (p. 198 U. S. 58), the Court said:

"We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, sui juris, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go."

And, after pointing out the unreasonable range to which the principle of the statute might be extended, the Court said (p. 198 U. S. 60):

"It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature."

. . .

The Court, speaking through the Chief Justice, pointed out that regarding "the private right and private interest, as contradistinguished from the public interest, the power exists between the parties, the employers and employees to agree as to a standard of wages free from legislative interference," but that this did not affect the power to deal with the matter with a view to protect the public right, and then said (p. 243 U. S. 353):

"And this emphasizes that there is no question here of purely private right since the law is concerned only with those who are engaged in a business charged with a public interest where the subject dealt with as to all the parties is one involved in that business and which we have seen comes under the control of the right to regulate to the extent that the power to do so is appropriate or relevant to the business regulated."

. . .

This Court has been careful, in every case where the question has been raised, to place its decision upon this limited authority of the legislature to regulate hours of labor and to disclaim any purpose to uphold the legislation as fixing wages, thus recognizing an essential difference between the two. It seems plain that these decisions afford no real support for any form of law establishing minimum wages.

If now, in the light furnished by the foregoing exceptions to the general rule forbidding legislative interference with freedom of contract… It forbids two parties having lawful capacity -- under penalties as to the employer -- to freely contract with one another in respect of the price for which one shall render service to the other in a purely private employment where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement and the other to dispense with the services of a desirable employee.

. . .

The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money. to insure her subsistence, health and morals. ***The ethical right of every worker, man or woman, to a living wage may be conceded.*** *… The moral requirement implicit in every contract of employment, viz., that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored. The necessities of the employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer, by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it.* ***In principle, there can be no difference between the case of selling labor and the case of selling goods.*** *If one goes to the butcher, the baker or grocer to buy food, he is morally entitled to obtain the worth of his money, but he is not entitled to more. If what he gets is worth what he pays, he is not justified in demanding more simply because he needs more, and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support*

of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. ***A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable.*** *But a statute which prescribes payment without regard to any of these things and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States.*

. . .

A wrong decision does not end with itself: it is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other. *It has been said that legislation of the kind now under review is required in the interest of social justice, for whose ends freedom of contract may lawfully be subjected to restraint. The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable, but may be made to move, within limits not well defined, with changing need and circumstance. Any attempt to fix a rigid boundary would be unwise, as well as futile. But, nevertheless, there are limits to the power, and when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority to so declare. To sustain the individual freedom of action contemplated by the Constitution is not to strike down the common good, but to exalt it, for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members.*"

And more from *ibid*, 261 U.S. 525, 557-558, 561 (1923) as pertinent to further burdening employers, financially, and on the potential for such laws to also negatively impact employees:

"*The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum not only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving him, of course, the privilege of abandoning his business as an alternative for going on at a loss. Within the limits of the minimum sum, he is precluded, under penalty of fine and imprisonment, from adjusting compensation to the differing merits of his employees. It compels him to pay at least the sum fixed in any event, because the employee needs it, but requires no service of equivalent value from the employee. It therefore undertakes to solve but one-half of the problem. The other half is the establishment of a corresponding standard of efficiency, and this forms no part of the policy of the legislation, although in practice the former half without the latter must lead to ultimate failure, in accordance with the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply. The law is not confined to the great and powerful employers, but embraces those whose bargaining power may be as weak as that of the employee. It takes no account of periods of stress and business depression, of crippling losses, which may leave the employer himself without adequate means of livelihood. To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole.*

The feature of this statute which, perhaps more than any other, ***puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and***

upon a basis having no causal connection with his business, or the contract or the work the employee engages to do.

. . .

If, for example, in the opinion of future lawmakers, wages in the building trades shall become so high as to preclude people of ordinary means from building and owning homes, an authority which sustains the minimum wage will be invoked to support a maximum wage for building laborers and artisans, and the same argument which has been here urged to strip the employer of his constitutional liberty of contract in one direction will be utilized to strip the employee of his constitutional liberty of contract in the opposite direction. A wrong decision does not end with itself: it is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other."

And discussing the negative implications of directly taxing employee recompense in *Adkins v. Children's Hosp.*, 261 U.S. 525, 555-557 (1923): "*The standard furnished by the statute for the guidance of the board is so vague as to be impossible of practical application with any reasonable degree of accuracy. What is sufficient to supply the necessary cost of living for a woman worker and maintain her in good health and protect her morals is obviously not a precise or unvarying sum -- not even approximately so.* ***The amount will depend upon a variety of circumstances: the individual temperament, habits of thrift, care, ability to buy necessaries intelligently, and whether the woman live alone or with her family.*** *To those who practice economy, a given sum will afford comfort, while to those of contrary habit the same sum will be wholly inadequate. The cooperative economics of the family group are not taken into account though they constitute an important consideration in estimating the cost of living, for it is obvious that the individual expense will be less in the case of a member of a family than in the case of one living alone. The relation between earnings and morals is not capable of standardization. It cannot be shown that well paid women safeguard their morals more carefully than those who are poorly paid. Morality rests upon other considerations than wages, and there is, certainly, no such prevalent connection between the two as to justify a broad attempt to adjust the latter with reference to the former. As a means of safeguarding morals the attempted classification in our opinion, is without reasonable basis. No distinction can be made between women who work for others and those who do not; nor is there ground for distinction between women and men, for, certainly, if women require a minimum wage to preserve their morals men require it to preserve their honesty.* ***For these reasons, and others which might be stated, the inquiry in respect of the necessary cost of living and of the income necessary to preserve health and morals, presents an individual, and not a composite, question, and must be answered for each individual considered by herself, and not by a general formula prescribed by a statutory bureau.*** *. . . The board probably found it impossible to follow the indefinite standard of the statute, and brought other and different factors into the problem, and this goes far in the direction of demonstrating the fatal uncertainty of the act, an infirmity which, in our opinion, plainly exists.*"

Karl Marx's whitepaper (edited by Friedrich Engels) entitled: *Wage Labour and Capital* (1847), therein synthesizes that there is a clear-cut distinction between the requisite and freely exchangeable labor-power of wageworkers and the profits of the capitalist; while also crystallizing the contrasts between slaves, serfs, proletariats, and the bourgeois, *viz.*:

"*Consequently, labour-power is a commodity which its possessor, the wage-worker, sells to the capitalist. Why does he sell it? It is in order to live. . . . And this life activity he sells to another person in order to secure the necessary means of life. His life-activity, therefore, is but a means of securing his own existence. He works that he may keep alive. He does not count the labour itself as a part of his life; it is rather a sacrifice of his life. … What he produces for himself is wages . . . which enable him to sit down at a table, to take his seat in the tavern, and to lie down in a bed. . . . The existence of a class which possesses nothing but the ability to work is a necessary presupposition of capital. . . . The labourer receives means of subsistence in exchange for his labour-*

power; the capitalist receives, in exchange for his means of subsistence, labour, the productive activity of the labourer… But it is just this noble reproductive power that the labourer surrenders to the capitalist in exchange for means of subsistence received. Consequently, he has lost it for himself. . . . Let us take an example. For one shilling a labourer works all day long in the fields of a farmer, to whom he thus secures a return of two shillings. The farmer not only receives the replaced value which he has given to the day labourer, he has doubled it. Therefore, he has consumed the one shilling that he gave to the day labourer in a fruitful, productive manner. For the one shilling he has bought the labour-power of the day-labourer, which creates products of the soil of twice the value, and out of one shilling makes two. The day-labourer, on the contrary, receives in the place of his productive force, whose results he has just surrendered to the farmer, one shilling, which he exchanges for means of subsistence, which he consumes more or less quickly. … Capital therefore presupposes wage-labour; wage-labour presupposes capital. They condition each other; each brings the other into existence. . . . Wages are determined above all by their relations to the gain, the profit, of the capitalist. …"
***** See chapters: "What are Wages?", "By what are wages determined?", "The Nature and Growth of Capital", "Relation of Wage-Labour to Capital", and "The Interests of Capital and Wage-Labour are diametrically opposed"

Timeless erudition on this very subject-matter has been prudently realized within Frédéric Bastiat's, *The Law* (1850):

"*Existence, faculties, assimilation—in other words, personality, liberty, property—this is man. It is of these three things that it may be said, apart from all demagogue subtlety, that they are anterior and superior to all human legislation. . . . Man can only derive life and enjoyment from a perpetual search and appropriation; that is, from a perpetual application of his faculties to objects, or from labor. This is the origin of property. But yet he may live and enjoy, by seizing and appropriating the productions of the faculties of his fellow men. This is the origin of plunder. Now, labor being in itself a pain, and man being naturally inclined to avoid pain, it follows, and history proves it, that wherever plunder is less burdensome than labor, it prevails; and neither religion nor morality can, in this case, prevent it from prevailing. When does plunder cease, then? When it becomes more burdensome and more dangerous than labor. It is very evident that the proper aim of law is to oppose the powerful obstacle of collective force to this fatal tendency; that all its measures should be in favor of property, and against plunder. But the law is made, generally, by one man, or by one class of men. And as law cannot exist without the sanction and the support of a preponderating force, it must finally place this force in the hands of those who legislate. This inevitable phenomenon, combined with the fatal tendency which, we have said, exists in the heart of man, explains the almost universal perversion of law. It is easy to conceive that, instead of being a check upon injustice, it becomes its most invincible instrument. It is easy to conceive that, according to the power of the legislator, it destroys for its own profit, and in different degrees, amongst the rest of the community, personal independence by slavery, liberty by oppression, and property by plunder. It is in the nature of men to rise against the injustice of which they are the victims. When, therefore, plunder is organized by law, for the profit of those who perpetrate it, all the plundered classes tend, either by peaceful or revolutionary means, to enter in some way into the manufacturing of laws. These classes, according to the degree of enlightenment at which they have arrived, may propose to themselves two very different ends, when they thus attempt the attainment of their political rights; either they may wish to put an end to lawful plunder, or they may desire to take part in it. . . . — as if it was necessary, before the reign of justice arrives, that all should undergo a cruel retribution, — some for their iniquity and some for their ignorance. It would be impossible, therefore, to introduce into society a greater change and a greater evil than this — the conversion of the law into an instrument of plunder. What would be the consequences of such a perversion? It would require volumes to describe them all. We must content ourselves with pointing*

out the most striking. In the first place, it would efface from everybody's conscience the distinction between justice and injustice. No society can exist unless the laws are respected to a certain degree, but the safest way to make them respected is to make them respectable. When law and morality are in contradiction to each other, the citizen finds himself in the cruel alternative of either losing his moral sense, or of losing his respect for the law — two evils of equal magnitude, between which it would be difficult to choose. It is so much in the nature of law to support justice, that in the minds of the masses they are one and the same. There is in all of us a strong disposition to regard what is lawful as legitimate, so much so that many falsely derive all justice from law. It is sufficient, then, for the law to order and sanction plunder, that it may appear to many consciences just and sacred. Slavery, protection, and monopoly find defenders, not only in those who profit by them, but in those who suffer by them. . . . But if the fatal principle should come to be introduced, that, under pretence of organization, regulation, protection, or encouragement, the law may take from one party in order to give to another, help itself to the wealth acquired by all the classes that it may increase that of one class, whether that of the agriculturists, the manufacturers, the ship owners, or artists and comedians; then certainly, in this case, there is no class which may not pretend, and with reason, to place its hand upon the law, which would not demand with fury its right of election and eligibility, and which would overturn society rather than not obtain it. Even beggars and vagabonds will prove to you that they have an incontestable title to it. They will say:

'We never buy wine, tobacco, or salt, without paying the tax, and a part of this tax is given by law in perquisites and gratuities to men who are richer than we are. Others make use of the law to create an artificial rise in the price of bread, meat, iron, or cloth. Since everybody traffics in law for his own profit, we should like to do the same. We should like to make it produce the right to assistance, which is the poor man's plunder. To effect this, we ought to be electors and legislators, that we may organize, on a large scale, alms for our own class, as you have organized, on a large scale, protection for yours. Don't tell us that you will take our cause upon yourselves, and throw to us 600,000 francs to keep us quiet, like giving us a bone to pick. We have other claims, and, at any rate, we wish to stipulate for ourselves, as other classes have stipulated for themselves!"

Additionally, Abraham Lincoln's December 3, 1861, State of the Union Address provides further enlightenment to this very topic:

"*… Labor is prior to and independent of capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration. Capital has its rights, which are as worthy of protection as any other rights. Nor is it denied that there is, and probably always will be, a relation between labor and capital producing mutual benefits. The error is in assuming that the whole labor of community exists within that relation. A few men own capital, and that few avoid labor themselves, and with their capital hire or buy another few to labor for them.*

A large majority belong to neither class--neither work for others nor have others working for them. In most of the Southern States a majority of the whole people of all colors are neither slaves nor masters, while in the Northern a large majority are neither hirers nor hired. Men, with their families—wives, sons, and daughters—work for themselves on their farms, in their houses, and in their shops, taking the whole product to themselves, and asking no favors of capital on the one hand nor of hired laborers or slaves on the other. It is not forgotten that a considerable number of persons mingle their own labor with capital; that is, they labor with their own hands and also buy or hire others to labor for them; but this is only a mixed and not a distinct class. No principle stated is disturbed by the existence of this mixed class.

Again, as has already been said, there is not of necessity any such thing as the free hired laborer being fixed to that condition for life. Many independent men everywhere in these States a few years back in their lives were hired laborers.

The prudent, penniless beginner in the world labors for wages awhile, saves a surplus with which to buy tools or land for himself, then labors on his own account another while, and at length hires another new beginner to help him. This is the just and generous and prosperous system which opens the way to all, gives hope to all, and consequent energy and progress and improvement of condition to all. No men living are more worthy to be trusted than those who toil up from poverty; none less inclined to take or touch aught which they have not honestly earned.

Let them beware of surrendering a political power which they already possess, and which if surrendered will surely be used to close the door of advancement against such as they and to fix new disabilities and burdens upon them till all of liberty shall be lost. …"

Initiating the philosophical debate on taxation within the United States of America was Thomas Cooley, LL.D., within his *A Treatise on the Law of Taxation*, (1876, 1886):

"***Classification of taxes.*** *Taxes are said to be Direct, under which designation would be included those which are assessed upon the property, person, business, income, etc., of those who are to pay them; and Indirect, or those which are levied on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Under the second head may be classed the duties upon imports, and the excise and stamp duties levied upon manufactures. The individual states have always derived their principal revenue from direct taxes, and the federal government from those which are indirect, but this has been matter of selection and policy merely; there being no doubt that each government has power to levy taxes of both descriptions. For the purposes of the general government congress has general power to lay and collect taxes, subject only to the limitations imposed by the federal constitution. It is provided by that instrument that direct taxes, when laid by the federal government, shall be apportioned among the several states according to representative population. …*

Taxes on Income. *These may be on all incomes, or on all with such exemption as will enable the tax payer, in a frugal manner, to support himself and his family. The latter is the course usually adopted, and, in some cases, incomes in excess of the exemption have been taxed a larger percentage as they increased in amount. The reasons which favor this discrimination would also justify a heavier proportionate tax on the thrifty classes in other cases; and the principle once admitted, there is no reason but its own discretion why the legislature should stop short of imposing the whole burden of government on the few who exhibit most energy, enterprise and thrift. Such a discrimination is a penalty on the possession of these qualities. But any income tax is also objectionable, because it is inquisitorial, and because it teaches the people evasion and fraud.*

No means at the command of the government have ever enabled it to arrive with anything like accuracy at the incomes of its citizens, and they resist its inquisitions in all practical modes, not only because they desire to avoid as far as possible the public burdens which they are certain are not to be equally imposed, but also because they are not willing that their private affairs and the measure of their prosperity should be exposed to the public. The taxes imposed on incomes by the United States during and immediately following the late war were escaped by a large proportion of those who should have paid them, and the assessors' returns were a wholly inadequate indication

of the annual private revenue of the country. In the United States, also, such a tax is unequal, because those holding lands for the rise in value escape it altogether—at least until they sell, though their actual increase in wealth may be great and sure.

Taxes on the Wages of Labor. *These, in a country where wages are only sufficient to supply the absolute needs of life, would necessarily fall on the employer; but when the accumulations of labor are relied upon for a competency, and even for wealth, the burden might be more felt by the laborer. In modern times such taxes have been unusual.*"

Providing insight on various classes of taxes and taxation is John Stuart Mill's, *Principles Of Political Economy*, "*Book V. On The Influence Of Government*" (1885):

"***Chapter I. On The General Principles Of Taxation.***

§ 4. Should the same percentage be levied on Perpetual and on Terminable Incomes?

Of the net profits of persons in business, a part, as before observed, may be considered as interest on capital, and of a perpetual character, and the remaining part as remuneration for the skill and labor of superintendence. The surplus beyond interest depends on the life of the individual, and even on his continuance in business, and is entitled to the full amount of exemption allowed to terminable incomes.

§ 6. Taxes falling on Capital not necessarily objectionable.

In addition to the preceding rules, another general rule of taxation is sometimes laid down—namely, that it should fall on income and not on capital. …

Chapter II. Of Direct Taxes.

§ 1. Direct taxes either on income or expenditure.

Taxes are either direct or indirect. A direct tax is one which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another: such as the excise or customs. . . . Direct taxes are either on income or on expenditure. Most taxes on expenditure are indirect, but some are direct, being imposed, not on the producer or seller of an article, but immediately on the consumer. . . . The sources of income are rent, profits, and wages. …

§ 3.—on profits.

A tax on profits, like a tax on rent, must, at least in its immediate operation, fall wholly on the payer. … If a tax were laid on the profits of any one branch of productive employment, the tax would be virtually an increase of the cost of production, and the value and price of the article would rise accordingly; by which the tax would be thrown upon the consumers of the commodity, and would not affect profits. But a general and equal tax on all profits would not affect general prices, and would fall, at least in the first instance, on capitalists alone.

§ 4.—on Wages.

I have already remarked that, in the present low state of popular education, all the higher grades of mental or educated labor are at a monopoly price, exceeding the wages of common workmen in a degree very far beyond that which is due to the expense, trouble, and loss of time required in qualifying for the employment. Any tax levied on these gains, which still leaves them above (or not below) their just proportion, falls on those who pay it; they have no means of relieving themselves at the expense of any other class. . . . Some will object that, even in this case, a tax on wages can not be detrimental to the laborers, since the money raised by it, being expended in the country, comes back to the laborers again through the demand for labor. Without, however, reverting to general principles, we may rely on an obvious reductio ad absurdum [i.e., reduction to absurdity]. *If to take money from the laborers and spend it in commodities is giving it back to the laborers, then, to take money from other classes, and spend it in the same manner, must be giving it to the laborers; consequently, the more a government takes in taxes, the greater will be the demand for labor, and the more opulent the condition of the laborers—a proposition the absurdity of which no one can fail to see. . . . To attempt to tax day-laborers, in an old country, is merely to impose an extra tax upon all employers*

of common labor; unless the tax has the much worse effect of permanently lowering the standard of comfortable subsistence in the minds of the poorest class. We find in the preceding considerations an additional argument for the opinion, already expressed, that direct taxation should stop short of the class of incomes which do not exceed what is necessary for healthful existence. These very small incomes are mostly derived from manual labor; and, as we now see, any tax imposed on these, either permanently degrades the habits of the laboring-class, or falls on profits, and burdens capitalists with an indirect tax, in addition to their share of the direct taxes; which is doubly objectionable, both as a violation of the fundamental rule of equality, and for the reasons which, as already shown, render a peculiar tax on profits detrimental to the public wealth, and consequently to the means which society possesses of paying any taxes whatever.

§ 5.—on Income.

An income-tax, fairly assessed on these principles, would be, in point of justice, the least exceptionable of all taxes. … But the variable gains of professions, and still more the profits of business, which the person interested can not always himself exactly ascertain, can still less be estimated with any approach to fairness by a tax-collector. The main reliance must be placed, and always has been placed, on the returns made by the person himself. The tax, therefore, on whatever principles of equality it may be imposed, is in practice unequal in one of the worst ways, falling heaviest on the most conscientious. It is to be feared, therefore, that the fairness which belongs to the principle of an income-tax can not be made to attach to it in practice. This consideration would lead us to concur in the opinion which, until of late, has usually prevailed—that direct taxes on income should be reserved as an extraordinary resource for great national emergencies, in which the necessity of a large additional revenue overrules all objections. The difficulties of a fair income-tax have elicited a proposition for a direct tax of so much per cent, not on income but on expenditure; the aggregate amount of each person's expenditure being ascertained as the amount of income now is, from statements furnished by the contributors themselves. The only security would still be the veracity of individuals, and there is no reason for supposing that their statements would be more trustworthy on the subject of their expenses than on that of their revenues. The taxes on expenditure at present in force, either in this or in other countries, fall only on particular kinds of expenditure, and differ no otherwise from taxes on commodities than in being paid directly by the person who consumes or uses the article, instead of being advanced by the producer or seller, and reimbursed in the price. The taxes on horses and carriages, on dogs, on servants, are of this nature. They evidently fall on the persons from whom they are levied—those who use the commodity taxed. A tax of a similar description, and more important, is a house-tax…"

Richard Theodore Ely, Ph.D within his, *Taxation in American States and Cities* (1888), succinctly distinguished between what properly constitutes *direct* and *indirect* taxes:

"*… The distinction which the Physiocrats made has become the generally accepted principle for classification both in the practical administration of public affairs, and in science. Taxes, it is generally stated, are direct which are borne ultimately by the one upon whom they are in the first instance laid, while taxes are called indirect when they are paid by one person and by him shifted to another. Those taxes which the Physiocrats considered indirect have since their time been held to be partly direct and partly indirect* [p. 64] *. . . The recent efforts to define direct taxes and indirect taxes with more precision seem, therefore, to be a move in the right direction, and two of these definitions are worthy of note. Paul Leroy-Beaulieu in his "Traité de la Science des Finances," gives this definition: "Direct taxes are those which the legislator intends should be paid at once and immediately by him who bears their burden. They strike at once his fortune or his revenue, and every intermediary between him and the treasury is suppressed, and a rigorous proportionality is sought between the lax and his fortune or ability to pay taxes." Indirect taxes, on the other hand, are defined by Leroy-Beaulieu as*

"those which the legislator does not intend should be paid at once and immediately by him who bears their burden, and he does not seek to proportion them to his revenues or fortune. The legislator seeks to lay them on the one who it is intended should bear their burden in a roundabout way. Intermediaries are put between him and the treasury." The income lax, land tax, and tax on personal property, on successions and gifts, and on horses and equipages, are included under direct taxes, while taxes on commodities, stamp duties, and fees for registering or recording legal documents are by this definition placed among indirect taxes. . . . Professor Knies [Karl Gustav Adolf Knies, "Political Economy from the Standpoint of the Historical Method"] *gives the following definition, which seems to me preferable: "Direct taxes are taxes which are based on an assessment of a person's property and business, or bear directly on the person of the tax-payer. Indirect taxes are taxes not based on such an assessment, but taxes which are levied when the existence of a taxable object, or source of taxes (productive property), is presumed from other evidence than that of direct assessment or valuation."* [pp. 66-67] *. . . Taxes on real property and on incomes are by general consent direct taxes. Property and income are assessed and taxes are imposed according to some rule of proportion, but income and property are not necessarily taxed in the same proportion. Indirect taxes are taxes on articles of food, drink, and clothing, or articles of consumption, or, as is most frequently said in America, on commodities. An accessory circumstance is, that they are, as a rule, paid by a dealer who adds the tax paid with a profit to the price of the article. This does not invariably happen, for sometimes the dealer is so situated that he must bear the tax, although it is obviously the intention of the legislator in most cases that he should shift the burden. When I import my own books, however, the tax I pay on their value is as truly indirect as when I purchase the books of a foreign dealer; but I usually save by doing so, because I am not then obliged to pay a profit on the duty. … This definition includes customs duties and internal revenue taxes, which are mainly thought of by the economist when he uses the term indirect taxation.* [p. 68] *The definition of direct taxes may now be completed by adding other taxes which it has generally been agreed to call direct, and which will be found to have certain characteristics in common, as, for example, that they imply a list of taxable persons, natural and artificial, and that they are proportioned more nearly to the ability of the tax-payer than can well be the case with indirect taxes. Sometimes direct taxes carry with them the assessment of all a man's fortune, more often of his total income, and perhaps still more frequently, the valuation of all of certain species of property; whereas indirect taxes are specific, a fixed charge for an object without assessment, as so much a pound for sugar; or the single object alone is valued and taxed without reference to the value of other property which the tax-payer or tax-bearer may or may not have. I would then give this as a definition of direct taxes. Direct taxes are taxes on trades (including any branch of business), on pursuits, on property consisting of other economic goods than articles of consumption, and on income. This definition includes taxes on articles of luxury, such as dogs, horses, carriages, and also on successions and gifts.*

Indirect taxes, on the other hand, are taxes on articles of consumption, or on commodities, as that term is now usually understood, and also taxes levied on occasion of certain transactions, as the payment of money by check, or the recording of deeds or mortgages. The following table [omitted] *will help the reader to understand this classification, and also the various subdivisions of these two classes:* [p. 69] *Direct taxes are divided into two main sub-classes: namely, real and personal taxes. It is to be noticed, however, that these terms are not used with the meaning which is current in the United States. Real taxes are taxes on things, as the word real (res) signifies. A tax on land is an example. It is a certain charge resting on the land, and has no reference to any particular owner. … Business taxes are also regarded as real taxes, as they are taxes on pursuits. The more prominently the personal element is brought forward, the closer the resemblance to a personal tax. When each per-son engaged in a given occupation is charged a certain sum per year, no consideration of the personal element enters into the tax. This may also be said of a tax based on capital employed or rental value of premises. Things are taxed—using the word things in the broadest sense so as*

to include transactions and occupations. When the personal ability of the merchant or physician, as formerly in the New England colonies, was estimated, and this was allowed to influence the amount of the tax, it in so far approached the nature of a personal tax. Personal taxes are, then, taxes on persons. An income tax is the chief of personal taxes, now that poll tax or capitation tax is generally held to be antiquated, and has been abolished in most places. A man's income is taxed, regardless of its source, in a properly constructed income tax. It may come from lands, houses, bonds, or pursuits, but this is of no consequence. A person from one source and another derives an annual revenue. It is something which gathers about a person. It is properly called a personal tax. This distinction is of great practical importance. … An income tax allows, on the other hand, a deduction of interest paid on the mortgage from income, because that lessens income. Income is what is left after business expenses are paid. Personal expenses, like house-rent may not with propriety be deducted from income before it is taxed, because income exists for the sake of personal expenditures. Taxes on property are divided into taxes on immovable and movable property, called in the United States real and personal property respectively. [pp. 71-72] *Indirect taxes are either taxes on goods manufactured or produced at home for home consumption, or taxes on commodities entering the home market or leaving it, or taxes levied on occasion of certain transactions. Internal revenue taxes are national in America, as they are levied by the federal government. The chief commodities subject to these taxes are intoxicating liquors and tobacco in its various forms.* [p. 73]"

Chapter V. The Indissoluble Fundaments of Our Republic

The government of the United States of America and of each of its individual and sovereign unionized states are legitimate and proper to function only under the fundamentals of a republic as stipulated by A.IV,S.4,C.1 of our U.S. Constitution and so conferred in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943): "*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, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.*"

Noting even further from *Everson v. Board of Education*, 330 U.S. 1, 35 (1947):

"**Footnote 2/14—**"*Jefferson, and Madison by his sponsorship, sought to give the Bill for Establishing Religious Freedom as nearly constitutional status as they could at the time. Acknowledging that one legislature could not "restrain the acts of succeeding Assemblies . . . and that, therefore, to declare this act irrevocable would be of no effect in law," the Bill's concluding provision, as enacted, nevertheless asserted:*

> *'Yet we are free to declare, and do declare, that* ***the rights hereby asserted are of the natural rights of mankind****, and that, if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right."*

Hence, through our covenanted *due process*, *habeas corpus*, *redress*, *suffrage*, *et al*, the inherent freedoms, defenses, and liberties of the individual person to life, estate, family, and personalty are as omnipresent and irrevocable, as the same are unalienable. See also: *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

In *City of Boerne v. Flores*, 521 U.S. 507, 518-519 (1997): "*It is also true, however, that "[a]s broad as the congressional enforcement power is, it is not unlimited." Oregon v. Mitchell, supra,*

at 128 (opinion of Black, J.). . . . Legislation which alters the meaning of the Free Exercise Clause cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing what the right is. It has been given the power "to enforce," not the power to determine what constitutes a constitutional violation. …"

Also in *City of Mobile v. Bolden*, 446 U.S. 55, 76 (1980): "*It is of course true that a law that impinges upon a fundamental right explicitly or implicitly secured by the Constitution is presumptively unconstitutional.*" **REAFFIRMED** in *Harris v. McRae*, 448 U.S. 297, 312 (1980).

And within *Miranda v. Arizona*, 384 U.S. 436, 491 (1966): "*Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them.*"

Furthermore, it had been held in *Schneider v. State*, 308 U.S. 147, 161 (1939) that: "*In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.*"

And additionally, in *United States v. Butler*, 297 U.S. 1, 62-63 (1936): "*There should be no misunderstanding as to the function of this court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the Government has only one duty -- to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question.*"

Furthermore in *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 453 (1934):

> "*The whole aim of construction, as applied to a provision of the Constitution, is to discover the meaning, to ascertain and give effect to the intent, of its framers and the people who adopted it.*"

In *South Carolina v. United States*, 199 U.S. 437, 449-450 (1905):

> "*It must also be remembered that the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men, dealing with the facts of political life as they understood them, putting into form the government they were creating and prescribing, in language clear and intelligible, the powers that government was to take. Mr. Chief Justice Marshall, in Gibbons v. Ogden, 9 Wheat. 1, 22 U.S. 188, well declared:*
>
> *"As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."*
>
> *One other fact must be borne in mind, and that is that, in interpreting the Constitution, we must have recourse to the common law. As said by Mr. Justice Matthews in Smith v. Alabama, 124 U.S. 465, 124 U.S. 478:*

"The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history."

And by MR. JUSTICE GRAY in United States v. Wong Kim Ark, 169 U.S. 649, 169 U.S. 654:

"In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. ..."

To determine the extent of the grants of power, we must therefore place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

Also in Pollock, *supra*, at 157 U.S. 429, 607: "*Here I close my opinion. I could not say less in view of questions of such gravity that go down to the very foundation of the government.*

If the provisions of the Constitution can be set aside by an act of Congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness.

'If the court sanctions the power of discriminating taxation, and nullifies the uniformity mandate of the Constitution,' as said by one who has been all his life a student of our institutions, 'it will mark the hour when the sure decadence of our present government will commence.'"

And written in *Cases on Constitutional Law Vol. I*, James Bradley Thayer, LL.D., 1894, p. 165; *1 Kent's Commentaries* (12th ed.), p.447:

"*The Constitution is the act of the people, speaking in their original character, and defining the permanent conditions of the social alliance; and there can be no doubt on the point with us, that every act of the legislative power contrary to the true intent and meaning of the Constitution, is absolutely null and void.*"

As within A Handbook of Politics for 1872, Hon. Edward McPherson, LL.D., pp. 118-119, (1872); (quoting Mr. Carpenter: 110 Senate Report No. 21, 42nd Cong. 2d Session 2, January 25, 1872; reprinted in *The Reconstruction Amendments' Debates*, Alfred Avins, 571, 1967):

"In construing the Constitution we are compelled to give it such interpretation as will secure the result which was intended to be accomplished by those who framed it and the people who adopted it. The Constitution, like a contract between private parties, must be read in the light of the circumstances which surrounded those who made it. . . . A construction which should give the phrase a "republican form of government" a meaning differing from the sense in which it was understood and employed by the people when they adopted the Constitution would be as unconstitutional as a departure from the plain and express language of the Constitution in any other particular."

Stated clearly within 110 Senate Report No. 21, 42nd Cong. 2d Session 2, pp. 591-592, January 25, 1872:

"*Mr. HOAR. Mr. Speaker, the earliest American constitution which contains a bill of rights was adopted by Virginia on the 29th day of June, 1776. It was largely*

inspired by Jefferson, with the fires of the Declaration of Independence still burning in heart and brain. It contains the sentence:

"No free Government or the blessings of liberty can be preserved to any people, but by a frequent recurrence to fundamental principles."

This sentence is repeated in the constitutions of many of the other original States. … I suppose our fathers meant to assert that it was not upon the form or mechanism that they were contriving, but on the ideas and principles upon which it was based, that they depended for the performance of their work. . . .

I desire, while so much fear is expressed that the necessities of self-preservation and reconstruction have caused an encroachment by the General Government on the proper functions of the States, to spend a little time in asking the favor of the House to a measure calculated to secure State rights.

Our Republic differs from all other forms of civil polity, not only in its object, but also in its mechanism. The principle of democracy was no new thing in history. . . .

The more educated and intelligent the people become, the more certain are they in the first place to take just views of the meaning of the Constitution. The better educated they are, the greater their capacity to grasp the fundamental principles upon which the protection of the rights of the States, the weaker power, against the nation, the stronger power, is in the end to depend. The better educated the people, the surer they are to see the importance of obeying the general rules, of respecting constitutional safeguards, and of opposing law and duty against temporary inclination accompanied by power.

Education secures to a State the possession of all those forces upon which it must depend for the protection of its rights against any other power.

Education means wealth, and equality in its distribution. This is one great means of defense against any encroachments from above. . . .

Mr. Speaker, education is the great means of preserving State rights, because it secures also vitality throughout the entire body of members of the community. An ignorant nation will have its brain educated at the center; and the center of power will be also the center of intelligence and the center of life. An educated nation has the intelligence, the power, the nerve, pervading and permeating the whole, extending to the entire extremities."

Legislative empowerment to craft and ratify public law has been served proper clarification in *Eisner v. Macomber*, 252 U.S. 189, 206 (1920): "*… 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, and within whose limitations alone that power can be lawfully exercised.*" See also: *Railroad Retirement Board v. Alton Railroad Co.*, 295 U.S. 330, 346-347 (1935).

As by Alexander Hamilton's further statements in Federalist Paper No. 84, Para. 7, 11: "*Here, in strictness, the people surrender nothing, and as they retain everything, they have no need of particular reservations. 'WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America.' . . . The truth is, after all the declamations we have heard, that the constitution is itself in every rational sense, and to every useful purpose, A BILL OF RIGHTS.*"

As by Alexander Hamilton's statements within Federalist Paper No. 83, Para. 7: "*… The plan of the convention declares that the power of Congress, or, in other words, of the NATIONAL LEGISLATURE, shall extend to certain enumerated cases. This specification of particulars evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd, as well as useless, if a general authority was intended.*"

As by Alexander Hamilton's further statements within Federalist No. 79, Para. 1: "*In the general course of human nature, A POWER OVER A MAN's SUBSISTENCE AMOUNTS TO A POWER OVER HIS WILL.*"

As by Alexander Hamilton's further statements within Federalist Paper No. 78, Para. 15: "*…and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.*"

As by Alexander Hamilton/James Madison's statements within Federalist Paper No. 62, Paras. 16-19:

> "… *It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be tomorrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?*
>
> *Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uniformed mass of the people.*
>
> *Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the FEW, not for the MANY.*
>
> *… What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? …*
>
> *But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.*"

As by James Madison's further statements within Federalist Paper No. 46, Para. 8: "*…that the powers proposed to be lodged in the federal government are as little formidable to those reserved to the individual States, as they are indispensably necessary to accomplish the purposes of the Union…*"

Alexander Hamilton further stated within Federalist No. 35, Para. 11: "*There is no part of the administration of government that requires extensive information and a thorough knowledge of the principles of political economy, so much as the business of taxation. The man who understands those principles best will be least likely to resort to oppressive expedients, or sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burdensome. There can be no doubt that in order to a judicious exercise of the power of taxation, it is*

necessary that the person in whose hands it should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with the resources of the country.

And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense the proposition has either no meaning, or an absurd one. And in that sense let every considerate citizen judge for himself where the requisite qualification is most likely to be found."

As by Alexander Hamilton's further statements within Federalist No. 21, Para. 11: "*It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue.*

When applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them."

More on Alexander Hamilton's statements made in Federalist No. 12, Para. 4: "*It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation.*"

Statutory vagueness, brings uncertainly, and hinders due process, as within *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972): "*It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.* [Footnote 3—Omitted.] *Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.* [Footnote 4—Omitted.] *A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.* [Footnote 5—Omitted.] *Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms,"* [Footnote 6—Omitted.] *it "operates to inhibit the exercise of [those] freedoms."* [Footnote 7—Omitted.] *Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked."* [Footnote 8—Omitted.]"

Clarified in *Shelton v. Tucker*, 364 U.S. 479, 488 (1960) was: "*In a series of decisions, this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.*"

It was candidly found by *Cantwell v. Connecticut*, 310 U.S. 296, 304, 310 (1940) that: "*The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case, the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. . . . But the people of this nation have ordained, in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is that, under their shield, many types of life, character, opinion and belief can develop unmolested and unobstructed. …*"

Indubitably crystallized is the holding by *Carter v. Carter Coal Co.*, 298 U.S. 238, 291-292, 296 (1936) that:

> "*Thus, it may be said that, to a constitutional end, many ways are open, but to an end not within the terms of the Constitution, all ways are closed. . . . The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to purposes affecting the nation as a whole with which the states severally cannot deal or cannot adequately deal, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have never been accepted, but always definitely rejected, by this court. Mr. Justice Story, as early as 1816, laid down the cardinal rule, which has ever since been followed -- that the general government 'can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication.' . . . And the Constitution itself is, in every real sense, a law -- … It is by that law, and not otherwise, that the legislative, executive, and judicial agencies which it created exercise such political authority as they have been permitted to possess. The Constitution speaks for itself in terms so plain that to misunderstand their import is not rationally possible. … -- … The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute, but conditioned upon its being made in pursuance of the Constitution.*"

And on the limits of general governance and the duties of the courts as a check and balance in *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 565-566 (1895): "*And Ellsworth, in the Connecticut convention, in discussing the power of Congress to lay taxes, pointed out that…*

"This Constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void, and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void." 2 Elliot 191, 192, 196."

Concisely acknowledged in *Norton v. Shelby County*, 118 U.S. 425, 442 (1886) was that: "*It is difficult to meet it by any argument beyond this statement: an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed.*"

Explicitly in *Marbury v. Madison*, 5 U.S. 137, 176-177 (1803): "*… It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.*

Between these alternatives there is no middle ground. The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void.

This theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject."

As further constituted by *Hale v. Henkel*, 201 U.S. 43, 88 (1906) in quoting Mr. Justice Bradley in *Boyd v. United States*, 116 U.S. 616, 635 (1886): "*It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis. We have no doubt that the legislative body is actuated by the same motives; but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which become developed by time and the practical application of the objectionable law.*" See also: *Davis v. U.S.*, 328 U.S. 582, 597, (1946).

Forthright in enlightening such fundaments was *Coppage v. Kansas*, 236 U.S. 1, 14 (1915): "*The principle is fundamental and vital. Included in the right of personal liberty and the right of private property -- partaking of the nature of each -- is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.*

If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich, for the vast majority of persons have no other honest way to begin to acquire property save by working for money."

And wholeheartedly exemplified in *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757, 762 (1884) in quoting from Dr. Adam Smith's "*Wealth of Nations*" (1776):

> "*It has been well said that "the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. 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. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper."* Smith, Wealth of Nations, Bk. I, c. 10. *. . . They established and declared one of the inalienable rights of freemen which our ancestors brought with them to this country.*
>
> *The right to follow any of the common occupations of life is an inalienable right, it was formulated as such under the phrase "pursuit of happiness" in the declaration of independence, which commenced with the fundamental proposition that "all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."*
>
> *This right is a large ingredient in the civil liberty of the citizen. To deny it to all but a few favored individuals by investing the latter with a monopoly is to invade one of the fundamental privileges of the citizen, contrary not only to common right, but, as I think, to the express words of the Constitution. It is what no legislature has a right to do, and no contract to that end can be binding on subsequent legislatures.*"

Although a privacy rights case, the same is relational as to taxation, *idem* having been acknowledged by **[DISSENTING]** Justice Brandeis within *Olmstead v. United States*, 277 U.S. 438, 478-479 (1928):

"*The protection guaranteed by the Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone -- the most comprehensive of rights, and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth. . . . Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.*"

***** *Olmstead* was **OVERTURNED** by *Katz v. United States*, 389 U.S. 347 (1967).

Additionally in substantiating the above point, see also:

1. *Loan Association v. Topeka*, 87 U.S. 655, 662-665 (1874);
2. *Budd v. New York*, 143 U.S. 517, 550-551 (1892) **[DISSENTING]**, and;
3. *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (1897), *supra*.
4. "*Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life, -- the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession -- intangible, as well as tangible.*" — "*The Right to Privacy*", Samuel D. Warren & Louis D. Brandeis, Harvard Law Review, Vol. IV, December 15, 1890, No. 5

Also another privacy rights case, although its holding is tantamount and bears heavily upon the policies and practices of those working throughout government, with emphasis upon the IRS, as stated in *United States v. Lefkowitz*, 285 U.S. 452, 466-467 (1932):

"*The teachings of that great case were cherished by our statesmen when the Constitution was adopted. In Boyd v. United States, supra, 116 U.S. 630, this Court said:*

"The principles laid down in this opinion [Entick v. Carrington] affect the very essence of constitutional liberty and security. . . . They apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. . . . Any forcible and compulsory extraction of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods is within the condemnation of that judgment. In this regard, the Fourth and Fifth Amendments run almost into each other." . . . An arrest may not be used as a pretext to search for evidence. The searches and seizures here challenged must be held violative of respondents' rights under the Fourth and Fifth Amendments.

And this Court has always construed provisions of the Constitution having regard to the principles upon which it was established. The direct operation or literal meaning of the words used do not measure the purpose or scope of its provisions. McCulloch v. Maryland, 4 Wheat. 316, 17 U.S. 406-407, 17 U.S. 421; Boyd v. United States, supra; Byars v. United States, ubi supra."

And great acknowledgement is due to the creed of Lord Acton—John Dalberg-Acton, 1st Baron Acton, (Letter to Bishop Mandell Creighton, April 5, 1887 published in *Historical Essays and Studies*, edited by J. N. Figgis and R. V. Laurence (London: Macmillan, 1907)):

> "*… Historic responsibility has to make up for the want of legal responsibility.* ***Power tends to corrupt, and absolute power corrupts absolutely.*** *Great men are almost always bad men, even when they exercise influence and not authority, still more when you superadd the tendency or the certainty of corruption by authority. There is no worse heresy than that the office sanctifies the holder of it. …*"

Which is in accord with Alexander Hamilton's statements within Federalist No. 25, Para. 3: "*For it is a truth, which the experience of ages has attested, that the people are always most in danger when the means of injuring their rights are in the possession of those of whom they entertain the least suspicion.*"

It is manifest, as related in *South Carolina v. United States*, 199 U.S. 437, 451-452 (1905) that neither may the federal government interfere with the free-exercise of rights by individuals outside of its own grant of (express and subsequently implied) powers:

> "*But it is undoubtedly true that that which is implied is as much a part of the Constitution as that which is expressed. As said by Mr. Justice Miller in Ex Parte Yarbrough, 110 U.S. 651, 110 U.S. 658:*
>
> *"The proposition that it has no such power is supported by the old argument, often heard, often repeated, and in this Court never assented to, that when a question of the power of Congress arises, the advocate of the power must be able to place his finger on words which expressly grant it. The brief of counsel before us, though directed to the authority of that body to pass criminal laws, uses the same language. Because there is no express power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted. It destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed."*
>
> *Among those matters which are implied, though not expressed, is that the nation may not, in the exercise of its powers, prevent a state from discharging the ordinary functions of government, just as it follows from the second clause of Article VI of the Constitution, that no state can interfere with the free and unembarrassed exercise by the national government of all the powers conferred upon it.*"

For which the importance of our Nation's founding documents was pointedly addressed by the Confederate States of America within its "*Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union*", December 24, 1860:

> "*By this Constitution, certain duties were imposed upon the several States, and the exercise of certain of their powers was restrained, which necessarily implied their continued existence as sovereign States. But to remove all doubt, an amendment was added, which declared that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people. On the 23d May , 1788, South Carolina, by a Convention of her People, passed an Ordinance assenting to this Constitution, and afterwards altered her own Constitution, to conform herself to the obligations she had undertaken.*

Thus was established, by compact between the States, a Government with definite objects and powers, limited to the express words of the grant. This limitation left the whole remaining mass of power subject to the clause reserving it to the States or to the people, and rendered unnecessary any specification of reserved rights.

We hold that the Government thus established is subject to the two great principles asserted in the Declaration of Independence; and we hold further, that the mode of its formation subjects it to a third fundamental principle, namely: the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences."

§ 5.1. ***American Inalienability, Fundaments, and Common Law.*** The United States of America being a national—*common law*—republic that bestows absolute respect to divinely granted unalienable rights in achieving life, liberty, and individual pursuits of happiness, does not bear to any degree as a neo-libertarian (e.g., liberalism), revisionist-progressivist, collectivist/communitarian, communist-socialist, consequentialist/hedonistic/utilitarian, corporatist/mercantilist, egalitarian, totalitarian, or similar nation (e.g., aristocracy/plutocracy, authoritarianism/Stalinism, autocracy/monarchy, bureaucracy, corporatocracy, cronyism, demagogy, democracy/mobocracy/ochlocracy, duopoly, hierocracy/theocracy, ineptocracy, kleptocracy/oligarchy (Keynesianism, Leninism, Marxism), mediocracy, meritocracy, stratocracy, timocracy, etc.) Being that the former is wholly and utterly incompatible with such opposing fundaments, ideologies, and tenets for which those latter are blatantly inauspicious to the enjoyments and propensities of ever-advancing freedom in independence; such as those postulated within the "*Communist Manifesto*" by: Karl Marx and Friedrich Engels (1848), therein revering a ten (10) plank process to establishing Marxist-communism that includes specifically those as stated below:

(a). The *status quo* misconception over the present day misapplication of the IRC (26 USC) so as to wrongfully implicate 'proletariats' as being entrepreneurs or other such privileged business professionals; ergo: "***2.*** *A heavy progressive or graduated income tax.*"

(b). The *status quo* misconception over the unsound practices of debt-to-credit and ratio-lending of fiat (nonconvertible paper) currency, which results in monetary depreciation through the process of inflationary monetization—ultimately lending unto financial monopolization and usury; ergo: "***5.*** *Centralisation of credit in the hands of the state, by means of a national bank with State capital and an exclusive monopoly.*"

The declaratory charter and spirited foundation of the United States of America was established through our Nation's *Declaration of Independence* (ratified 1776), at first as a confederacy by the *Articles of Confederation* (ratified 1781 and repealed 1788).

Other such empirically relevant tenets as to the rights-of-man have been respectfully enumerated throughout all humankind's history, including: Code of Hammurabi (1772 B.C.), Magna Carta Libertatum (1215), English Bill of Rights (1689), Virginia Declaration of Rights (1776), Declaration of the Rights of Man (France, 1789), *et al.*

Such having been educed within *Mattox v. United States*, 156 U.S. 237, 243 (1895):

"*We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted, not as reaching out for new guaranties of the rights of the citizen, but as securing to every individual such as he already possessed as a British subject -- such as his ancestors had inherited and defended since the days of Magna Charta. Many of its provisions in the nature of a bill of rights are subject to exceptions, recognized long before the adoption of the Constitution, and not interfering at all with its spirit. Such exceptions were obviously intended to be respected. A technical adherence to the letter of a Constitutional provision may occasionally be carried further than is necessary to the just protection of the accused, and further than the safety of the public will warrant.*"

Our national Constitution, the *U.S. Constitution* (ratified 1788), established, under a republic, three (3) branches of national government bestowing unto it the authority of the 'United States' in: **(1)** Article I, being the Legislative Branch (the Congress—the House of Representatives and of the Senate), holding sole power to legislate, regulate, and declare; **(2)** Article II, being the Executive Branch, holding sole power to administer public law, to veto, to implement regulatory-procedures, and to take such actions as by the authority granted to Congress; and **(3)** Article III, being the Judicial Branch, holding sole rule-making powers to implement judicial procedure and evidentiary rules, to interpret and enforce public law with regard and respect to both *fundamental law* and *common law*.

The preamble to our national *Bill of Rights* (ratified 1791) states in-part the following:

"*… THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution. …*"

Hence, all acts or engagements partaken by the federal government must regard our *Bill of Rights*.

Respectively, our Nation's amended *U.S. Constitution* prescribes the federal government, the 'United States' with thirty-three (33) specifically designated functions over the several states and our *Bill of Rights* further stipulates ten (10) amendments thereto for the purpose of further constraining the breadth of the federal government.

The federal government of the United States has been granted only strictly defined powers to enact and enforce public laws through the medium of our U.S. Constitution. As succinctly written by James Madison in Federalist Paper No. 45, Para. 7:

"*The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. As the former periods will probably bear a small proportion to the latter, the State governments will here enjoy another advantage over the federal government. The more adequate, indeed, the federal powers may be rendered to the national defense, the less frequent will be those scenes of danger which might favor their ascendancy over the governments of the particular States. If the new Constitution be examined with*

accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them."

***** See also, Federalist Paper No. 33, Para. 4-8.

Our *Declaration of Independence*, *U.S. Constitution* and *Bill of Rights* serve conjointly as the core of what is revered as *fundamental law*, which is in essence the morality or standing principles—the historical causation—enrooted in our United States of America. All enacted public acts and resolutions (statutes, regulations, orders, etc.) must remain in absolute accord and spirit with these omnipresent documents, they are not conditionally malleable.

The intent and purpose of establishing nation-state constitutions had been epitomized by Chancellor of New York James Kent (within his "*Commentaries on American Law, Vol. I*" (1826), "Part II, Municipal Law", "Lecture XX.—Of Statute Law", p. 421):

"*The constitution is the act of the people, speaking in their original character, and defining the permanent conditions of the social alliance; and there can be no doubt on the point with us, that every act of the legislative power contrary to the true intent and meaning of the constitution, is absolutely null and void.*"

Also, more recently the following has been decreed within 100th Congress, 2D Session, H. Con. Res. 331, October 5, 1988:

"*Whereas the original framers of the Constitution, including, most notably, George Washington and Benjamin Franklin, are known to have greatly admired the concepts of the Six Nations of the Iroquois Confederacy;*

Whereas the confederation of the original Thirteen Colonies into one republic was influenced by the political system developed by the Iroquois Confederacy as were many of the democratic principles which were incorporated into the Constitution itself; …"

Moreover, the sum of this point has been prudently elaborated by our jurist forebearer Thomas Jefferson ("*The Papers of Thomas Jefferson, Volume 33: 17 February to 30 April 1801*", Princeton University Press (2006), 143-8, Para. 3):

"*Let us then, with courage and confidence, pursue our own federal and republican principles; our attachment to union and representative government. … Still one thing more, fellow citizens, a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government; and this is necessary to close the circle of our felicities.*"

Chapter VI. Directed Conceptions

§ 6.1. ***Renewed Perspective on the Intention of 'Compensation'.*** Another interesting realization to lend further consideration is the use of 'compensation' within the term 'gross

income' (i.e., 26 USC § 61(a)), which may not necessarily intend to contextually include wages, salaries, or remuneration; it more likely than not, provides provision for the correction of unfavorable errors, maintaining obligatory balance, making another whole, restoration, or righting wrongs.

Further noting the intentional exclusion of both 'salaries' and 'wages' within the definitions specifically numerated listing (However, that 'salaries' is contextually included within the originally drafted 1913 definition of 'net income', now referred to only as 'gross income'.) and instead providing mention of only: "fees, commissions, fringe benefits, and similar items"—within the provided context of "compensation for services"—of which 'wages' is no such similar item in likeness, while each one of the items as included go above or beyond the receipt of mere wages.

One's act of laboring just as their personal experience, knowledge, personality, strength, and training lacks the necessary element of transferable ownership and is therefore nonexistent as a form of producible capital, and hence is constitutionally excluded as a valid source of income; it is only upon the acquisition of valued property—*viz.*, one's paycheck—that such a valid source of income at once presents itself, still yet, no concomitant gain or profit, as a means of deriving constitutional 'income' has come into realization (see: *Lynch v. Turrish*, 247 U.S. 221, 227-228 (1918).)

Earning a livelihood in itself does not provide a laborer gains or profits, and neither does it so ascend them into a financial status of wealth; it accomplishes them one thing only, an ongoing and practical means for which to readily maintain their own competency.

Moreover, this matter cannot be argued both ways by the progressive-status quo, for an "exchange" is as much of a "gain" as "loss" is "compensation"—which undoubtedly neither is the case.

§ 6.2. ***Providing Context to 'Personal' and 'Professional' Services.*** 26 USC § 269A(b)(1) defines the term 'personal service corporation' as a "corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners." Thereby, if one is not employed as an 'employee-owner' of such a corporation they can neither be in receipt of "compensation for personal services."

Still further, in-part 26 USC § 448(d)(2)(A) defines a 'qualified personal service corporation' to include: "substantially all of the activities of which involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting."

Realizing then, of a direct correlation between professional corporations, or 'personal service corporations' and the compensation received for 'personal services' as numerated within Section 61 of the Internal Revenue Code. Such professional corporations—often requiring state issued permits, licenses, and certifications to operate legally—to be taxed by the IRS (presently at a set rate of 35-percent), generally include the following fields of professional services: accountants; actuaries; architects; attorneys; consultants; engineers; performing arts, including: writers, photographers, and artists; and medical health care professionals, including: audiologists, chiropodists/podiatrists, chiropractors, dentists, doctors, nurses, opticians, optometrists, osteopaths, pharmacists, physical therapists, physicians, and speech pathologists, psychologists, social workers, surgeons, veterinarians; and other similar 'personal service' professionals.

Thusly is clarified in *Commissioner v. Smith*, 324 U.S. 177, 181 (1945): "*Section 22(a) of the Revenue Act is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected.*"

§ 6.3. ***Depicting 'gross income' Mathematically.*** The determining of a person's taxable liabilities can effectively be thought of as three variable equation. Thusly, without first possessing the precise sums for each one of its three core variables (*viz.*, ***s*** for 'source'; ***i*** for income as a financial 'gain or profit'; and ***a*** for subsidized 'adjustments') the equation cannot possibly be solved with the prudence established under tax law. And thereby no legally binding *assessment* or *certification* of taxes due may be reasonably performed by that person, their agent, or on the behalf of government.

Thereby, upon this realization it must be concluded that an individual earning their competence by way of privately contracted arrangements, through the fair exchange of their personal toiling for industries or occupations of common right (meaning those classifications of livelihood which are not deemed as "privileged" by the Legislature), possesses only one of the three required variables—that being the variable '**s**' (keeping in mind that variable '**a**' is intended to remain mostly in relation to *bona fide* pursuits of achieving variable '**i**')—and thereby that individual is wholly incapable of solving the equation (at least, that is, until having taken in a 'gain' or 'profit' qualifying as *constitutional income* from their beneficial 'source'.) To depict this visually:

$$(s \int i) - a = t$$

Legend	
s	The 'source'; capital, principal, and revenue (immature pecuniary; income-as-capital; source-capital; the asset or financial corpus.)
i	Income therefrom a 'source'; financial gains and profits; productive incomes; (i.e., 26 USC 61 – 'gross income'.)
a	Legally permissible adjustments (expenses, losses, and credits; allowances; deductions; (i.e., 26 USC 62 – 'adjusted gross income'.)
t	Taxable income as lawful by the breadth of the Sixteenth Amendment; (i.e., 26 USC 63 – 'taxable income'.)
$\int$	Conferring that '**s**' derives 'i' (hence, pecuniary, so severed; or which has matured or "come in".)

§ 6.4. ***This Crux Answered by Syllogism.*** The contextual arguments set forth throughout this discourse are easily substantiated when viewed as a multipart *compound syllogism*—the bedrock of logical rhetoric and debate (a theorem long ago realized by Aristotle):

(a). Every tax laid and collected upon either individuals or an individual's capital, principal, or property is direct; all workers are individuals whom contractually labor in order to provide their own competence or subsistence; all workers exert themselves under labor for the receipt of capital, or principal, or property as their recompense; therefore, the taxing of workers or their recompense is direct.

(b). Every tax laid and collected upon an individual's gain or profit is indirect; some workers apply their acquired capital, or principal, or property to realize an increase in financial wealth, or gains, or profits; some workers contractually receive increased wealth, or gains, or profits in addition to their recompense for laboring; thereby, the taxing of all wealth above recompense, including gains or profits is indirect.

§ 6.5. ***'Stoppage at the Source': The Taking of Personalty without Compensating.*** Retired Wisconsin Tax Court judge, Douglas H. Bartley (author of: "*The Kiss of Judice: The Constitution Betrayed: A Coroner's Inquest and Report*", Vol. I-IV, 2011-2013), made an astute observation within his Internet article entitled "*As to Employees, Federal Withholding Taxes are Unconstitutional*", which concerns the IRS' practice of withholding wages throughout the year. Namely, that it is a blatant violation of the Fifth Amendment (V Amend.) to the U.S. Constitution—i.e., "[*P*]*rivate property* [*shall not*] *be taken for public use, without just compensation.*"

Just as importantly to consider is that such means of compelled withholdings, impairs the obligatory *consideration* of private employment (pay-for-labor) contracts, which may consequentially never be fulfilled as intently agreed upon by the responsible parties; while further impeding the ability of employers to effectively provide *satisfaction* upon *performance* by those they employ whenever involving agreements attending financial obligations.

Mr. Bartley, having further realized that: "*Federal tax withholding deprives employees of the time value of their money (up to 15 1/2 months' worth of interest employees could have earned on the withheld funds). Thus the withholding is a taking (i.e., interest lost) of employee property (money) without any compensation. . . . The same principle applies to all others required to make advance tax deposits, such as estimated tax payments. . . . Also for those who have overpaid in their withholding, there is an additional loss for the lapse between filing and receiving a refund.*"
(Source URL: http://douglassbartley.wordpress.com/2012/03/20/as-to-employees-federal-withholding-taxes-are-unconstitutional/)

As an example, say that you and your spouse together have $8,000 withheld annually by the IRS, meanwhile your local bank provides a compounding interest rate of 4% for your personal savings account—which if you each were otherwise permitted to retain possession of that sum (being otherwise deposited) until legally due at the close of each tax year (*viz.*, April 15th), would have realized you both $320 (annually) in addition to accruing interest throughout the entirety of your 40-years of working. Thusly, considering both federal and state income taxes, the outline depicted below reflects the financial loss that your family will imminently experience due to the withholding scheme during the entirety of you and your spouse's lifelong career or occupation:

Years	Sums Pertaining to Federal Income Taxes		Sums Pertaining to State Income Taxes	
	ACCUMULATING SUM	(INTEREST ACCRUING)	ACCUMULATING SUM	(INTEREST ACCRUING)
1	$320	(+ $12.80)	$40.00	(+ $1.60)
2	$652.80	(+ $26.11)	$81.60	(+ $3.26)
3	$998.91	(+ $39.96)	$124.86	(+ $4.99)
4	$1,358.87	(+ $54.35)	$169.86	(+ $6.79)
5	$1,733.22	(+ $69.33)	$216.65	(+ $8.67)
6	$2,122.55	(+ $84.90)	$265.32	(+ $10.61)
7	$2,527.45	(+ $101.10)	$315.93	(+ $12.64)
8	$2,948.55	(+ $117.94)	$368.57	(+ $14.74)
9	$3,386.49	(+ $135.46)	$423.31	(+ $16.93)
10	$3,841.95	(+ $153.68)	$480.24	(+ $19.21)
11	$4,315.63	(+ $172.63)	$539.45	(+ $21.58)
12	$4,808.26	(+ $192.33)	$601.03	(+ $24.04)
13	$5,320.59	(+ $212.82)	$665.07	(+ $26.60)
14	$5,853.41	(+ $234.14)	$731.68	(+ $29.27)
15	$6,407.55	(+ $256.30)	$800.94	(+ $32.04)
16	$6,983.85	(+ $279.35)	$872.98	(+ $34.92)
17	$7,583.20	(+ $303.33)	$947.90	(+ $37.92)
18	$8,206.53	(+ $328.26)	$1,025.82	(+ $41.03)
19	$8,854.79	(+ $354.19)	$1,106.85	(+ $44.27)
20	$9,528.99	(+ $381.16)	$1,191.12	(+ $47.64)
21	$10,230.14	(+ $409.21)	$1,278.77	(+ $51.15)
22	$10,959.35	(+ $438.37)	$1,369.92	(+ $54.80)
23	$11,717.72	(+ $468.71)	$1,464.72	(+ $58.59)
24	$12,506.43	(+ $500.26)	$1,563.30	(+ $62.53)
25	$13,326.69	(+ $533.07)	$1,665.84	(+ $66.63)
26	$14,179.76	(+ $567.19)	$1,772.47	(+ $70.90)
27	$15,066.95	(+ $602.68)	$1,883.37	(+ $75.33)
28	$15,989.63	(+ $639.59)	$1,998.70	(+ $79.95)
29	$16,949.21	(+ $677.97)	$2,118.65	(+ $84.75)
30	$17,947.18	(+ $717.89)	$2,243.40	(+ $89.74)
31	$18,985.07	(+ $759.40)	$2,373.13	(+ $94.93)
32	$20,064.47	(+ $802.58)	$2,508.06	(+ $100.32)
33	$21,187.05	(+ $847.48)	$2,648.38	(+ $105.94)
34	$22,354.53	(+ $894.18)	$2,794.32	(+ $111.77)
35	$23,568.71	(+ $942.75)	$2,946.09	(+ $117.84)
36	$24,831.46	(+ $993.26)	$3,103.93	(+ $124.16)
37	$26,144.72	(+ $1,045.79)	$3,268.09	(+ $130.72)
38	$27,510.51	(+ $1,100.42)	$3,438.81	(+ $137.55)
39	$28,930.93	(+ $1,157.24)	$3,616.37	(+ $144.65)
40	$30,408.17	(+ $1,216.33)	$3,801.02	(+ $152.04)
TOTAL (APPROXIMATED) LIFELONG LOSS:				
Totals:	$31,624.50		$3,953.06	

§ 6.6. ***The Effects of Taxing Capital Itself.*** The burden brought about by taxing source-capital in opposition to its effluence, negatively results in grave subjugation and loss upon each individual's motivational capacity for obtaining meaningful life achievements, rather descending them into spiraling financial dependency, debt-lender reliance, and unrelenting interest and loan repayments. Below generalizes, hypothetically, the overwhelming burden such a method of taxation inevitably results in.

For instance, supposing that a single filer earns $52,000 annually, or $2,000 biweekly; now with that in mind, at present the federal income tax rate for this sum is set at: $3,315, plus 25% (which is actually 28%, although has been reduced due to 26 USC § 1(i)(2)) of the remaining amount over $22,100, and an additional 7.65% for FICA—6.2% plus 1.45% for Medicare. (Noting that this example only accounts for the *standard deduction* allotted by statute (currently set at $9,750 for single filers) and not any other any other deductions, exemptions, refunds, etc., which one might be entitled to receive, but only the basic tax rates as set at present.)

Thus, presuming that the above sums and rates remain frozen throughout the entirety of such individual's work career, we may conclude the following losses to be incurred by them annually:

After determining their taxable sum of $42,250 (52,000 - 9,750 = 42,250), they are compelled to surrender $3,315 on their first $22,100; $5,037.50 on their $20,150 overage ((42,250 - 22,100) * .25 = 20,150); and $3,232.13 for FICA (42,250 * .0765 = 3,232.125); then totaling a conversionary theft by *de facto* decree of $11,585 (3,315 + 5,037.50 + 3,232.13 = 11,584.63) per annum, leaving that individual with only $40,415 in recompense at the close of the year—a 22.3% sustained net loss upon that source-capital of $52,000.

Effectively, this results in a perpetual constraint of $445.58 for each biweekly pay-period; indicating that whereas that individual would have otherwise honestly acquired $2,000 every 14-daysthroughout the year, respectively, for their own necessity and competency through their individualistic hard work and effort, they actually realize only $1,554.42. While further acknowledging that these figures do not include the additional losses brought about by state income taxation obligations or the myriad of other excise taxes such an individual might owe for enjoying modern day "necessities", e.g., water or trash services; texting, telephone, Internet, or cell-phone services; oil, gas, or fuel; electricity; also including: user or usage registration dues, fees, licenses, or permits; transfer or inheritance (succession) taxes; sales taxes; property taxes; parking fees or roadway tolls; etc. And neither does this example take into account the annual inflationary devaluation to our national currency, which is itself a hidden tax generally upon the populace, effectively resulting in a 2-3.5 percentage increase in COL/CPI (Cost of Living/Consumer Price Index) for each subsequent year, (e.g., in early 2000 gold was priced at approximately $280 per ounce and silver around $5 an ounce, and presently, each fluctuates between $1,300-1,725 for gold and $20-32 for silver; as well, back in 2000 low octane gasoline averaged around $2.00 per gallon, while now its averages swing between $3.50-4.00.)

Again, presuming that this individual's annual pay and the respective federal income tax rates remain unchanged as they labor unimpeded until reaching retirement—which historically, recompense for the average individual is likely only to slightly increase over the entirety of their career, yet federal tax rates and monetary depreciation will exponentially increase, both in disproportion to one another—it can be inferred that if they were to remain working for 20-years prior to retiring early, then the lifelong loss that is to be sustained by them as a result of having taxed their source-capital amounts to $231,700; while on the other hand if they were to instead work a full 40-years prior to seeking retirement their sustained loss would amount to: $463,400. Which if taxed in such a manner throughout their entire career, would equate the gross sum of:

For 20-years: $808,300 (40,415 * 20 = 808,300), as opposed to the undisturbed gross sum of $1,040,000 (52,000 * 20 = 1,040,000)—as shown a negative differential of: **$231,700**.

For 40-years: $1,616,600 (40,415 * 40 = 1,616,600), as opposed to the undisturbed gross sum of $2,080,000 (52,000 * 40 = 2,080,000)—as shown a negative differential of: **$463,400**.

§ 6.7. ***The Income Tax as a Means of Authoritarianism.*** Upon entering retirement the average retiree will most likely already be well into their sixties, counting themselves lucky just to be receiving the miniscule monthly payments from their Social Security Insurance or similar plan, which at present averages $650 per month, not including an additional stipend or two each month or year.

Ultimately, the methodology behind income taxation being sought by the progressivist status quo is intent on methodically compelling the vast majority of the population into relishing their volunteerism upon credit card and loan debt, while ensuring that the possibility of providing for the furtherance of each family's personal education, savings, retirement, and of owning their own estates remain an elusive yet hopeful fiction; bonding most all individuals into a subservient lifestyle, while the true benefactors function surreptitiously as international robber-baron elitists and oligarchs. While in actuality, *We the People* have become unyieldingly subjugated to the greed and grip of our elected representatives. And yet, we "unwashed masses" dare to persist, all for the prospect of one day owning our very own portion of that allusive "American Dream", even when that goal is to be obtained just prior to reaching retirement—by then jaded and weakly.

To proffer further resolve regarding this aspect, the following outlines the respective monthly expenses incurred by an average family of two (*****):

Cable:	$55-100
Cell-phone or wireless carrier:	$35-75
Fuel:	$150-220
Gas and electric:	$60-200
Healthy organic groceries and dinning:	$500-800
Insurance auto:	$35-75
Insurance health:	$200-1,500
Insurance personal/life:	$20-50
Internet (ISP):	$25-60
Phone and long distance:	$45
Rent, lease, or mortgage:	$700-2,000

The totals for above range from $1,825 upwards to $5,125; and when averaged out equals $3,475.

Therefore, generally, the average individual would be capable of retaining $525 ((2,000 * 2) - 3,475 = 525) every month if their source-capital were to be left untaxed; whereas, since the conversion of their source-capital is presently the case, such individuals are left to incur a negative loss each month of -$366.16 ((1,554.42 * 2) - 3,475 = -366.16), compelling those individuals to perpetually contract into debt or that they must otherwise diminish their most basic humane expectations and standards of living within our modernized society.

In finalizing this point, it is considerable to visually summarize the distinctions between each of the above minimized, median, and maximum examples (figures rounded upward):

	Minimally	Median	Maximally
Untaxed:	$4,000 - $1,825 = **$2,175**	$4,000 - $3,475 = **$525**	$4,000 - $5,125 = **-$1,125**
Taxed:	$3,109 - $1,825 = **$1,284**	$3,109 - $3,475 = **-$366**	$3,109 - $5,125 = **-$2,016**
Variance:	(2,175 - 1,284) = **$891**	($525 - -$366) = **$159**	(-1,125 - -2,016) = **-$891**

***** Additional considerations to monthly expenses have been excluded from the context of the above examples, including: loan, credit card, and APR debt obligations; tool/utility, rental, landscaping, home, and automotive maintenance, repairs, fees, or costs; personal losses due to vandalized, stolen, lost, or damaged property; and other necessary expenses such as retirement planning, personal savings, or education, etc., or miscellaneous expenses, such as unplanned repairs, and the like.

It would be no less than prudent to provide illuminatingly wise maxims on the very subjects of taxation, social welfare, and national debt by our Forefather Thomas Jefferson, as quoted from "*Jeffersonian Cyclopedia*" (Funk and Wagnalls, 1900):

- "*It is incumbent on every generation to pay its own debts as it goes. A principle which if acted on would save one-half the wars of the world.*" (p. 227)
- "*I predict future happiness for Americans if they can prevent the government from wasting the labors of the people under the pretense of taking care of them.*" (p. 271)
- "*To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical.*" (p. 663)

And as from Baron De Montesquieu's "*Spirit of the Laws*", XIII, 1750 (1748), which was copied into Thomas Jefferson's Commonplace Book:

> "*A capitation is more natural to slavery; a duty on merchandise is more natural to liberty, by reason it has not so direct a relation to the person.*"

Finally, included in-part, Thomas Jefferson's 2nd Inaugural Address, Washington D.C., March 4, 1805:

> "*At home, fellow-citizens, you best know whether we have done well or ill. The suppression of unnecessary offices, of useless establishments and expenses, enabled us to discontinue our internal taxes. These, covering our land with officers and opening our doors to their intrusions, had already begun that process of domiciliary vexation which once entered is scarcely to be restrained from reaching successively every article of property and produce.*
>
> *If among these taxes some minor ones fell which had not been inconvenient, it was because their amount would not have paid the officers who collected them, and because, if they had any merit, the State authorities might adopt them instead of others less approved.*
>
> *The remaining revenue on the consumption of foreign articles is paid chiefly by those who can afford to add foreign luxuries to domestic comforts, being collected on our seaboard and frontiers only, and incorporated with the transactions of our mercantile citizens, it may be the pleasure and the pride of an American to ask, What farmer, what mechanic, what laborer ever sees a taxgatherer of the United States? These contributions enable us to support the current expenses of the Government, to fulfill contracts with foreign nations, to extinguish the native right of soil within our limits, to extend those limits, and to apply such a surplus to our public debts as places at a short*

day their final redemption, and that redemption once effected the revenue thereby liberated may, by a just repartition of it among the States and a corresponding amendment of the Constitution, be applied in time of peace to rivers, canals, roads, arts, manufactures, education, and other great objects within each State. In time of war, if injustice by ourselves or others must sometimes produce war, increased as the same revenue will be by increased population and consumption, and aided by other resources reserved for that crisis, it may meet within the year all the expenses of the year without encroaching on the rights of future generations by burthening them with the debts of the past."

§ 6.8. ***The Impropriety of Taxing Nonproductive Real Estate.*** This issue directly strikes against the ethical considerations of those attentive in acquiring the so-called "American Dream" and should be of grave concern to all strict libertarians.

By compelling every individual owning realty to fund an entire profession of public educators, school administrators and boards, including their staff and contractors, what exists then to prevent those in government from further compelling those individuals to additionally fund other such professions under that same likeness?

State governments having likely sold the property initially (either upon its sovereign origination or through historical happenstance), asserts that it may place a lien upon those unable or unwilling to pay the property taxes deemed due, lien-selling it at below market value, yet still at a much greater price than originally sold, in order to collect on whatever outstanding taxes imposed, now including accruing penalty interest, associated fees and fines, and at once collect additional taxes from all the parties involved in its repurchase and resale (presuming that a profit is to be taken in.)

Here the underlying concern is the government's perpetual imposition upon objects which never intend to ascend an individual's personal wealth, such as their primary or secondary residences, including their personal means of transportation, and the modern day necessities of life that go along with them both; to which that very government then uses to pocket not for specific purposes, but for whatever their general funding pleases of them at the time—which effects a complete lack of dutiful accountability on its part. Further it is to be acknowledged that individuals are additionally expected to pay for every service pertaining to the ownership, maintenance, and repair of their property as separate fees, including: water, sewage, refuse, gas, electric, communications, etc.; a rule which similarly applies to their automobiles and the like.

Inevitably, this point reins inherent financial abuse against taxpayers throughout the various levels of government. To exemplify this point, we need simply look to a contract recently agreed upon for the Los Angeles Unified School District—which possesses an annual budget of $7.3-billion to fund its 662,140 students—to dedicate $30-million for the purchase of 31-thousand Apple iPads for use by their students and then to arrange for the future purchase of an additional 609,000 units (further costing taxpayers an additional sum of $589,353,660.00, respectively.) Thus we can determine each unit is being purchased for $967.74 (which includes educational software and additional arrangements), while keeping in mind that Apple iPads cost between $300-500 (with the latter being fully loaded.) One might only imagine the host of resulting implications to be brought about by issuing near-thousand dollar electronic devices into the custody of irresponsible children.

The above figures indicate that the Los Angeles Unified School District expends approximately $11,024.86 per student, per year. Therefore, each classroom containing 30-students (albeit it has become the modernized standard throughout public institutions to

place more than thirty students into each classroom), costs its county taxpayers monthly: $33,074.58 and yearly: $330,745.80—while the average teacher's salary for Los Angeles County is $54,000. To wit, these figures seriously call into question the necessity in overtaxing through ramped property taxes.

In concluding this point, Gouverneur Morris in correspondence to Rufus King in London, dated June 4, 1800, had written:

> "*The truth is, that a direct tax, unpopular everywhere, is really unwise in America, because property here is not productive. Of course the democrats, and their demagogues, have had just cause to complain of the manner in which money is raised, and our expenditure is far from economical, so that no applause is to be expected on that score.*" ("*The Life of Gouverneur Morris: With Selections from His Correspondence and Miscellaneous Papers*, Volume III", Jared Sparks, Gray & Bowen 1832, p. 128)

Reemphasizing this point over a decade later, with great intensity, he corresponded with:

(a). Moss Kent at Morrisania, NY, March 3, 1816:

> "*While you offer millions of acres to sell, is it wise to threaten those who buy with an everlasting yoke of taxation? . . . If you will have a land tax, lay it on revenue. But why resort to this pernicious mode of replenishing your treasury? Why amerce those, who leave a settled country to lay open the bosom of an unproductive wilderness? Is it not enough, that you entice the youth of our country by high premiums, to quit the wholesome tillage of her soil for manufacturing sloth and debauchery? Is it not enough, that you subject the busy bees, on whose honey you live, to the extortion of drones, who must quit the hive or perish, if not supported by your profusion? Why travel on in the down hill road to ruin? Why degrade a yeomanry, our country's pride, by a useless, pernicious, tormenting imposition? There was a time when American farmers could cheer their friends with a glass of generous wine. Heavy protecting duties have exposed them an unprotected prey to the rapacity of mechanics, whose riot insults their want, and, bereaving them of comforts, has deprives the public of that rich revenue, which might be raised by a moderate impost on their enjoyments.*
>
> *Now to cure the wounds, wantonly made on your farmers and finances, you try to squeeze out the last drop from their penury by the pressure of direct taxation. Why, in the name of Heaven, why uphold a system radically wrong! Is it because the odium inseparable from its oppression must render it every day more and more unpopular? Will not your best friends begin, at last, to believe, what your taunting foes long since proclaimed, that Federalism and folly are synonymous terms.*" (*Ibid.*, pp. 350-351)

(b). Rufus King at Morrisania, NY, January 26, 1816:

> "*A land tax is just nowhere, and peculiarly unjust here. If light, it is an expensive instrument of torture. If heavy, it is oppressive to individuals, injurious to the community. . . . I think it both unwise and unjust to tax either money or unproductive land. If you tax money, while you limit interest and thereby prevent a man from employing it to advantage within the State, he will send it abroad. The scarcity will raise the price, so that borrowers must give more than the interest and tax in some other shape. If you do not limit interest, the borrower by an increase of it pays the tax. He is taxed double. First, for his property, and secondly, for the loan; though it is a deduction from his property. Taxes can be raised only from revenue. Push the matter further and their nature is changed. It is no longer taxation but confiscation. A nation of cultivators will not long be the dupe of contrivances to ruin them. . . . The wealth of the governed is not the only consideration of a wise ruler. Their comfort, their peace, their domestic felicity, should claim a share of his attention.*" (*Ibid.*, pp. 343-345)

(c). Moss Kent at Washington, January 10, 1815:

> "*It is very true, my good friend, that direct taxes fall heavily on great land-holders. And it is equally true, that the land tax, as originally imposed, and now reimposed, is a breach of faith, and in the mildest view an act of injustice. No government can rightfully exact more than a fair portion of income. To go further, and take the capital, is no longer taxation. It is confiscation.*
>
> *When the State sells uncultivated land, they receive that which produces income, in exchange for that which produces no income, under the engagement generally expressed, but always implied, that while it remains unproductive it shall remain untaxed. Imagine a person, and there were many such, who invested the greater part of a large money capital in the purchase of wild land, reserving as much in public stock as might enable his family to live. Such persons, the interest on his stock withheld and unable to sell the principal, is pressed for a tax on his wild land. He cannot sell it, for no one is so foolish as to purchase a tax. What then can he do? You may determine that, if he do not pay, so much of his land shall be sold as the tax amounts to. Now make that certain, which, in the course of things, must become certain. Suppose it to be one tenth. It results, that your operation when analyzed amounts to this. You sell a thousand acres for cash today, and take back a hundred for nothing tomorrow. Why not play the whole game of French rapacity? Why not take the whole property, preluding as they did by an overture on the guillotine?*" (*Ibid.*, p. 327)

Chapter VII. Obligatory IRS Mandates—and Summation

§ 7.1. ***IRS W-4 Withholdings—'Stoppage at the Source'.*** In federal tax law, with regard to *stoppage at the source*, Congress has statutorily authorized individuals the option to commence voluntary IRS W-4 wage withholdings within 26 USC § 3402(p)(3)(B) and to make *claims of refund* on whatever sums having been withheld and overpaid (including its accruing interest), regardless if tax liabilities are realized or not—see: 26 USC § 31(a)(1) → §§ 3503, 6401(a),(c), 6402(a), 6511(a),(b), 6611(a),(b)(2), 6621(a), 6622(a), 7422(a), *et seq*.

An important realization concerning IRS W-4 withholdings is highlighted in *Baral v. United States*, No. 98-1667 DC Circuit, (2000): "*Contrary to Baral's claim, the withholding tax and estimated tax are not taxes in their own right (separate from the income tax), that are converted into income tax only on the income tax return. Rather, they are methods for collecting income taxes.*"

The federal income tax, 26 USC § 61(a)—*gross income* is not a tax upon a 'source' whatever; that is to say, it is not a tax upon one's basis in establishing or acquiring pecuniary capital, (i.e., one's "whole" estate or personal property having been received in the course of a respective tax-year; including their: assets, competence, contracts, earnings, livelihood, personalty, principal, remuneration, savings, stock, sustenance, etc.)

Moreover, an individual's federal income tax liability is not born merely from the receipt of money; it is born from the growth or increase of monies either being within their possession or command, or otherwise through a pecuniary conversion of whatever assets or arrangements held that has resulted in realizing them 'gains' or 'profits' within or throughout a respective tax-year.

A tax upon those compelled to toil in exchange for monetary pay, being so necessary to subsist, is particular to a tax upon their right to pursue and enjoy life and thereby is constitutional only when prudent and levying is being achieved through 'apportionment'.

The Sixteenth Amendment to the U.S. Constitution in rendering itself constitutionality, subsequently, to the pride of the Internal Revenue Code, was never designated to permit for imposing and levying a national tax, *indirectly*, upon the portion of income that is itself the capital (i.e., its source), but to permit for imposing and levying a national tax, *indirectly*, only upon the portion of income that has been severed therefrom—the capital—and which results in deriving a monetary ascension to "wealth" from that originating sum, (thereafter being "severed" from its 'source'; *viz*, after subtracting all legally permissible loss, expense, deduction, etc.)

The term 'incomes' as provided for within the Sixteenth Amendment to the U.S. Constitution and subsequently adopted for implementation within the Internal Revenue Code of 1913 as the term 'net income' is in direct reference to the '1909 Corporation Excise Tax Act', which therein defined 'income' peculiarly as: "*profit gained through sale or conversion of capital assets*", thereby providing the term 'gross income' an intentionally unambiguous legal context and breadth, (see: *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399 (1913); *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179 (1918); *Eisner v. Macomber*, 252 U.S. 189 (1920); *Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509 (1921); *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170 (1926); *et al.*)

Moreover this usage of the term 'income' had been clearly enunciated in *United States v. Whitridge*, 231 U.S. 144, 147 (1913):

"*As repeatedly pointed out by this Court, the Corporation Tax Law of 1909 … **imposed an excise or privilege tax, and not in any sense a tax upon property or upon income merely as income.** It was enacted in view of the decision of this Court in Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 158 U.S. 158 U.S. 601, which held the income tax provisions of a previous law (Act of August 27, 1894, 28 Stat. c. 349, pp. 509, 553, §§ 27 et seq.) to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument.*"

Additionally, it is imperative to realize that with exception to those classes explicitly stipulated by 42 USC § 405(c)(2)(B)(i), participation in federal entitlement (i.e., social justice) programs such as: Social Security, Medicare, Medicaid, etc., are voluntary for individual citizens. See also: 26 CFR §§ 31.6011(b)-2(b)(1)(iv),(c)(2)(i), 301.6109-1(c),(d)(1),(d)(3)(i), *et seq*. Also noting that IRS foreign status certificate, Form W-8BEN, stipulates for those who are either a "U.S. citizen or other U.S. person" to instead use IRS Form W-9, which is a request for a TIN—Taxpayer Identification Number.

Such was illuminated in *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 513-514 (1937) that:

> "*The taxation of employees is not prerequisite to enjoyment of the benefits of the Social Security Act. The collection and expenditure of the tax on employers do not depend upon taxing the employees, and we find nothing in the language of the statute or its application to suggest that the tax on employees is so essential to the operation of the statute as to restrict the effect of the separability clause [Section 19]. Distinct taxes imposed by a single statute are not to be deemed inseparable unless that conclusion is unavoidable. See Field v. Clark, 143 U. S. 649, 143 U. S. 697; Sonzinsky v. United States, 300 U. S. 506.*
>
> *From what has been said, it is plain that the tax qua tax conforms to constitutional requirements, and that our inquiry as to its validity would end at this point if the proceeds of the tax were to be covered into the state treasury, and thus made subject to appropriation by the legislature.*"

Still this point is even further substantiated with consideration to the exacting confines stipulated within the Code of Federal Regulations, therein detailing the IRS' assessment and collection procedures, as provided below:

(a). 26 CFR § 601.101(a) – 'Introduction': "General. The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed. Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue.

The Director, Foreign Operations District, administers the internal revenue laws applicable to **taxpayers residing or doing business abroad, foreign taxpayers deriving income from sources within the United States, and taxpayers who are required to withhold tax on certain payments to nonresident aliens and foreign corporations**, provided the books and records of those taxpayers are located outside the United States. For purposes of these procedural rules any reference to a district director or a district office includes the Director, Foreign Operations District, or the District Office, Foreign Operations District, if appropriate. …"

(b). *Ibidem*, § 601.104(2) – 'Collection functions': "… In no case does withholding of the tax relieve an individual from the duty of filing a return otherwise required by law. The chief means of collecting the **income tax due from nonresident alien individuals and foreign corporations** having United States source gross income which is not effectively connected with the conduct of a trade or business in the United States is the withholding of the tax by the persons paying or remitting the income to the recipients. **The tax withheld is allowed as a credit in payment of the tax imposed on such nonresident alien individuals and foreign corporations.**"

The context provided to the above regulatory general procedures is especially disconcerting in that both nonresident aliens and foreign corporations (including withholding provisions) is already thoroughly addressed in 26 CFR §§ 1.871-1, 1.1441-0, *et seq.* See also 26 USC § 7701(a)(16), therein providing only a very narrow definition of what is termed a *withholding agent* that is in context to the above regulation: "The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461." Neither is there any such statutory provision for guiding those not meeting this limited scope, as show below.

i. *Ibid*, § 1441 – 'Withholding of tax on nonresident aliens'
ii. *Ibid*, § 1442 – 'Withholding of tax on foreign corporations'
iii. *Ibid*, § 1443 – 'Foreign tax-exempt organizations'
iv. *Ibid*, § 1461 – 'Liability for withheld tax'

Also interestingly (discounting any reference to the "861 Argument"), the entirety of 26 USC, Chapter 1, Subchapter N – 'Tax Based on Income From Sources Within or Without the United States' provides only for a narrow context to sources existing within the United States.

Further, that the four national regions and thirty-three 'Internal Revenue Districts' delegated under 'Executive Order 10289' (E.O.) that are respective to 26 USC § 7621(a), have been terminated as of March 9, 2001 through 'Treasury Order 150-02(18)' (T.O.), which thereby cancelled Treasury Order 150-01 in its entirety. See also: 4 USC § 72 – 'Public offices; at seat of Government'; 26 USC § 7601(a) – 'Canvass of districts for taxable persons and objects'.

Concluding that the rulemaking powers vested to E.O. 10289 within the 'Parallel Table of Authorities and Rules' (PTOA) pertain solely to 19 CFR, Part 101 – 'General provisions'; which in-part sets forth the authority for Customs Officers and their locations of prescribed operation which are (i.e., 19 CFR § 101.0 – 'Scope'): **(1)** "Customs ports of entry", **(2)** "service ports", and **(3)** "Customs stations". Therefore, all employees, agents, or officers of the IRS when traversing exterior to the District of Columbia—or otherwise its designated "National Headquarters"—may only carry out the lawful course of their prescribed administrative duties or functions while either in the presence of a Customs Officer who are themselves as well engaged in carrying out the lawful course of their own prescribed duties or functions, or from within a designated: "Customs port of entry", "service port", or "Customs station".

One final realization with respect to *stoppage at the source* (i.e., IRS W-4 withholdings) is that such conversionary tact is blatantly fraudulent as the sum recompense of employees being withheld by proxy was never, at any time, within the employee's physical possession or asserted control or custody—as contractually agreed upon, but merely depicted in individual payroll records. Ergo, such pretax withholdings are only prudently assessable upon an employee's employer (e.g., as an indirect tax charged on the gross wages paid out to employees by trades, businesses, and the like), but not an employer's employees—as was succinctly clarified by Dr. Adam Smith within his magnum opus.

§ 7.2. ***The Non-authority of W-2 Forms.*** "IRS" W-3 Forms as submitted by an employer (i.e., the payer), directly pertain to each individual employee, the accuracy of which is attested to by the employer's own affirmation; while "IRS" W-2 Forms are intended merely as an unverified duplicate to its coinciding IRS W-3 Form (as it excludes an affirmation or *jurat*.)

All IRS W-3 Forms, together with its W-2 Form counterpart are to be provided to the Social Security Administration (SSA) by one's employer for no other purpose than to be purely informational in nature—in effect, there is no existing individual federal income tax statute permitting the IRS to receive either W-3 or W-2 Forms for use in determining enforcement actions against employees, save for when an IRS W-2 Form (that including the use of IRS 843 and 4852 Forms) is submitted by the employee themselves to the IRS along with their properly filed tax documents. Even though labeled as documents issued by the IRS, the W-3 and W-2 are primarily apposite forms for SSA purposes. In fact there is no legal requirement for an employee to include a W-2 Form along with their proper tax filing to the IRS, and doing so is purely a courtesy. Regardless, IRS W-3 and W-2 Forms are third-party hearsay documents. (See: 26 CFR §§ 31.6011(a)-5(b), 31.6051-2, *et seq.*)

The submission of IRS published W-3/W-2 Form receipts by a respective payer to the SSA or IRS alone does not establish any federally taxable liabilities. Such forms are merely informational receipts, thereby providing for a proper claim of lawful ownership; by identifying the rightful owner of specifically withheld monies and stating the aggregate and precise amounts having been withheld (and deposited, 26 USC §§ 7501(a), 7809(a)) throughout a respective tax-year in consideration of that total sum (26 USC § 6051(a).)

Furthermore, within 26 USC § 6201(a)(1) Congress has required that: "The Secretary shall assess all taxes determined by the taxpayer…" American jurisprudence has well-established that "shall" means "must" and that "must" means "to be required to". See also: IRM at 4.10.12.1.2(4).

It is conceivable that an employee does not presume themselves to be involved in the officiates of operating a 'trade or business', thus requiring recordkeeping on their part and

moreover that their employer is not party to their court proceedings; hence, whatever is asserted of an employer's legal obligations as a structured business entity is simply not relevant to its employees.

The receipt of a W-2 Form by the IRS from other than the authority or grant of the taxpayer themselves, (to be voluntarily included within their official tax filings or by requested transference), involves a conspiracy to misuse private, personal, and confidential information on the part of both the SSA and IRS—i.e., excluding subordinate Treasury Regulations, there is no existing public statute granting such authority to either federal agency—and is being conducted in violation of 5 USC § 552a(b) (i.e., *Privacy Act of 1974*), including: 26 USC §§ 6103(a), 7602(c)(1),(2). Simply stated, there is no legally valid reason or excuse to require for every employer to generate two individual forms, specifically IRS W-3 and W-2 Forms, and then mail (or email) them both to the SSA—and moreover such tact is contrary to the intent of the *Paperwork Reduction Act of 1980*.

It is arguable that prosecutors serving on behalf of the IRS to meet its burden of proof, seek to submit IRS W-2 Forms as unchallengeable pseudo-evidence, being wholly reliant upon its face value in-order to substantiate the entirety of its case—this in conjunction with generalizing supporting public statutes and regulations, along with any other conflicting tax documents that are on file with the IRS, and nothing more. When in-fact the legal relevance of IRS W-3/W-2 Forms is to serve as 'informational receipts', these forms (on their own) are not to intended to establish *bona fide* documentable best-evidence against a 'taxpayer', see: 26 USC §§ 6051(a), 6201(a)(1),(d); 26 CFR §§ 31.6011(a)-5(b), 31.6051-2; IRS, IRM at Part 4.2.2.4(4E). Hence, until otherwise disproved, it is the taxpayer's own officially submitted tax documents that are *prima facie*—not the other way around.

Regardless, the attempted submission of an IRS W-2 Form as admissible evidence is not properly includable as an exception to hearsay under Rule 803(6) of the *Federal Rules of Evidence*, save for if the prosecution should intend to proffer a witness with direct and recent knowledge of such informational records or a qualifying certification of such, and the respondent is unable to successfully counter-argue an existing lack of trustworthiness within the source or its means of preparation. Further aspects of this concern include:

- Under the *Federal Rules of Evidence* an IRS published W-2 Form as submitted by a third-party do not qualify as an *original document*, *ibid.* Articles IX and X, inclusive;
- The IRS (including the SSA) lacks all specific first-party contextual knowledge pertaining to the actual and precise preparation, distribution, and content of a specific individual's IRS W-3 and W-2 Forms;
- The IRS W-2 Form fails the required test of 'self-authentication' under *ibid.* Rule 902(11), as it is neither a Xerox nor carbon copy; rather it is its own separate and distinctive document copy than an affirmed IRS W-3 Form, lacking the necessary certification;
- Neither the IRS nor SSA are purvey to the "source of information or the method or circumstances of preparation" and cannot testify to a third-party's trustworthiness or the means of preparation and distribution of a specific employee's as issued IRS W-3 or W-2 Forms, and;
- IRS W-2 Forms fail the original documents test of *ibid.* Rule 1002, to wit, a party to a court proceeding has a legal right to demand and inspect "the originals."

And the evidentiary value of third-party documents (e.g., IRS W-3/W-2 Forums) was touched on in *Fisher v. United States*, 425 U.S. 391, 413 (1976): "*The taxpayer would be no more competent to authenticate the accountant's workpapers or reports* [Footnote 13] *by producing them than he would be to authenticate them if testifying orally. The taxpayer did not prepare the papers, and could not vouch for their accuracy. The documents would not be*

admissible in evidence against the taxpayer without authenticating testimony. Without more, responding to the subpoena in the circumstances before us would not appear to represent a substantial threat of self-incrimination.

Footnote 13—*In seeking the accountant's "retained copies" of correspondence with the taxpayer in No. 74-611, we assume that the summons sought only "copies" of original letters sent from the accountant to the taxpayer -- the truth of the contents of which could be testified to only by the accountant.*"

§ 7.3. ***Setting Forth a Legal Basis for Claiming a Refund.*** Generally, the IRS forms stipulated for use by individuals filing for a lawful (including joint) claim of refund consist of a combination of IRS 1040-type Forms, IRS 4852 Forms (W-2 Correction/Substitution—or otherwise when specifically applicable an IRS 843 Form), and also whichever IRS Schedule Forms that are applicable.

Moreover, in order for individuals to set forth a legally binding—so as be made a valid and proper—*claim of refund* they are to provide the IRS with a verified affidavit (signed under perjury and notarized as such), which therein establishes and substantiates the validity of their claims, along with their respective tax documents that are also be filed. These documents must be timely submitted for filing (i.e., by USPS or in person) at their designated IRS regional service center/district office in lawful accordance with 26 CFR § 301.6402-2(b)(1) and subsequently 26 CFR § 601.105(a),(b)(1-2,4),(c)(1),(d)(1),(e)(1-3), *et seq.*

Contrary to the misguided assertions pontificated on behalf of inadequately trained IRS employees it is important to understand that submitting a *claim of refund* (or credit) is not *frivolous* (26 USC § 6702); however, under intentionally illegitimate circumstances doing so may be construed as being *negligent*, *fraudulent*, or *erroneous* (see: 26 USC §§ 6662, 6663, 6676.) Additionally, the average IRS employee is not an attorney and cannot provide tax—i.e., legal—advice to the public.

The regulatory procedures for submitting claims of refund are thoroughly covered within 26 CFR §§ 301.6203-1, 601.102, 601.103, 601.104, 601.105, *et al*, (and subsequently by the IRM, *supra*.)

Including the formal proceedings to contest adverse terminations made on the part of the IRS, which are set forth by 26 CFR § 601.105(b)(5)(iii)(a) and *et seq.* Furthermore, it is a stipulation within 26 USC § 7422(a) that filing a claim of refund with the IRS is the first requirement in permitting individuals the necessary jurisdiction to bring forth a civil action, suit, or administrative proceeding against the IRS.

§ 7.4. ***Obliged to Assess and Provide Notice.*** The IRS is mandated by 26 USC §§ 6203, 7522, *et seq.*, to timely provide individuals (i.e., within 60-days of making its tax assessment) with a notice of taxes due—including a copy of the record of assessment upon their request—depicting the exact sum of taxes owed and the basis upon which such taxes have been imposed, including any interest, additions, and penalties for each respective tax-year.

The record of any assessable penalties or deficiencies concluded by the IRS is determined through an *initial assessment* and thereafter verified upon a *certification of assessment*, which substantiates whatever future actions that are to be taken on behalf of the IRS' interests (see: 26 USC §§ 6201(a)(1), 6203, 6751(b)(1), 7522(a), *et seq.*)

In all instances, the IRS is duty bound to act and to serve the public as prescribed within 26 USC §§ 6201(a),(a)(1), 6203, 6204(a), 6303(a), 6402(a),(l), 6665(a),(b), 6751(a),(b)(1),(c), 7401, 7522(a), *et seq.*

Yet, providing even further emphasis that the IRS' is itself factually obliged to function under due process of law, is the finding of *Lipke v. Lederer*, 259 U.S. 557, 562 (1922):

> "*A revenue officer, without notice, has undertaken to assess a penalty for an alleged criminal act, and threatens to enforce payment by seizure and sale of property without opportunity for a hearing of any kind. . . . Before collection of taxes levied by statutes enacted in plain pursuance of the taxing power can be enforced, the taxpayer must be given fair opportunity for hearing; this is essential to due process of law. Central of Georgia Ry. v. Wright, 207 U.S. 127, 207 U.S. 136-138, 207 U.S. 142.*
>
> *And certainly we cannot conclude, in the absence of language admitting of no other construction, that Congress intended that penalties for crime should be enforced through the secret findings and summary action of executive officers. The guaranties of due process of law and trial by jury are not be forgotten or disregarded. See Fontenot v. Accardo, 278 F. 871. A preliminary injunction should have been granted.*"

Still, moreover in *Goldberg v. Kelly*, 397 U.S. 254, 266-271 (1970), concerning qualified *administrative due process* upon denial of governmental benefits, i.e., "social justice" programs:

> "*As the District Court correctly concluded, "[t]he stakes are simply too high for the welfare recipient, and the possibility for honest error or irritable misjudgment too great, to allow termination of aid without giving the recipient a chance, if he so desires, to be fully informed of the case against him so that he may contest its basis and produce evidence in rebuttal."*
> . . .
> *The fundamental requisite of due process of law is the opportunity to be heard." [Citation omitted.] The hearing must be "at a meaningful time and in a meaningful manner." [Citation omitted.] In the present context, these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases.* [Footnote 15]
> . . .
> *The city's procedures presently do not permit recipients to appear personally, with or without counsel, before the official who finally determines continued eligibility. Thus, a recipient is not permitted to present evidence to that official orally, or to confront or cross-examine adverse witnesses. These omissions are fatal to the constitutional adequacy of the procedures.*
>
> *The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.* [Footnote 16 omitted.] *It is not enough that a welfare recipient may present his position to the decisionmaker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations; they do not permit the recipient to mold his argument to the issues the decisionmaker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand*

presentation to the decisionmaker by the caseworker has its own deficiencies; since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore, a recipient must be allowed to state his position orally. Informal procedures will suffice; in this context, due process does not require a particular order of proof or mode of offering evidence. Cf. HEW Handbook, pt. IV, § 6400(a).

In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. [Citations omitted.] *What we said in Greene v. McElroy,* [Citation omitted.]*, is particularly pertinent here:*

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that, where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment. . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative . . . actions were under scrutiny."

Welfare recipients must therefore be given an opportunity to confront and cross-examine the witnesses relied on by the department.

Finally, the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. [Citations omitted.] To demonstrate compliance with this elementary requirement, the decisionmaker should state the reasons for his determination and indicate the evidence he relied on, [Citations omitted.] though his statement need not amount to a full opinion, or even formal findings of fact and conclusions of law. And, of course, an impartial decisionmaker is essential. [Citations omitted.] We agree with the District Court that prior involvement in some aspects of a case will not necessarily bar a welfare official from acting as a decisionmaker. He should not, however, have participated in making the determination under review.
Footnote 15—*This case presents no question requiring our determination whether due process requires only an opportunity for written submission, or an opportunity both for written submission and oral argument, where there are no factual issues in dispute or where the application of the rule of law is not intertwined with factual issues. See FCC v. WJR, 337 U. S. 265, 337 U. S. 275-277 (1949).*"

However, the IRS as a matter of common policy and practice, denies individuals their requisite right to first exhaust *procedural due process*, particularly, in matters concerning allegations of 26 USC § 6702 pre-deprivation; with such just right—minimally obliging that governmental agencies provide: **(1)** prior and prudent notice, **(2)** a non-adversarial oral hearing, **(3)** the final decision be made by an impartial party, and **(4)** an evidentiary hearing post-deprivation—being negligently and fraudulently avoided by the IRS when corresponding with alleged frivolous filers, thus legally nullifying such proposed collection actions. The following, so stated in *Mathews v. Eldridge*, 424 U.S. 319, 332-334 (1976):

"***Rather, the Secretary contends that the existing administrative procedures, detailed below, provide all the process that is constitutionally due before a recipient can be deprived of that interest.***

This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. [Citations omitted.] *The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.*

[Citation omitted.] *The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."* [Citations omitted.] . . . ***More recently, in Arnett v. Kennedy, supra, we sustained the validity of procedures by which a federal employee could be dismissed for cause. They included notice of the action sought, a copy of the charge, reasonable time for filing a written response, and an opportunity for an oral appearance. Following dismissal, an evidentiary hearing was provided.***"

i(a). There is no federal statute that explicitly exempts the IRS from the above stated rights in consideration of treating frivolous allegations differently from any other alleged civil wrongdoing.

i(b). Concerning 26 USC § 6702 allegations and subsequent IRS CDPH's, all methods of contact, with exception to brief mail correspondence—which, at any rate, is largely either never or otherwise inadequately responded to—are outright avoided by the IRS.

ii. IRS CDPH's are held only in Holtsville, New York, which is external to the majority of Americans designated Internal Revenue District—in violation of 26 USC §§ 7621(a), 7601(a); Executive Order: 10289; Treasury Orders: 150-01 (rescinded 2001), 150-02(18).) Clearly, this tact is purposefully intended to negate the taxpayer's ability to seek appropriate due process locally.

§ 7.5. ***The Illegitimacy of the IRS' ACS and FRP.*** The IRS has for many years now been implementing digital technologies that include computerized automation under what they have named the Automated Collection System or "ACS", which is designed to work in conjunction with their intradepartmental processing procedures, including their Frivolous Return Program or "FRP" that is largely based in Ogden, UT, including Fresno, CA.

In doing so the IRS has developed an inclination to devoid virtually every single citizen's right to enjoy their *administrative due process*. The use and application of such technology and multistate routing and rerouting programs have permitted the employees of the IRS to operate with complete anonymity and thus with absolute impunity.

The vast majority of all notices, letters, and forms mailed out nationwide under such respective programs by the IRS, using these technologies are legally *null and void*, due to such documents being crafted in utter violation of federal statutes, which makes the IRS' mailing of each qualifying notice, letter, or form through the United States Postal Service one count of mail fraud—a federal felony (see: 18 USC §§ 1341, 1349.)

To clarify, the IRS is legally required to include upon any notice, letter, or form that so qualifies (i.e., all balances due must be addressed through *manually generated correspondence*), requisite information such as: the associated IRS employee's **(1)** title, **(2)** full name, **(3)** contact telephone number, **(4)** unique identifying number, and **(5)** signature;

which are to be shown in a prominent manner upon "*manually generated correspondence*" that is to be "*clear, concise, and professional*", while meeting "*the needs of the taxpayer*", and having been "*approved by the group manager*", (see: RRA 98 § 3705; IRM at 4.10.1.5.3.2(1-5) – 'Written Communication' and 4.10.1.6.9(1) – 'Providing Taxpayers With Employee Contact Information'.)

The IRS' tell-tale on this very issue is that they frequently use entirely made up names (e.g., Mr. Excel, Ms. Green, Mr. White, etc.) on their documents; however, since this shady tactic was recently exposed across the Internet on social forums, the IRS appears to have redrafted the majority of its still ambiguous notices, letters, and forms being arbitrarily distributed under the pretext of such internal programs, although now all together excluding any supposed IRS employee contact information whatsoever (providing only a nationwide 1-800-number.)

§ 7.6. ***The Burden of Proof Doctrine.*** It is stipulated by 26 USC § 6201(d) that the IRS becomes obligated to shoulder the 'burden of proof' in instances of "*reasonable dispute with respect to any item of income reported on an information return filed by a third party*", and such has been appropriately raised, (see also: 26 USC §§ 6703(a), 7491(a)(1),(c) *et seq.*)

Additionally, IRS 'Policy Statement 4-7' stipulates within its IRM at 1.2.13.1.5(1-2) — 'Impartial determination of tax liability' in-part the following:

> "*An exaction by the United States Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution. Accordingly, a Service representative … shall hew to the law and the recognized standards of legal construction. …*" See additionally, IRM 1.2.14.1.2(1-10) – 'Policy Statement 5-2'.

Which is per in-whole 26 CFR § 601.106—Appeals functions. "(f) Conference and practice requirements. Practice and conference procedure before Appeals is governed by Treasury Department Circular 230 as amended (31 CFR Part 10), and the requirements of Subpart E of this part. In addition to such rules but not in modification of them, the following rules are also applicable to practice before Appeals:

(1) Rule I. An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers."

Moreover, the IRS is prohibited from establishing or threatening "bargaining points" or "bargaining chips"; i.e., as the IRM states at each of: 4.10.6.4(1), – 'Finalizing Penalty Determinations', 1.2.20.1.1(9c) – 'Policy Statement 20-1', and 20.1.1.2.3.1(1) – 'Examination Change Reports Assessing Penalties', *et seq.*, therein requiring that:

> "*… The manager should verify that the penalties were fairly imposed and accurately computed, that the employee did not improperly assert the penalties in the first instance as a bargaining chip, and that the employee's conclusions regarding "reasonable cause" (or the lack thereof) were proper.*"

And more on setting forth the underlying guilt of an offense in *Tot v. United States*, 319 U.S. 463, 465-468 (1943): "*An indictment charges the defendant with action or failure to act*

contrary to the law's command. It does not constitute proof of the commission of the offense. Proof of some sort on the part of the prosecutor is requisite to a finding of guilt; it may consist of testimony of those who witnessed the defendant's conduct. Although the Government may be unable to produce testimony of eye-witnesses to the conduct on which guilt depends, this does not mean that it cannot produce proof sufficient to support a verdict. The jury is permitted to infer from one fact the existence of another essential to guilt if reason and experience support the inference. In many circumstances, courts hold that proof of the first fact furnishes a basis for inference of the existence of the second. [Footnote 7—omitted.]

The rules of evidence, however, are established not alone by the courts, but by the legislature. The Congress has power to prescribe what evidence is to be received in the courts of the United States. [Footnote 8—omitted.] *The section under consideration is such legislation. But the due process clauses of the Fifth and Fourteenth Amendments set limits upon the power of Congress or that of a state legislature to make the proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated. The question is whether, in this instance, the Act transgresses those limits.*

The Government seems to argue that there are two alternative tests of the validity of a presumption created by statute. The first is that there be a rational connection between the facts proved and the fact presumed; the second, that of comparative convenience of producing evidence of the ultimate fact. We are of opinion that these are not independent tests, but that the first is controlling, and the second but a corollary. Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. [Footnote 9—omitted.] *This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case.* [Footnote 10—omitted.] *But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of courts.*"

Consequently, with regard to the concern of "willfulness", as pertinent to *Cheek v. United States*, 498 U.S. 192 (1991), the following had been prior determined in *United States v. Bishop*, 412 U.S. 346, 360-361 (1973) and partially quoted within *Cheek*, *supra*, at 200:

> "*The Court, in fact, has recognized that the word "willfully" in these statutes generally connotes a voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as "bad faith or evil intent," Murdock, 290 U.S. at 290 U.S. 398, or "evil motive and want of justification in view of all the financial circumstances of the taxpayer," Spies, 317 U.S. at 317 U.S. 498, or knowledge that the taxpayer "should have reported more income than he did." Sansone, 30 U.S. at 30 U.S. 353. See James v. United States, 366 U.S. 213, 366 U.S. 221 (1961); McCarthy v. United States, 394 U.S. 459, 394 U.S. 471 (1969).*
>
> *This longstanding interpretation of the purpose of the recurring word "willfully" promotes coherence in the group of tax crimes. In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law. The Court has said, "It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care."*
>
> *Spies, 317 U.S. at 317 U.S. 496. Degrees of negligence give rise in the tax system to civil penalties. The requirement of an offense committed "willfully" is not met, therefore, if a taxpayer has relied in good faith on a prior decision of this Court. James v. United States, 366 U.S. at 366 U.S. 221-222. Cf. Lambert v. California, 355 U.S. 225 (1957). The Court's consistent interpretation of the word "willfully" to require an element of mens rea implements the pervasive intent of Congress to construct penalties that*

separate the purposeful tax violator from the well meaning, but easily confused, mass of taxpayers."

On the matter of producing records and the like in *Boyd v. United States*, 116 U.S. 616, 621-622, 624-628, 633-635, 637-638 (1886), [the context of this case has since been limited throughout by subsequent precedent, as in: *Hale v. Henkel*, 201 U.S. 43 (1906); *Marron v. United States*, 275 U.S. 192 (1927); *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *Osborn v. United States*, 385 U.S. 323 (1966); *Berger v. New York*, 388 U.S. 41 (1967); *Katz v. United States*, 389 U.S. 347 (1967); and *Fisher v. United States*, 425 U.S. 391 (1976)]:

"[*W*]*hatever might have been alleged against the constitutionality of the acts… under which the order in the present case was made, is free from constitutional objection, because it does not authorize the search and seizure of books and papers, but only requires the defendant or claimant to produce them. That is so; but it declares that if he does not produce them, the allegations which it is affirmed they will prove shall be taken as confessed. This is tantamount to compelling their production, for the prosecuting attorney will always be sure to state the evidence expected to be derived from them as strongly as the case will admit of. It is true that certain aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching among his papers, are wanting, and to this extent the proceeding under the act of 1874 is a mitigation of that which was authorized by the former acts; but it accomplishes the substantial object of those acts in forcing from a party evidence against himself. It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property, is within the scope of the fourth amendment to the constitution, in all cases in which a search and seizure would be, because it is a material ingredient, and effects the sole object and purpose of search and seizure. … No doubt long usage, acquiesced in by the courts, goes a long way to prove that there is some plausible ground or reason for it in the law, or in the historical facts which have imposed a particular construction of the law favorable to such usage. It is a maxim that, consuetudo est optimus interpres legume* [i.e., custom is the best advocate of law]*; and another maxim that, contemporanea expositio est optima et fortissima in lege* [i.e., contemporaneous exposition is the best and most powerful in the law]*. But we do not find any long usage or any contemporary construction of the constitution, which would justify any of the acts of congress now under consideration. … Even the act under which the obnoxious writs of assistance were issued* **[Footnote 2]** *did not go as far as this… The search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ toto coelo* [i.e., diametric]*. In the one case, the government is entitled to the possession of the property; in the other it is not.*

. . .

As this act was passed by the same congress which proposed for adoption the original amendments to the constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment. … But, when examined with care, it is manifest that there is a total unlikeness of these official acts and proceedings to that which is now under consideration. In the case of stolen goods, the owner from whom they were stolen is entitled to their possession, and in the case of excisable or dutiable articles, the government has an interest in them for the payment of the duties thereon, and until such duties are paid has a right to keep them under observation, or to pursue and drag them from concealment; and in the case of goods seized on attachment or execution, the creditor is entitled to their seizure in satisfaction of his debt; and the examination of a defendant under oath to obtain a discovery of concealed property or credits is a proceeding merely civil to effect the ends of justice, and is no more than what the court

of chancery would direct on a bill for discovery. Whereas, by the proceeding now under consideration, the court attempts to extort from the party his private books and papers to make him liable for a penalty or to forfeit his property.

. . .

The practice had obtained in the colonies of issuing writs of assistance to the revenue officers, empowering them, in their discretion, to search suspected places for smuggled goods, which James Otis pronounced 'the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book;' since they placed 'the liberty of every man in the hands of every petty officer.' [Footnote 4] *This was in February, 1761, in Boston, and the famous debate in which it occurred was perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country. . . . The action was trespass for entering the plaintiff's dwelling-house in November, 1762, and breaking open his desks, boxes, etc., and searching and examining his papers. . . . As every American statesman, during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the fourth amendment to the constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures. We think, therefore, it is pertinent to the present subject of discussion to quote somewhat largely from this celebrated judgment. After describing the power claimed by the secretary of state for issuing general search-warrants, and the manner in which they were executed, Lord CAMDEN says:*

'Such is the power, and therefore one would naturally expect that the law to warrant it should be clear in proportion as the power is exorbitant. If it is law, it will be found in our books; if it is not to be found there it is not law.

'The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law are various. Distresses, executions, forfeitures, taxes, etc., are all of this description, wherein every man by common consent gives up that right for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing, which is proved by every declaration in trespass where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show, by way of justification, that some positive law has justified or excused him. The justification is submitted to the judges, who are to look into the books, and see if such a justification can be maintained by the text of the statute law, or by the principles of the common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment.

'Papers are the owner's goods and chattels; they are his dearest property, and are so far from enduring a seizure, that they will hardly bear an inspection; and though the eye cannot by the laws of England be guilty of a trespass, yet where private papers are removed and erried away the secret nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect. Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and therefore it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society.

'But though it cannot be maintained by any direct law, yet it bears a resemblance, as was urged, to the known case of search and seizure for stolen goods. I answer that the difference is apparent. In the one, I am permitted to seize my own goods, which are

placed in the hands of a public officer till the felon's conviction shall entitle me to restitution. In the other, the party's own property is seized before and without conviction, and he has no power to reclaim his goods, even after his innocence is declared by acquittal.

. . .

We have already noticed the intimate relation between the two amendments. They throw great light on each other. For the 'unreasonable searches and seizures' condemned in the fourth amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the fifth amendment; and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the fifth amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the meaning of the fourth amendment. ***And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself.*** *We think it is within the clear intent and meaning of those terms. … If the government prosecutor elects to waive an indictment, and to file a civil information against the claimants,-that is, civil in form,-can he by this device take from the proceeding its criminal aspect and deprive the claimants of their immunities as citizens, and extort from them a production of their private papers, or, as an alternative, a confession of guilt?* ***This cannot be.*** *The information, though technically a civil proceeding, is in substance and effect a criminal one. … As, therefore, suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the fourth amendment of the constitution, and of that portion of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the fifth amendment to the constitution, and is the equivalent of a search and seizure-and an unreasonable search and seizure-within the meaning of the fourth amendment. Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose.*

. . .for it is his breach of the laws which has to be proved to establish the forfeiture, and it is his property which is sought to be forfeited; and to require such an owner to produce his private books and papers, in order to prove his breach of the laws, and thus to establish the forfeiture of his property, is surely compelling him to furnish evidence against himself. In the words of a great judge, 'Goods, as goods, cannot offend, forfeit, unlade, pay duties, or the like, but men whose goods they are.' [Footnote 9]

. . .

The assumption that the owner may be cited as a witness in a proceeding to forfeit his property seems to us gratuitous. It begs the question at issue. A witness, as well as a party, is protected by the law from being compelled to give evidence that tends to criminate him, or to subject his property to forfeiture. Queen v. Newel, Parker, 269; 1 Greenl. Ev. 451-453. But, as before said, although the owner of goods, sought to be forteited by a proceeding in rem, is not the nominal party, he is, nevertheless, the substantial party to the suit; he certainly is so, after making claim and defense; and, in a case like the present, he is entitled to all the privileges which appertain to a person who is prosecuted for a forfeiture of his property by reason of committing a criminal offense. . . . We think that the notice to produce the invoice in this case, the order by virtue of which it was issued, and the law which authorized the order, were unconstitutional and void, and that the inspection by the district attorney of said invoice, when produced in obedience to said notice, and its admission in evidence by the court, were erroneous and unconstitutional proceedings.

Footnote 2—*13 & 14 Car. II. c. 11, 5.*

Footnote 4—*Cooley, Const. Lim. 301-303. A very full and interesting account of this discussion will be found in the works of John Adams, vol. 2, Appendix A, pp. 523-525;*

vol. 10, pp. 183, 233, 244, 256, etc., and in Quincy's Reports, pp. 469-482; and see Paxton's Case, Id. 51-57, which was argued in November of the same year, (1761.) An elaborate history of the writs of assistance is given in the appendex to Quincy's Reports, above referred to, written by Horace Gray, Jr., Esq., now a member of this court. **Footnote 9—***VAUGHAN, C. J., in Sheppard v. Gosnold, Vaughan, 159, 172; approved by PARKER, C. B., in Mitchell v. Torup, Parker 227, 236.*"

Viz., in likeness to the practice of *writs of assistance*, i.e., general search and seizure warrants authorizing, without expiration the taking of literally anything, anywhere and at anytime, being arbitrarily authorized to petty officers by local courts. As clarified by John Adams in his "*Novanglus and Massachusettensis*", 1819, pp.246-247:

"*But Otis* [i.e., James Otis, Jr.] *was a flame of Fire! With the promptitude of classical allusions, a depth of research, a rapid summary of historical events and dates, a profusion of legal authorities, a prophetic glare of his eyes into futurity, and a rapid torrent of impetuous eloquence he hurried away all before him. American independence was then and there born. The seeds of patriots and heroes to defend the Non Sine Diis Animosus Infans* [i.e., The infant is not bold without the aid of the gods.]*; to defend the vigorous youth were then and there sown. Every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born. In fifteen years, i.e. in 1776, he grew up to manhood and declared himself free. . . . 'The court has considered the subject of writs of assistance, and can see no foundation for such a writ…'—But it was generally reported and understood that the court clandestinely granted them; and the custom house officers had them in their pockets, though I never knew that they dared to produce and execute them in any one instance. Mr. Otis's popularity was without bounds.*"

And appropriately following:

(a). *Heiner v. Donnan*, 285 U.S. 312, 329 (1932): "*This Court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment. For example, Bailey v. Alabama, 219 U. S. 219, 219 U. S. 238, et seq.; Manley v. Georgia, 279 U. S. 1, 279 U. S. 5-6. "It is apparent," this Court said in the Bailey case (p. 219 U. S. 239)*

"that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. ***The power to create presumptions is not a means of escape from constitutional restrictions.****"*

If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove the facts of his case, certainly the power cannot be made to emerge by putting the enactment in the guise of a rule of substantive law."

(b). *Blodgett v. Holden*, 275 U.S. 142, 147 (1927): "*In Nichols v. Coolidge, 274 U. S. 531, this Court pointed out that a statute purporting to lay a tax may be so arbitrary and capricious that its enforcement would amount to deprivation of property without due process of law within the inhibition of the Fifth Amendment. … It seems wholly unreasonable that one who, in entire good faith and without the slightest premonition of such consequence, made absolute disposition of his property by gifts should thereafter be required to pay a charge for so doing.*"

(c). *Schlesinger v. State of Wisconsin*, 270 U.S. 230, 240 (1926): "*The presumption and consequent taxation are defended upon the theory that, exercising judgment and discretion, the legislature found them necessary in order to prevent evasion of inheritance taxes. … Rights guaranteed by the federal Constitution are not to be so lightly treated; they are superior to this*

supposed necessity. The state is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever. . . . A classification for purposes of taxation must rest on some reasonable distinction. A forbidden tax cannot be enforced in order to facilitate the collection of one properly laid."

(d). *Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150, 151 (1897): "*The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and in all cases it must appear not merely that a classification has been made, but also that it is based upon some reasonable ground -- something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection.*"

Still, with further consideration, statutory prohibitions attributing blanket assertions, including levying such upon "tax-protesters", "sovereigns", "frivolous filers", and the like, are blatantly unconstitutional, as in *Vlandis v. Kline*, 412 U.S. 441, 445-448 (1973):

> "*Appellees then brought suit in the District Court pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, contending that they were bona fide residents of Connecticut, and that § 126 of Public Act No. 5, under which they were classified as nonresidents for purposes of their tuition and fees, infringed their rights to due process of law and equal protection of the laws, guaranteed by the Fourteenth Amendment to the Constitution.* [Footnote 3] *After the convening of a three-judge District Court, that court unanimously held §§ 126(a)(2), (a)(3), and (a)(5) unconstitutional, as violative of the Fourteenth Amendment, and enjoined the appellant from enforcing those sections. 346 F.Supp. 526 (1972). The court also found that, before the commencement of the spring semester in 1972, each appellee was a bona fide resident of Connecticut; and it accordingly ordered that the appellant refund to each of them the amount of tuition and fees paid in excess of the amount paid by resident students for that semester. On December 4, 1972, we noted probable jurisdiction of this appeal. 409 U.S. 1036.*
>
> *The appellees do not challenge, nor did the District Court invalidate, the option of the State to classify students as resident and nonresident students, thereby obligating nonresident students to pay higher tuition and fees than do bona fide residents. The State's right to make such a classification is unquestioned here. Rather, the appellees attack Connecticut's irreversible and irrebuttable statutory presumption that, because a student's legal address was outside the State at the time of his application for admission or at some point during the preceding year, he remains a nonresident for as long as he is a student there. This conclusive presumption, they say, is invalid in that it allows the State to classify as "out-of-state students" those who are, in fact, bona fide residents of the State. The appellees claim that they have a constitutional right to controvert that presumption of nonresidence by presenting evidence that they are bona fide residents of Connecticut. The District Court agreed:*
>
> *"Assuming that it is permissible for the state to impose a heavier burden of tuition and fees on nonresident than on resident students, the state may not classify as 'out of state students' those who do not belong in that class." 346 F.Supp. at 528. We affirm the judgment of the District Court.*
>
> *Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments. In Heiner v. Donnan, 285 U. S. 312 (1932), the Court was faced with a constitutional challenge to a federal statute that created a conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his estate of a higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to deprive the taxpayer of his property without due process of law, the Court stated that it had "held more than once that a statute creating*

a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." [Citations omitted.]

The more recent case of Bell v. Burson, 402 U. S. 535 (1971), involved a Georgia statute which provided that, if an uninsured motorist was involved in an accident and could not post security for the amount of damages claimed, his driver's license must be suspended without any hearing on the question of fault or responsibility. The Court held that, since the State purported to be concerned with fault in suspending a driver's license, it could not, consistent with procedural due process, conclusively presume fault from the fact that the uninsured motorist was involved in an accident, and could not, therefore, suspend his driver's license without a hearing on that crucial factor.

Likewise, in Stanley v. Illinois, 405 U. S. 645 (1972), the Court struck down, as violative of the Due Process Clause of the Fourteenth Amendment, Illinois' irrebuttable statutory presumption that all unmarried fathers are unqualified to raise their children. Because of that presumption, the statute required the State, upon the death of the mother, to take custody of all such illegitimate children, without providing any hearing on the father's parental fitness. It may be, the Court said, "that most unmarried fathers are unsuitable and neglectful parents. . . . But all unmarried fathers are not in this category; some are wholly suited to have custody of their children."

Id. at 405 U. S. 654. Hence, the Court held that the State could not conclusively presume that any individual unmarried father was unfit to raise his children; rather, it was required by the Due Process Clause to provide a hearing on that issue. According to the Court, ***Illinois "insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove.*** *Under the Due Process Clause, that advantage is insufficient to justify refusing a father a hearing. . . ." Id. at 405 U. S. 658.* **[Footnote 4]**

The same considerations obtain here. It may be that most applicants to Connecticut's university system who apply from outside the State or within a year of living out of State have no real intention of becoming Connecticut residents, and will never do so. But it is clear that not all of the applicants from out of State inevitably fall in this category.

Footnote 3—*While the case was pending in the District Court, the Connecticut Legislature passed a bill relating to tuition payments by nonresidents, House Bill No. 5302, which would have repealed the particular portions of the statute that were under constitutional attack. On May 18, 1972, however, the Governor of Connecticut vetoed that bill.*

Footnote 4—*Moreover, in Carrington v. Rash, 380 U. S. 89 (1965), the Court held that a permanent irrebuttable presumption of nonresidence violated the Equal Protection Clause of the Fourteenth Amendment. That case involved a provision of the Texas Constitution which prohibited any member of the Armed Forces who entered the service as a resident of another State and then moved his home to Texas during the course of his military duty, from ever satisfying the residence requirement for voting in Texas elections, so long as he remained a member of the Armed Forces. The effect of that provision was to create a conclusive presumption that all servicemen who moved to Texas during their military service, even if they became bona fide residents of Texas, nonetheless remained nonresidents for purposes of voting. The Court held that "[b]y forbidding a soldier ever to controvert the presumption of nonresidence, the Texas Constitution imposes an invidious discrimination in violation of the Fourteenth Amendment."* [Citations omitted.]"

The guarantee of governmental due process is not an entirely modern concept; noting that the concept of establishing due process was first conceived in the following major works:

Maxims of Ptahhotep, "*Leadership*", para. 24, (Vizier to Egyptian King Isesi, 5th Dynasty (2450-2300 B.C.); 6th Dynasty, 2300-2150 B.C.):

"*If you are a man who leads,*
Listen calmly to the speech of one who pleads;
Don't stop him from purging his body
Of that which he planned to tell.
A man in distress wants to pour out his heart
More than that his case be won.
About him who stops a plea
One says: "Why does he reject it?"
Not all one pleads for can be granted,
But a good hearing soothes the heart."

Magna Carta Libertatum, para. 38, 39, 40, 45 (1215):

"*In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.*

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

To no one will we sell, to no one deny or delay right or justice.

We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well."

§ 7.7. ***On IRS 'Substitute for Returns'.*** Contrary to the IRS' assertions, 26 USC § 6020(b)(1) does not provide the IRS with the lawful authority to commence substitute returns (SFR) on non-SB/SE individuals who have timely filed their income tax returns—as the IRS is statutorily obliged to process such documents in accord with 26 USC § 6201(a)(1); see: IRM at 5.1.11.6.7(1A-H),(2) – 'IRC 6020(b) Authority' and 1.2.44.3 – 'Delegation Order 5-2'. Even still only "*revenue officers GS-09 and above*" and "*Collection Support Function managers GS-09 and above*" have been provided such authority (see: IRS 'Delegation Order No. 182' (D.O.)) to prepare and execute SFR', but only for non-1040-type 'Individual Income Tax Returns' under the grant provided by 26 USC § 6020(b).

§ 7.8. ***IRS "Lock-in Letter" Procedural Violations.*** An improper tactic commonly implemented by the IRS to harass individuals who dare contest the *status quo*' perception and validity of individual federal income taxation involves internally flagging such individuals using what is referred to as a "lock-in letter", (i.e., 'LTR 2800C' and 'LTR 2801C'.) This process effectively overrides the IRS W-4 Form arrangements of those employees, which they had contracted privately for along with their employers; by permanently locking the impeded employee into a 'single' and 'zero' pay reduction until that withholding status is otherwise released under the sole authority of the IRS.

The underlining concern in the way the IRS perpetuates this process is that in implementing such means of engrossing despotism, it regularly neglects its own regulatory edicts for lawfully initiating the "lock-in" procedure, while utterly disregarding federal law in the process; to which only provides the IRS with the following actions to be taken:

26 USC § 3402(i)(1) — 'Changes in withholding': "The Secretary may by regulations provide for increases in the amount of withholding otherwise required under this section in cases where the employee requests such changes."

26 CFR § 31.3402(f)(2)-1(g)(2)(i) — 'Withholding exemption certificates', (which to note (being merely a "regulation") is superseded in context by the legislative scope prescribed under federal statute) is intended only to ensure that employees are claiming only what they are lawfully entitled to and not to be enforced as a venomous form of maximum withholding punishment:

> "**(2)** *Notice of the maximum number of withholding exemptions permitted*—**(i)** Notice to employer. The IRS may notify the employer in writing that the employee is not entitled to claim a complete exemption from withholding or more than the maximum number of withholding exemptions specified by the IRS in the written notice. The notice will also specify the applicable marital status for purposes of calculating the required amount of withholding. The notice will specify the IRS office to be contacted for further information. The notice of maximum number of withholding exemptions permitted may be issued if--
> **(A)** The IRS determines that a copy of a withholding exemption Certificate submitted under paragraph (g)(1) [i.e., "An employer must submit to the Internal Revenue Service (IRS) a copy of any currently effective withholding exemption certificate as directed in a written notice to the employer from the IRS or as directed in published guidance."] of this section or otherwise provided to the IRS contains a materially incorrect statement or determines, after a request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct.
> **(B)** The IRS otherwise determines that the employee is not entitled to claim a complete exemption from withholding and is not entitled to claim more than a specified number of withholding exemptions. . . ."

§ 7.9. ***Levying Hardships.*** Provided that an individual has established a good faith motive pertaining to respecting "the law", the IRS is required to release any levies being imposed upon that individual when otherwise continuing the levy results in causing them economic hardships, thereafter preventing the individual from providing for their personal expenses and continued competency, see: IRM at 5.11.2.2.1.4(1) – 'Economic Hardship', *et seq.* Additionally, the matter of economic hardships had long ago been addressed within "*A Treatise on the Law of Income Taxation Under Federal and State Laws*", Henry Black, (1913, 1915):

> "**§ 197. Economic Aspects of Income Taxation**
> *... 'the fundamental idea upon which its champions rest their argument in its favor is that taxation should logically be imposed according to ability to pay, rather than upon the mere possession of property, which for various reasons may produce no revenue to the owner. . . .* [State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.]"

§ 7.10. ***The IRS' Ponzi and Levy Scheming.*** The IRS has been granted lawful authority to levy by a mere 'notice of levy' only for specific classes of individuals, as clarified within 26 USC § 6331(a): "... Levy may be made upon the accrued salary or wages of **any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer** (as defined in section 3401(d)) **of such officer, employee, or elected official**. ..."

This breadth is further substantiated by the rulemaking context of 26 CFR § 301.6331-1(a)(4)(i),(ii); noting that 26 CFR § 301.6331-1(a)(4)(ii), applicable to "**State and municipal employees**", entirely omits the 'notice of levy' language, while 26 CFR § 301.6331-1(a)(4)(i), applicable to "**Federal employees**", further clarifies the limiting term 'employer' to which such IRS self-issued notices apply.

As by the interpretive principle of *pari materia*, the above statute (i.e., 26 USC § 6331(a)) derives its authority from § 3310(a) of the 1939 IRC, which therein stipulated the legal applicability of *distraint* (*ibid.*, §§ 3310(e), 3690), upon only those classes of persons who were required to submit monthly tax returns to the IRS.

Additionally, as stated within 26 CFR § 31.6011(a)-5 'Monthly returns': "An employer (or other person) who is required by § 31.6011(a)-1 or § 31.6011(a)-4 to make quarterly or annual returns on any such form shall, in lieu of making such quarterly or annual returns, make returns of such taxes in accordance with the provisions of this section if the employer is so notified in writing by the IRS. . . ."

Thereby, the IRS' arbitrary issuance of levy notices is wholly inapplicable to individuals working solely in the capacity of an employee for an employer.

The IRS is obliged to act in a good faith accord with 26 USC § 7401 and 26 CFR § 301.7401-1(a); for otherwise, the IRS might arbitrarily enforce *distraint* by *de facto* tactics, while remaining grossly devoid of all accountably to the very public it serves. Moreover, 26 USC § 6331(a) affects only those first having been determined "liable to pay any tax".

A 'notice of' is neither denotative nor correlative to a 'demand for'. Appropriately, in order for the IRS to lawfully levy (or lien) upon the property or personalty of a private individual in contest, it is a constitutionally protected requirement under one's inherent right of *due process* to first obtain a valid court order, i.e., an executing warrant or writ (e.g., 'Writ of Attachment', 'Writ of Execution', 'Writ of Garnishment', 'Warrant of Distraint', etc.), with such being signed by a judge with the legal authority and jurisdiction to promulgate or rendition such orders as legally binding, in full accord with, e.g., 28 USC §§ 3102, 3203; *ibid.*, App. Rule 69; *et al.*

IRS Delegation Order 5-3 (Rev. 1), creates no authority for computer programs such as the IRS' FRP-ACS to issue any of: 'notice of intent to levy' or 'notice of levy', e.g., IRM at 1.2.44.4(2-3,11-12) – 'Delegation Order 5-3'. 'Notice of levy' delegations have been granted to only: **(1)** Insolvency Group Managers; **(2)** Technical Services Advisory Group Managers; **(3)** Revenue Officer Group Managers; **(4)** GS-09 SB/SE and W&I Compliance/Collection Managers responsible for collection matters; and **(5)** W&I Field Assistance Group Managers.

§ 7.11. ***Statutory Protection, Exculpation, and Countenance.*** Individuals are provided statutory protections, either civilly or criminally, from a variety of resulting failures, inactions, malfeasances, negligence, torts, and other such *wrongful acts* committed against them by governmental agencies, employees, or officials—thus, ensuring that those within government and its instruments retain full culpability in them maintaining their professional responsibilities. As further exemplified in following:

(a). In *Cooper v. Aaron*, 358 U.S. 1, 18, 23-24 (1958):

> "*Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3 "to support this Constitution." Chief Justice Taney,*

speaking for a unanimous Court in 1859, said that this requirement reflected the framers' "anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State. . . ."

Ableman v. Booth, 21 How. 506, 62 U. S. 524: No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it. Chief Justice Marshall spoke for a unanimous Court in saying that:

"If the legislatures of the several states may at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery. . . ."

"The historic phrase 'a government of laws, and not of men' epitomizes the distinguishing character of our political society. When John Adams put that phrase into the Massachusetts Declaration of Rights, he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws, and not of men,' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout our history. Or what this Court has deemed its duty to decide may be changed by legislation, as it often has been, and, on occasion, by constitutional amendment." . . . The conception of a government by laws dominated the thoughts of those who founded this Nation and designed its Constitution, although they knew as well as the belittlers of the conception that laws have to be made, interpreted and enforced by men. To that end, they set apart a body of men who were to be the depositories of law, who, by their disciplined training and character and by withdrawal from the usual temptations of private interest, may reasonably be expected to be 'as free, impartial, and independent as the lot of humanity will admit."

(b). In *Owen v. City of Independence*, 445 U.S. 622, 641, 651-652, 654, 656-657 (1980):

"*In the leading case of Thayer v. Boston, 36 Mass. 511, 515-516 (1837), for example, Chief Justice Shaw explained:*

"There is a large class of cases, in which the rights of both the public and of individuals may be deeply involved, in which it cannot be known at the time the act is done whether it is lawful or not. The event of a legal inquiry, in a court of justice, may show that it was unlawful. Still, if it was not known and understood to be unlawful at the time, if it was an act done by the officers having competent authority, either by express vote of the city government, or by the nature of the duties and functions with which they are charged, by their offices, to act upon the general subject matter, and especially if the act was done with an honest view to obtain for the public some lawful benefit or advantage, reason and justice obviously require that the city, in its corporate capacity, should be liable to make good the damage sustained by an individual, in consequence of the acts thus done."

The Thayer principle was later reiterated by courts in several jurisdictions, and numerous decisions awarded damages against municipalities for violations expressly found to have been committed in good faith. [Citations omitted.]

. . .

Yet owing to the qualified immunity enjoyed by most government officials, [citation omitted]*, many victims of municipal malfeasance would be left remediless if the city*

were also allowed to assert a good faith defense. Unless countervailing considerations counsel otherwise, the injustice of such a result should not be tolerated. [Footnote 33]

Moreover, § 1983 was intended not only to provide compensation to the victims of past abuses, but to serve as a deterrent against future constitutional deprivations, as well. [Citation omitted.] *The knowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights.* [Footnote 34] *Furthermore, the threat that damages might be levied against the city may encourage those in a policymaking position to institute internal rules and programs designed to minimize the likelihood of unintentional infringements on constitutional right.* [Footnote 35] *Such procedures are particularly beneficial in preventing those "systemic" injuries that result not so much from the conduct of any single individual, but from the interactive behavior of several government officials, each of whom may be acting in good faith.* [Citations omitted.]

. . .

It hardly seems unjust to require a municipal defendant which has violated a citizen's constitutional rights to compensate him for the injury suffered thereby. Indeed, Congress enacted § 1983 precisely to provide a remedy for such abuses of official power. [Citation omitted.] *Elemental notions of fairness dictate that one who causes a loss should bear the loss.*

. . .

As one commentator aptly put it:

"Whatever other concerns should shape a particular official's actions, certainly one of them should be the constitutional rights of individuals who will be affected by his actions. To criticize section 1983 liability because it leads decisionmakers to avoid the infringement of constitutional rights is to criticize one of the statute's raisons d'etre. [Footnote 41]"

. . .

In sum, our decision holding that municipalities have no immunity from damages liability flowing from their constitutional violations harmonizes well with developments in the common law and our own pronouncements on official immunities under § 1983. Doctrines of tort law have changed significantly over the past century, and our notions of governmental responsibility should properly reflect that evolution. No longer is individual "blameworthiness" the acid test of liability; the principle of equitable loss-spreading has joined fault as a factor in distributing the costs of official misconduct.

We believe that today's decision, together with prior precedents in this area, properly allocates these costs among the three principals in the scenario of the § 1983 cause of action: the victim of the constitutional deprivation; the officer whose conduct caused the injury; and the public, as represented by the municipal entity. The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury. The offending official, so long as he conducts himself in good faith, may go about his business secure in the knowledge that a qualified immunity will protect him from personal liability for damages that are more appropriately chargeable to the populace as a whole. And the public will be forced to bear only the costs of injury inflicted by the "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy."

Footnote 33—*The absence of any damages remedy for violations of all but the most "clearly established" constitutional rights, see Wood v. Strickland, 420 U.S. at 420 U. S. 322, could also have the deleterious effect of freezing constitutional law in its current state of development, for without a meaningful remedy, aggrieved individuals will have little incentive to seek vindication of those constitutional deprivations that have not previously been clearly defined.*

Footnote 34—*For example, given the discussion that preceded the Independence City Council's adoption of the allegedly slanderous resolution impugning petitioner's integrity, see n 6, supra, one must wonder whether this entire litigation would have been necessary had the Council members thought that the city might be liable for their misconduct.*

Footnote 35—*Cf. Albemarle Paper Co. v. Moody, 422 U. S. 405, 422 U. S. 417-418 (1975):*

"If employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality. It is the reasonably certain prospect of a backpay award that"

"provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history."

"United States v. N. L. Industries, Inc., 479 F.2d 354, 379 (CA8 1973)."

Footnote 41—*Note, Developments in the Law: Section 1983 and Federalism, 90 Harv.L.Rev. 1133, 1224 (1977). See also Johnson v. State, 69 Cal.2d 782, 792-793, 447 P.2d 352, 359-360 (1968):*

"Nor do we deem an employee's concern over the potential liability of his employer, the governmental unit, a justification for an expansive definition of 'discretionary,' and hence immune, acts. As a threshold matter, we consider it unlikely that the possibility of government liability will be a serious deterrent to the fearless exercise of judgment by the employee. In any event, however, to the extent that such deterrent effect takes hold, it may be wholesome. An employee in a private enterprise naturally gives some consideration to the potential liability of his employer, and this attention unquestionably promotes careful work; the potential liability of a governmental entity, to the extent that it affects primary conduct at all, will similarly influence public employees."

(Citation and footnote omitted.)"

(c). In *City of Houston v. Hill*, 482 U.S. 451, 462-463 (1987):

"*The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.* [Footnote 12]

Footnote 12—*This conclusion finds a familiar echo in the common law. See, e. g., The King v. Cook, 11 Can. Crim. Cas. Ann. 32, 33 (B. C. County Ct. 1906) ("Cook . . . a troublesome, talkative individual, who evidently regards the police with disfavour and makes no secret of his opinions on the subject . . . [told] some persons in a tone of voice undoubtedly intended for [the officer's] ears, that the arrested man was not drunk and the arrest was unjustifiable. Now up to this point he had committed no crime, as in a free country like this citizens are entitled to express their opinions without thereby rendering themselves liable to arrest unless they are inciting others to break the law; and policemen are not exempt from criticism any more than Cabinet Ministers"); Levy v. Edwards, 1 Car. & P. 40, 171 Eng. Rep. 1094 (Nisi Prius 1823) (where constable breaks up fight between two boys and proceeds to handcuff one of them, third party who objects by telling constable "'you have no right to handcuff the boy'" has done no wrong and may not be arrested); cf. Ruthenbeck v. First Criminal Judicial Court of Bergen Cty., 7 N. J. Misc. 969, 147 A. 625 (1929) (vacating conviction for saying to police officer "You big muttonhead, do you think you are a czar around here?"). See generally Note, Obstructing A Public Officer, 108 U. Pa. L. Rev. 388, 390-392, 406-407 (1960) ("[C]onduct involving only verbal challenge of an officer's authority or criticism of his actions . . . operates, of course, to impair the working efficiency of government agents. . . . Yet the*

countervailing danger that would lie in the stifling of all individual power to resist - the danger of an omnipotent, unquestionable officialdom - demands some sacrifice of efficiency . . . to the forces of private opposition. . . . [T]he strongest case for allowing challenge is simply the imponderable risk of abuse - to what extent realized it would never be possible to ascertain - that lies in the state in which no challenge is allowed")."

Outline of Pertinent IRS Procedures and Mandates

Federal Statutes (USC) and Regulations (CFR):

5 USC § 702 – 'Right of review'
5 USC § 3331 – 'Oath of office'
5 USC § 3332 – 'Officer affidavit; no consideration paid for appointment'
5 USC § 3333 – 'Employee affidavit; loyalty and striking against the Government'
18 USC § 4 – 'Misprision of felony'
18 USC § 241 – 'Conspiracy against rights'
18 USC § 242 – 'Deprivation of rights under color of law'
18 USC § 872 – 'Extortion by officers or employees of the United States'
18 USC § 876(d) – 'Mailing threatening communications'
18 USC § 1001(a) – 'Statements or entries generally'
18 USC § 1018 – 'Official certificates or writings'
18 USC § 1512(b),(c),(d),(k) – 'Tampering with a witness, victim, or an informant'
18 USC § 1621(1)-(2) – 'Perjury generally'
18 USC § 1622 – 'Subornation of perjury'
18 USC § 1918 [5 USC § 7311 – 'Loyalty and striking'] – 'Disloyalty and asserting the right to strike against the Government'
26 USC § 7206(2) – 'Fraud and false statements'
26 USC § 7214(a)(1),(2),(3),(7),(8),(9) – 'Offenses by officers and employees of the United States'
26 USC § 7433(a) – 'Civil damages for certain unauthorized collection actions'
42 USC § 1983 – 'Civil action for deprivation of rights'
42 USC § 1994 – 'Peonage abolished'
5 CFR Part 735 – 'EMPLOYEE RESPONSIBILITIES AND CONDUCT', 5 CFR Part 2635 – 'STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH', 5 CFR Part 3101 – 'SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY'—(see also: Executive Order 12731 (E.O.), "Principles of Ethical Conduct for Government Officers and Employees", Oct. 17, 1990; therein revising E.O. 12674, April 12, 1989)
31 CFR § 0.102(a),(b),(c) – 'Policy.'

RRA (TBOR III):

Public Law 105-206, 'Restructuring and Reform Act of 1998' §§ 3705(a),(b), 3706(a), 3707(a)(1), July 22, 1998—(see also: Public Law 104-168, 'Taxpayer Bill of Rights II', July 30, 1996)

IRS Publications:

IRS Publication 1 – 'Taxpayer Bill of Rights': I. "Protection of Your Rights"; III. "Professional and Courteous Service"; and "Refunds"

IRS Internal Revenue Manual (IRM):

1.2.13.1.5(1-2) – 'Policy Statement 4-7'
1.2.14.1.2(1-10) – 'Policy Statement 5-2'
1.2.20.1.1(2,4,8a-c,9a-c,10-11) – 'Policy Statement 20-1'

IRS Internal Revenue Manual (IRM):

1.2.21.1(1) – 'Introduction to Customer Account Services related Policy Statements', Policy Statements: 21-1, 21-2, 21-3, 21-4, and 21-5
3.30.123.5.2(1-11) – 'Response to Correspondence and Overage Criteria'
4.2.2.4(4E) – 'Identification of Bad Payer Data'
4.10.1.4(1,2A-B) – 'Basic Examiner Responsibilities—Overview'
4.10.1.5(1) – 'Customer Service'
4.10.1.5.1 – 'Focus on Problem Solving'
4.10.1.5.2(1-2A-E,3,5) – 'Ensure Timely Actions'
4.10.1.5.3(1) – 'Ensure Quality Taxpayer Communication'
4.10.1.5.3.2(1-5) – 'Written Communication'
4.10.1.6(1-3) – 'Taxpayer Rights'
4.10.1.6.9(1) – 'Providing Taxpayers With Employee Contact Information'
4.10.1.6.9.1(1-2) – 'Applicability to Examination'
4.10.6.3.4 – 'Managerial Involvement'
4.10.6.4 – 'Finalizing Penalty Determinations'
4.10.6.7 – 'Workpapers — General Requirements'
4.10.7.1(1,2A-C) – 'Overview'
4.10.7.2(1,3-4) – 'Researching Tax Law'
4.10.7.2.9.8(1-3) – 'Importance of Court Decisions'
4.10.7.3(1-2) – 'Evaluating Evidence'
4.10.7.4(1-3,4A-E,5) – 'Arriving at Conclusions'
4.10.9.2.3.2 – 'Workpaper Body'
4.10.9.2.3.3 – 'Miscellaneous Lead Sheet Content'
4.10.9.3 – 'Activity Record'
4.10.9.4 – 'Workpapers'
4.10.12.4.10(1-2) – 'Outgoing Correspondence'
5.11.1.2.4(1-5) – 'Managerial Approval'
20.1.1.1.3(2-4A-H) – 'Responsibility'
20.1.1.2(1-3) – 'Purpose of Penalties'
20.1.1.2.1(2-3,6,9A-C,10) – 'Encouraging Voluntary Compliance'
20.1.1.2.2(1A-D) – 'Fair and Consistent Approach to Penalty Administration'
20.1.1.2.3 – 'Managerial Approval for Penalty Assessments'
20.1.1.2.3.1(1) – 'Examination Change Reports Assessing Penalties'
20.1.5.1.6 – 'Managerial Approval of Penalties'
20.1.6.1(1) – 'Introduction'
20.1.6.1.1(1A-F) – 'Responsibility'
20.1.6.1.1.1(1A-D) – 'Fair and Consistent Approach to Penalty Administration'
20.1.6.1.1.2(5) – 'Managerial Approval for Assessment of Penalties'
21.3.3.3.4(1)(A-C) – 'Quality and Timely Responses'
21.3.3.4.2.2.1(1-2) – 'Required Information'
21.3.3.4.17.1(1-4) – 'Preparation of Outgoing Correspondence'
21.3.3.4.24(1I,2D) – 'Review of Outgoing Correspondence'

Chapter VIII. Epilogue

Currently, the obligatory nature of the federal income tax (including its relationally subsequent *social justice* taxes), so far that it is being directly imposed upon the laborious recompense of individuals, the IRS expects to illicitly intercept $2.3-trillion in perpetual revenue per year. Meanwhile, America's adult population now numbers approximately 237,510,000; thereby, it may be deduced that if so apportioned, each adult individual, through mathematical averaging, must be held to account for respectively $10,000 per annum in order to sustain that vastly large sum of $2,300,000,000,000.

Many progressively standing economists themselves agree that the federal government could be readily downsized, financially, while still functioning within their own ideological social constructs. Operating instead on a budget of between $400-billion to $600-billion annually—which is in reality so much more realistic; effecting, a vastly smaller annual sum of $1,684 to $2,526 per adult, if so apportioned.

Pointedly, indirect, federal income taxes imposed instead only upon businesses could cover these greatly decreased operating expenditures, which at present average around $900-billion in corporate income taxes per year. Additionally, there are literally hundreds of excise and other such taxes collected yearly by the federal government (e.g., upon communications, energy, mining, privileged transfers, sins or vices, etc.)

Conversely, if the federal income tax was to be applied strictly with the breadth of its original intent, along with the national government reducing its ongoing budgetary costs to a sum that is actually reasonable (e.g., if modern economists state the national government could continue functioning on between from $400 to 600-billion per year, then splitting that difference and adding that to its threshold), say roughly $800-billion per annum, along with the following tax related amendments (amongst others):

- Cease the practice of withholding at the source, but only upon the whole wages and salaries portion of employee recompense with respect to individual participation in federal entitlement programs;
- Cease the presumptive taxing on all core employee recompense;
- Slightly reduce capital gain tax rates (e.g., adjusted from between 6-12%);
- Slightly reduce the tax rates on all businesses, corporations, and the self-employed (e.g., stepped from 10% and topping out at 24%);
- Ceasing statutorily stipulated amortizations, exemptions, deductions, write-offs, etc., (i.e., essentially leaving only clean and starched progressive tax-rates that are purely gains and profits based, while completely stripping away all else that is diversionary), and;
- Overtly making participation in all related federal entitlement benefits (i.e., social justice programs) entirely voluntary on a per individual basis and revamp the withholding process for such programs—*viz.*, being applicable only to American citizens and residents—and include statutory amendments for the permanent earmarking of all related funds collected for such entitlement benefits, while providing for related 'safe investment' interest gains to aid in keeping respective tax rates down over the long-haul and ensuring the upkeep of maintenance of all respective federal programs.

Then the federal government would no longer be left overextended; thusly, again acquiring the capacity to better exert its available resources to actively keeping a vigilant watch over businesses that willfully skirt their tax obligations. Emphasizing that business related

income and excise taxes would generate around $600 to $800-billion per year in new revenue; while individual income taxes, including its inclusionary taxes, transfer taxes, etc., would likely bank in the $200-billion ballpark. Consequently, the free-markets could devise highly competitive forms of lifelong work-related savings, retirement, insurance, and healthcare coverage. With perhaps a period of time having passed, governmental social justice programs could then be phased out completely; effectively, through a gentle tapering off along with the last of surviving participants, for instance.

With thoughtful consideration to the above, while remaining devoid of mission creep, the federal government would begin to establish itself vastly more than capable of functioning from year-to-year, even during trending economical lows.

§ 8.1. *Recapping the Sixteenth Amendment.*

The proper context of the Sixteenth Amendment is intended only to reverse what the findings of the *Pollock* case had effectively accomplished. The Sixteenth Amendment, as ratified, simply prohibits a person from thereafter substantiating that one's bona fide net or 'gross income' is constitutionally exempt from income taxation because it had been acquired from one source or another (which that source, if so taxed, would require constitutional apportionment), be it having derived through property, investment, gift, employment, chance, and the like. Still yet, a source 'deriving' taxable income, as an essential element, is a required variable in determining the income tax equation; for without it, the *gross income* equation is rendered invalid and inapplicable—it simply does not apply to that person. Ultimately, it is, for example, the distinction between receiving a gift and later realizing monetary gains through its financially successful conversion. This point being clarified in *Taft v. Bowers*, 278 U.S. 470, 481-483 (1929):

> "*It is said that the gift became a capital asset of the donee to the extent of its value when received, and therefore when disposed of by her no part of that value could be treated as taxable income in her hands.*
>
> *The Sixteenth Amendment provides:*
>
> *"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."*
>
> *Income is the thing which may be taxed -- income from any source. The amendment does not attempt to define income or to designate how taxes may be laid thereon, or how they may be enforced.*
>
> *Under former decisions here, the settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income.*
>
> *Also, this Court has declared:*
>
> *"Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets."*
>
> *Eisner v. Macomber, 252 U.S. 189, 252 U.S. 207. The "gain derived from capital," within the definition, is "not a gain accruing to capital, nor a growth or increment of value in the investment, but a gain, a profit, something of exchangeable value proceeding from*

the property, severed from the capital however invested, and coming in -- that is, received or drawn by the claimant for his separate use, benefit and disposal."
United States v. Phellis, 257 U.S. 156, 257 U.S. 169.

If, instead of giving the stock to petitioner, the donor had sold it at market value, the excess over the capital he invested (cost) would have been income therefrom and subject to taxation under the Sixteenth Amendment. He would have been obliged to share the realized gain with the United States. He held the stock -- the investment -- subject to the right of the sovereign to take part of any increase in its value when separated through sale or conversion and reduced to his possession. Could he, contrary to the express will of Congress, by mere gift enable another to hold this stock free from such right, deprive the sovereign of the possibility of taxing the appreciation when actually severed, and convert the entire property into a capital asset of the donee, who invested nothing, as though the latter had purchased at the market price? And, after a still further enhancement of the property, could the donee make a second gift with like effect, etc.? We think not.

In truth, the stock represented only a single investment of capital -- that made by the donor. And when, through sale or conversion, the increase was separated therefrom, it became income from that investment in the hands of the recipient subject to taxation according to the very words of the Sixteenth Amendment. ***By requiring the recipient of the entire increase to pay a part into the public treasury, Congress deprived her of no right and subjected her to no hardship.*** *She accepted the gift with knowledge of the statute and, as to the property received, voluntarily assumed the position of her donor. When she sold the stock, she actually got the original sum invested, plus the entire appreciation and out of the latter only was she called on to pay the tax demanded.*

The provision of the statute under consideration seems entirely appropriate for enforcing a general scheme of lawful taxation. To accept the view urged in behalf of petitioner undoubtedly would defeat, to some extent, the purpose of Congress to take part of all gain derived from capital investments. To prevent that result and insure enforcement of its proper policy, Congress had power to require that, for purposes of taxation, the donee should accept the position of the donor in respect of the thing received. And, in so doing, it acted neither unreasonably nor arbitrarily."

Ergo, when an individual labors in exchange for a basic paycheck (i.e., lacking any additional rewards, perks, gifts, bonuses, benefits, etc.), it is the receipt of that core recompense which establishes that individual a 'source' from which an indirect tax may assessed and levied; however, it is not until a financial increase has become realized through the prudent application of it that there is any 'gross income' to be realized and subsequently taxed. As had been held long ago in the *Eisner* case, the income tax is not to be imposed on all incomes, but only upon "incomes, from whatever source derived".

The concern being relative to 'incomes' pertains not so much to the source itself, but more to what has actually been derived by the source. Perhaps, more simply stated, 'gross income' is the source's emanation; and it is that emanation, unless statutorily exempted from taxation, which has been determined legally taxable under the federal income tax. Better still, there are existing correlations from which proffer a better understanding of this principle:

The federal income tax is imposed not upon property, but its rent; not upon principal, but its gain; not upon sales, but its profit; and not upon a person's assets, capital, labor (including basic recompense or remuneration), or stock, but each's subsequent financial ascension. The income tax is in essence not upon the source itself, and neither upon possession nor receipt, but the consequential increase acquired from applying a given

source in a financially beneficial way. The federal income tax succeeds mere contractual exchanges, even-breaks, sustained losses, and sustenance. As found in *United States v. Phellis*, 257 U.S. 156, 169 (1921):

> "*Disregarding the slight looseness of construction, we interpret "gains profits, and income derived from . . . dividends," etc., as meaning not that everything in the form of a dividend must be treated as income, but that income derived in the way of dividends shall be taxed. Hence, the inquiry must be whether the shares of stock in the new company received by claimant as a dividend by reason of his ownership of stock in the old company constituted (to apply the tests laid down in Eisner v. Macomber, 252 U.S. 189, 252 U.S. 207), a gain derived from capital, not a gain accruing to capital, nor a growth or increment of value in the investment, but a gain, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested, and coming in -- that is, received or drawn by the claimant for his separate use, benefit, and disposal.*"

As to the context of 'property' in *Crane v. Commissioner of Internal Revenue*, 331 U.S. 1, 6-7 (1947):

> "*The only relevant definitions of "property" to be found in the principal standard dictionaries* **[Footnote 14]** *are the two favored by the Commissioner -- i.e., either that "property" is the physical thing which is a subject of ownership or that it is the aggregate of the owner's rights to control and dispose of that thing.*
>
> *"Equity" is not given as a synonym, nor do either of the foregoing definitions suggest that it could be correctly so used. Indeed, "equity" is defined as "the value of a property . . . above the total of the liens. . . ."* **[Footnote 15]** *The contradistinction could hardly be more pointed. Strong countervailing considerations would be required to support a contention that Congress, in using the word "property," meant "equity," or that we should impute to it the intent to convey that meaning.* **[Footnote 16]**
>
> **Footnote 14**—*See Webster's New International Dictionary, Unabridged, 2d Ed.; Funk & Wagnalls' New Standard Dictionary; Oxford English Dictionary.*
>
> **Footnote 15**—*See Webster's New International Dictionary, supra.*
>
> **Footnote 16**—*Crooks v. Harrelson, 282 U. S. 55, 282 U. S. 59.*"

Moreover, a 'source', whatever, satisfies constitutional validity only within it existing in a tangible context (i.e., being capable of physical transference while intrinsically market-based), elsewise it is fundamentally constrained and disqualified as any such source, whatever.

Unlike direct taxes, income taxes operate exactly identical to most all other indirect taxes, being that the respective tax is not intended to negate its source, only its acquired excess. Hence, if financial ascension has not been achieved within a tax-period then there is no positive yielding sum from which to be indirectly collected in the form of *gross income*. In the case of the income tax, it is intended to negate only the evolution of wealth, but not the rudiments of wealth itself; and in the case of the common laborer, not their right to eke out a means of livelihood or competency, but what they had managed to obtain beyond mere subsistence in maintaining their own self-sufficiency.

Further recalling that *Black on Taxation* substantiates the majority view that is held by the Tax Honesty Movement and not that of progressive tax "professionals"; and neither does the context proffered within the CRS' Annotated Constitution in thoroughly addressing the Sixteenth Amendment's case law correspond to the majority of notions made by such professionals. Thus, to respectfully emphasize a maxim favorably crafted by Baron De

Montesquieu in his "Spirit of the Laws", XIII, 1750 (1748)—which was later copied by Mr. Thomas Jefferson into his own commonplace book:

> "*A capitation is more natural to slavery; a duty on merchandise is more natural to liberty, by reason it has not so direct a relation to the person.*"

Also clarified by following ("*Speeches of the Hon. Jefferson Davis, of Mississippi: Delivered During the Summer of 1858*", John Murphy & Co., (1859), p. 55): "*The same dangerously powerful man* [Senator William Henry Seward (R-NY)] *describes the institution of slavery as degrading to labor, as intolerant and inhuman, and says* ***the white laborer among us is not enslaved only because he cannot yet be reduced to bondage.*** *Where he learned his lesson, I am at a loss to imagine; certainly not by observation, for you all know that by interest, if not by higher motive, slave labor bears to capital as kind a relation as can exist between them anywhere; that it removes from us all that controversy between the laborer and the capitalist, which has filled Europe with starving millions and made their poorhouses an onerous charge.*"

Thereby in effect, this is precisely what the status quo's perception of the modern interpretation of the federal income tax accomplishes, to a degree varied only by the Legislature's decreed tax rates and tax brackets, be it: 1% over $0-20,000 (1913), 3% over $50,000-75,000 (1913), 5% over $100,000-250,000 (1913), 15% over $500-1,000 (1965), 30% over $6,000-8,000 (1960), 50% over $16,000-18,000 (1955), 75% over $50,000-60,000 (1950), or 94% over $200,000 (1945), as it has fluctuated throughout history. And further noting 10% over $0-8,925, 15% over $8,925-36,250, 25% over $36,250-87,850, 28% over $87,850-183,250, 33% over $183,250-398,350, or 35% over $398,350-400,000 (and which does not include the additional tax rates of FICA, FUTA, PPACA, or SSI.)

§ 8.2. *Your Job is Labor as a 'Source'.*

An individual's occupational employments, the work they had contractually tasked to perform under labor, is itself not a constitutionally taxable source. As a "job" is not whatsoever the property of the employee, it is neither controlled nor owned by them—hence, an employment itself is not a physically transferable construct. The employee does not get to take it with them from one place to another; neither do they have the choice of selling it off nor gifting it to another; or to store it away for safekeeping or alternative usage. In fact employees do not physically possess any authority over their jobs whatsoever; an employee's job is wholly under the command and determination of their employer. Moreover, both an employee's job and their labor, as a 'source' are not viable for existence outside of the individual worker.

The income tax is in essence a method of assessing taxes upon the increase of market worthy (i.e., salable) principal or capital (i.e., corpus), while being physically capable of remaining within a person's sole possession or control.

Ratification of both the Sixteenth Amendment and Internal Revenue Code had been drafted on the premise of it being a tax only upon wealth; its being a tax upon survival and competence (e.g., the underlying motivations of day-labors) was never, not ever, not even a single instance all throughout its legislative history (including its public relations campaigning), mentioned. In effect, income taxation within America was only ever intended to purpose national revenue singly upon newly received wealth, namely those wealthy, but not upon those merely subsisting.

The origination of the 1913 Revenue Act is simply an expanded iteration of its 1894 rendition; crafted merely to refine its subject-matter scope within its previously established

context; which therein had already defined a precise definition for the term 'net income' (now termed 'gross income'), the United States Supreme Court has time and time again upheld the constitutional validity of that original intent.

It is sordidly incorrect to assert that one's employment is a source, for it meets none of the requirements of qualifying as a source; meaning that it is not under the ownership or control of the employee, it is not transferable (at least on the part of the employee), the employment itself (aside from the employer-employee contract) has neither any marketable value or worth nor is it a tangible object. In fact the only way that an unapportioned tax may be constitutionally—that is to say ethically—imposed upon employee paychecks, is if it were to be wholly assessed upon the employer themselves.

Further, labor is imparted by employees, and yet it is not something capable of being manifested unto any other person, its action is nontransferable, and cannot be duplicated or reproduced—once performed it has been expended and can never be reacquired by either the employee or anybody else, under any circumstances, ever. For instance, only Mr. Michael Jordan was capable of exponentially elevating that status of the Chicago Bulls with the wondrous skills that Mr. Jordan had brought to the game of basketball; ergo, there will never be another laborer of hoops with his unique capabilities again.

An individual that works quid pro quo for a paycheck is not in any way similar to say, an individual who is receiving monthly payments from the tenets of their rental properties, as the landlord is actually getting something additional to their physical property, such is not comparably the case for the average toiling employee. Being that the employee only comes out even as a result of their individual efforts; having permanently expended a part of themselves and sacrificing an allotment of their life-energy, either by performing specifically agreed upon tasks or for a stated period of time, as a means of obtaining their own competence, while to a much greater benefit to their employer.

As for another comparative example, slave-owners (their slaves being representative of laborers bonded by servitude) could only ever be directly taxed (even though slaves in exchange received room and board, including other such humane necessities), while the result of their slave's laboring was otherwise indirectly taxable. (Apropos, it is rather intriguing—perhaps ironic is the better word—that the call for a national income tax did not arise until the Civil War, while being lauded as a means to fund a war destined to abolish slavery. Effectively, having in ultimate consequence, exchanged a selectively physical form of slavery for a communal form of financial slavery; regardless, either form is just as iniquitous as the other.)

Hence, employments cannot be appropriately construed as a taxable source (i.e., principal or capital), only the medium of payments that employees have received from the performance of their employments. See: *United States v. Phellis*, 257 U.S. 156 (1921); *Taft v. Bowers*, 278 U.S. 470, 481 (1929); *Steward Mach. Co. v. Collector*, 301 U.S. 548, 581 (1937); *South Carolina v. Baker*, 485 U.S. 505, 522 [Footnote 13] (1988); *et al.*

Even in the case of tax professionals who truly hold a desire to designate an employee's paycheck or wages as being a means of 'gross income' from their job—i.e., as a source—it is still under contract law an agreed upon *quid pro quo* exchange, for which there has yet to be anything received that is beyond what that paycheck is representative of. And thus the adage goes: "*An honest day's wage for an honest day's work.*" A likely paraphrasing attributed to:

> "*That ye may behave yourselves honestly toward them that are without, and that nothing be lacking unto you.*"—1 Thessalonians 4:11 (GNV)

"*He that tilleth his land, shall be satisfied with bread, but he that followeth the idle, shall be filled with poverty. A faithful man shall abound in blessings, and he that maketh haste to be rich, shall not be innocent.*"—Proverbs 28:19-20 (GNV)

Typically, tax professionals assert that as pertaining to tax law, 'income', provisions the received value less the invested cost upon transference—the former being on par with the perceived market value and the latter equating to the principal—which is in essence the statutory intent of 'gross income'. And, thusly, laud the argument that laboring (i.e., as a means of acquiring a livelihood) burdens zero "cost" basis to the employee, but only to employers, and thereby all that is reciprocated unto the employee in subsequent exchange, equates a pure and complete financial gain or ascension of wealth upon the employee (and even more than that to not be taxed on such proceeds results in garnering them a "financial windfall")—conversely, the aforementioned is a circular fallacy wrangled about by disingenuous semantics and sophomoric subterfuge, as "value" and "cost" are merely delineations of "price" (as provided *infra*.)

Excusing the reality that the very mechanics of 'cost basis' (i.e., tax basis) is virtually applicable only to commerce and futures and commodities trading within financial markets—ergo, this principle does not at all correctly pertain to (i.e., proletariats) merely earning individual competency in itself—it is undeniable that the cost basis in contractual labor is explicitly determinable by the expenses paid out by the employer to each of their employees; that is, it's the employer who commands an unconditional and selfless chaining of: commitment, exertion, ingenuity, knowledge, propriety, skill, and training from their individual employees as had been previously agreed upon or implied, with such generally taking place over a designed timeframe, just as it's the employee who expects, accordingly, that a precise sum of tangible property is to be interchanged either upon completion of their assigned tasks or after a prescheduled duration as transpired; for it is each *quid pro quo* employment contract that establishes a literal cost to the continuation of the employee's toiling at a proportionate value to their employer, and moreover to the further advancement of the employer's profits—effecting complete equality and accord on the part of both parties. Noting further that generally, employers are only willing to financially bear the perceived market value of labor, given to each field or classification of labor and with special consideration lent namely to individual expertise, occupational hazard, locality and duration—such is a core principle of microeconomics.

Merriam-Webster Dictionary defines the above relative synonyms as:

Cost: the **price** of something : the amount of money that is needed to **pay** for or **buy** something.

Value: the amount of money that something is worth : the **price** or **cost** of something.

Price: the amount of money that you **pay** for something or that something **costs**.

Market value: the **value** of a business, property, etc., in terms of what it can be sold for on the open market.

The realization is crisply unavoidable that assessing such a method of taxation upon remuneration correctly falls under the legally binding definition of capitations and personal taxes; both methods are historically known as direct modes of taxation. Further noting, there are dozens of United States Supreme Court cases holding that Congress cannot craft legislation, through trickery, pretext, or creativeness, as a means of circumventing its own constitutional constraint. So much had been thoughtfully clarified in *Pollock*:

"*If it be true that, by varying the form, the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of the citizens of each State. But constitutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has indeed been established by repeated decisions of this court. . . . Nothing can be clearer than that what the Constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any State through a majority made up from the other States. …*"

Additionally, in *Postal Telegraph Co. v. Adams*, 155 U.S. 688, 698 (1895): "*The substance, and not the shadow, determines the validity of the exercise of the power.*" See also: *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, 581-582 (1895); *Macallan Co. v. Massachusetts*, 279 U.S. 620, 626-627 (1929); including a myriad of other United States Supreme Court cases addressing varying aspects of this very issue. Even more, the empirical views of classic philosophers and economists are consistently supportive to the well-founded theory that labor is an individual right of private property that is commonly exchanged at a loss to the laborers in an effort to bring about mere subsistence to themselves and determinable wealth to their employers—there are virtually dozens upon dozens of varying sources (including the USSC) available that substantiate this imperative point.

Providing yet further persuasive authority to the above is the federal minimum wage standard for covered nonexempt employees, presently set at $7.25 per hour (effective July 24, 2009); with these legal provisions being contained within the *Fair Labor Standards Act* (FLSA). Insinuating that if an employee's laborious toiling itself factually holds no financial value or bears zero expense to the employee then why does collective bargaining exist and why do employers provide exact payment as the reciprocation for an individual's valueless time, labor, exertion, or effort, for otherwise is the matter not ultimately relegated into legal mootness? However, the reality is that the federal government has itself acknowledged that the exchange of an employee's labor possesses an inherent value within its ratification of the FLSA, therein standardizing a national minimum wage for non-unionized laborers (which is either further increased or decreased on a state-by-state basis, such as for example, (effective July 1, 2014) the above sum has been increased to $9.00 by *California Labor Code* §§ 510, 1182.12—excluding only Alabama, Louisiana, Mississippi, South Carolina, and Tennessee as the only states requiring no minimum wage standards.) Such minimum wage standards have been imposed by over 150-foreign countries, including most notably (while keeping exchange rates and perpetual fiat dollar inflation in mind):

- Belgium €1,501.82 per month at 21-years old, €1,541.67 monthly when at 21 ½-years old, and €1,559.38 at 22-years of age;
- Canada ranges from C$9.50 to C$11 hourly respective to one's province and territory;
- France €9.40 hourly;
- Ireland €8.65 hourly;
- Netherlands those at least 23-years of age earn either €66.77 daily, €333.85 weekly, or €1,446.60 monthly; while the pay for those between the ages of 15 and 22 years old ranges from €216.99 weekly to €1,012.62 monthly;
- New Zealand NZ$13.50 hourly for those over 18-years of age and NZ$10.80 hourly for trainees and juveniles;
- San Marino's hourly minimum wage is €7.04;
- United Kingdom rates are set at £3.68 for juveniles, £4.98 for those between the ages of 18-20, and £6.19 for those 21 and older, and;

- Additional socialistic worker benefits throughout foreign nations include variations of mandatory bonuses, healthcare, housing, welfare, etc.

§ 8.3. *Summation*.

- Sumptuary taxation is constitutionally prohibited.
- Direct taxes are constraining and thusly are to be levied only in prudence.
- Nonconvertible (i.e., fiat) currencies eventually burden insurmountable debt upon a nation's posterity.
- One's ascending wealth is measured neither by what is saved nor spent, but by what is received beyond invested corpus.
- Unlike the imposition of an indirect tax upon compensatory damages, a direct tax upon labors and laboring is constitutionally capable of apportionment.
- The continued misapplication of the income tax scheme operates as a proverbial *carrot and stick*, which is readily observable through the accumulating years of IRS gross malfeasance, such as by its damning hostility waged against politically oppositional non-profits and the like. In effect, rendering an egregiously severe disconnect that's ultimately advantageous to fictional entities, which in reality consists of individuals benefiting in likeness through trades and businesses, above and beyond individuals themselves, and hence misrepresenting the United States as a caste society.

Aside from *Eisner* as referenced above, the thru-and-thru breakdown of the Sixteenth Amendment had been earlier addressed in *Lynch v. Turrish*, 247 U.S. 221, 227-228 (1918). And as emphasized earlier, 26 USC § 83(a) outlines the very mechanics involved in determining the excess from the source-capital; thereby, removing all existing doubt, all remaining confusion.

America's system of common law has made it abundantly clear that income is not denotative of 'gross income' and that "from whatever source derived" is to be taken objectively, within the originating breadth of the Internal Revenue Code; its Section 61 (i.e., 26 USC § 61) does not state that all income is to be included in determining gross income unless it has been statutorily exempted, but what it does state is "gross income means all income <u>from whatever source derived</u>". Further noting that it does not state any source is to be included in gross income, as income in and of itself, but only income that has been derived from a source (exempted income notwithstanding.)

The public laws of our social republic are resolved in prohibiting unethical acts and immoralities, including theft, rape, murder, hatred (including threats and harassment), greed, fraud, cardinal sins, etc., and certainly it is utterly asinine to argue that it is neither unethical nor immoral to, through mere public decrees, take directly from the subsistence of the average lifelong laborer—under the threat of force—merely to carry out the express intentions of political, partisan agendas or for private beneficiaries.

It is unconstitutional for our national government to *indirectly* tax American's on their fundamental rights of individualism and competency, such as unapportionately taxing their sovereign right to contractually work for payment (monetary or otherwise) as a medium of equal exchange in procuring their own necessarily comfortable existence.

With respect to the Sixteenth Amendment's rightful context of permitting the United States Congress to constitutionally impose, assess, and collect income taxes—indirectly—without apportionment "from whatever source derived", such delineates a relational concept pertaining to the gains, namely, of financial investors and investments (this including the

profits of business) that is virtually similar to the post-applied monetary sustenance received by laborious employees (this further conferring the synergistic inclusion of the majority of—statutorily non-exempted—employer-employee negotiated perks and fringe benefits.) So far as the former's annualized investments of, for example, $75,000 in financial capital and their subsequent positive whole sum return of $125,000, attentively satisfies this constitutionally intended breadth in the form of applying a tangible source of privilege-in-risk to emanate the financial investor with $50,000 in taxable *unearned income* (*viz.*, a realized 'capital gains' distribution (CGD) via cash dividends, returns, and the like), as does it also upon laborers working under an employer, so far as their recompense is thereafter prudently applied to effect a bona fide gain or profit in excess of whatever sum an employee had initially invested (or was awarded beyond the sum established as the basis of their recompense), for example, an employee receiving $1,440 biweekly for having worked 40-hours each week at $18 per hour of toiling has yet to realize any *taxable income*—as near identically would be the case for the capitalistic investor, businessperson, or similar entrepreneurs. Comparatively, this is the very distinction between respecting the privilege of *indirectly* flourishing one's finances through investments over that of their immutable right to *directly* contract in continued exchange for livelihood. While there may be tangible rewards in leveraging the risks of social crafts for increased wealth there is only relative necessity in exercising divine rights for the continuance of life.

Moreover, the return of capital retains its non-taxable status for the purposes of the federal income tax—and is not indirectly taxable regardless of what label attributes it. 'Income' is but a simplified term associated with the private receipt and control over monies, which follows upon the interdependent conversion of either human or financial capital into incremental real-wealth that has literally come-in (i.e., becoming an innately tangible market-based object capable of ownership through transference.) When the classification of derived incomes more readily falls as capital in its application or appearance it is not constitutionally suitable for taxable consideration under federal income taxation; this precise logic was clearly reflected upon in *Pollock* [*ibid.*, 3 Hamilton's Works, 34]: "*This principle, which seems critically correct, would* ***exempt as well the income as the capital*** *of the property.*" Ergo, 'gross income' is determinable only on the acquisition of new wealth and not mere commensuration.

Conceptually, a valid correlation may be made to civil lawsuits, wherein awards of *compensatory damages* for injury, illness and attributed distress are exempted from income taxation (further including non-deducted prior incurred *medical expenses*), while *punitive damages*, *interest*, and reimbursement of *attorney's fees* and *court costs* (with respect to any taxable sums awarded) generally are not—however, certain permissible deductions may then be made in most cases.

Certainly, an employee's recompense may be generically thought of as "income", just as it could be further considered "revenue". The latter usage however, no more fits the proper definition of an employee's compensatory pay as the former (i.e., the term "income" is more applicable to businesses as "revenue" is to governments), so far as an appropriate consideration is rendered to the legislatively crafted definition of 'gross income'—an intentional distinction weighted by the constitutionality of the Sixteenth Amendment.

In brief, when an indirect method of taxation is imposed directly on the efforts of laborers it finds itself having exceeded constitutional constraint as an uniform tax levying a source rather than from a source's derivation, while otherwise, when the tax is imposed indirectly on the beneficially prudent investment returns of laborers it finds itself in constitutional harmony as it is properly levying from a source's derivation; just as such a tax is correctly imposed upon the gains returned to investors or the profits of businesspersons, however

this rightfulness dissolves into constitutional contempt as it transitions into imposed levies on the investor's principal, businessperson's inventory, or laborer's recompense.

Constitutionally, for an individual's earned—fundamental—income to meet the lawfulness of realizing statutorily defined 'gross income' that income must be preponderant to its represented source, otherwise it is as a preclusion and wholly income tax exempt.

Finally, IRS W-2 Forms are legally intended to provide only general information in summary and are not to be lent greater weight than the individual's officially filed tax documents. Wherefore, the proper context of IRS W-2 Forms is blatantly misrepresented with full and ongoing judicial support in surreptitious collaboration with both the IRS' political agenda and the federal government's damning monetary policies—to the utter detriment of our Nation as a whole.

Closing Quotation

"*The heavens declare the glory of God; the skies proclaim the work of his hands. Day after day they pour forth speech; night after night they display knowledge. There is no speech or language where their voice is not heard. Their voice goes out into all the earth, their words to the ends of the world.*" — Palms 19:1-4 (NIV)

Excerpt from President Eisenhower' Farewell Address

President Dwight D. Eisenhower's Farewell Address, 1961, Pt. "**IV.**":

"*. . . In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the militaryindustrial complex. The potential for the disastrous rise of misplaced power exists and will persist.*

We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.
…
In this revolution, research has become central; it also becomes more formalized, complex, and costly. A steadily increasing share is conducted for, by, or at the direction of, the Federal government.

Today, the solitary inventor, tinkering in his shop, has been overshadowed by task forces of scientists in laboratories and testing fields. In the same fashion, the free university, historically the fountainhead of free ideas and scientific discovery, has experienced a revolution in the conduct of research. Partly because of the huge costs involved, a government contract becomes virtually a substitute for intellectual curiosity. For every old blackboard there are now hundreds of new electronic computers.

The prospect of domination of the nation's scholars by Federal employment, project allocations, and the power of money is ever present and is gravely to be regarded. Yet, in holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientifictechnological elite. . . ."

(Source URL: http://avalon.law.yale.edu/20th_century/eisenhower001.asp)

Recommended for Additional Reading

Biblical: Genesis 47:1-31; Matthew 21:1-46

Common Sense and Rights of Man–Thomas Paine

The Revolution and Liberty Defined–Dr. Ron Paul

The Law–Frederic Bastiat

The Social Contract and the Discourses and A Discourse on the Origin of Inequality and A Discourse on Political Economy–Jean-Jacques Rousseau

The Nature of the Judicial Process–Benjamin N. Cardozo

The Case Against the Fed–Murray N. Rothbard

Economics in One Lesson–Henry Hazlitt

The Path of the Law and The Common Law–Oliver Wendell Homes Jr.

The Art of War–Sun Tzu

Civil Disobedience–Henry Thoreau

Tao Te Ching–Lao Tzu

The Prince–Niccolo Machiavelli

The Communist Manifesto–Karl Marx and Friedrich Engels

The Anglo-American Establishment and Tragedy & Hope–Caroll Quigley

The Constitutional Convention

The (Anti-)Federalist Papers, (especially Papers: 12, 21, 30-36, 46, 62, 78-79, 83)

Reflections on the Formation and Distribution of Wealth–Turgot

Moral Sentiments and Wealth of Nations–Dr. Adam Smith

A Sketch of the Finances of the United States–Albert Gallatin

A Treatise on the Law of Taxation–Thomas Cooley

A Treatise on the Law of Income Taxation–Henry Black

The Anti-Capitalist Mentality–Ludwig Von Mises

Why Government is the Problem–Milton Friedman

The Creature from Jekyll Island–G. Edward Griffin

The Freedom Answer Book and The Constitution in Exile–Andrew P. Napolitano

None Dare Call it a Conspiracy–Gary Allen

Black Propaganda: In the Second World War–Stanley Newcourt-Nowodworski

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- Article I, Section 8, Clause 18
- Article I, Section 8, Clause 1
- Article I, Section 9, Clause 4
- Article I, Section 10, Clause 1
- Article V
- Article VI, Clause 2
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- Sixteenth Amendment (XVI Amend.)

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