

CONSTITUTIONAL TAXATION

Direct Taxation

Article I, Section 2, clause 3

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 9, clause 4

No Capitation, or other direct Tax, shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

INDIRECT TAXATION

Article I, Section 8, clause 1

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article I, Section 8, clause 18

To 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.

The CONSTITUTIONAL AUTHORITY

FOR ENFORCEMENT of the TAXING POWERS

The Necessary and Proper *enabling enforcement* clause

Article I, Section 8, clause 18

To 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.

SUBJECT-MATTER JURISDICTION

OF THE UNITED STATES COURTS

**REQUIRES THREE ELEMENTS TO EXIST, IN ORDER TO BE
LAWFULLY *TAKEN* BY A U.S. COURT, OVER A *CLAIM* FOR TAX:**

- (1) The U.S. Constitution *MUST* grant a specific *power to tax* for Congress to *exercise* in its operations;**
- (2) The U.S. Constitution *MUST* provide an *enabling enforcement clause* for Congress to be authorized to write law, to enforce by law the *power* granted in (1);**
- (3) U.S. Congress must actually enact legislation to pass a law imposing and enforcing the specific *taxing power* granted in (1) above, and made *enforceable* in (2).**

... If ANY of the three required elements is absent, *subject-matter jurisdiction* does NOT exist.

To see a clear example of how the Constitution grants Congress its powers to tax, together with how those granted taxing powers are also specifically limited, we need only look to **Article I, Section 8, clause 1**, which plainly and clearly states:

“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;”

Here we plainly have three separate powers to tax that are granted by the original Constitution, *i.e.*: the powers to tax by *Impost, Duty and Excise*. And the stated constitutional *limitation* is that “*all duties, imposts and excises shall be uniform throughout the United States*”

And now, to see how the U.S. Congress is also **constitutionally authorized to write law to enforce** those granted taxing powers, we need only look to the original “*Necessary and Proper*” *enabling enforcement clause* of Article I, Section 8, Clause 18, which states:

“To 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.”

Both of these constitutional grants of authority, to tax, and to write law to enforce the taxin power granted, are both essential, required, indispensable elements of properly establishing the ability of any federal court to take a fully granted subject matter jurisdiction of the court over a specific claim for tax made by the IRS or DOJ.

The third required element subject matter jurisdiction is of course, that Congress write a law that *exercises* the granted taxing power and imposes an authorized tax, that is also constitutionally authorized to be enforced by additional statutes enacted by Congress beyond the statute that imposes the tax.

***personal jurisdiction* of the federal courts to enforce Income Tax Law**

U.S. Constitution

provides for the Federal power to indirectly tax **INCOME**

Before the 16th Amendment was adopted in 1913, these 3 indirect powers were the only taxing powers that the U.S. Congress was constitutionally authorized to write law under, to impose and enforce any tax.

INDIRECT POWERS

are established under

Article I, Section 8, cl. 1

but only as an

Impost or **Duty** or **Excise**
(on foreigners (on exports) (on commodities(ATF),
& imports) corporations, products,
tax collections, etc.)

and the **16th Amendment** says this includes
ALL income derived from these taxable activities.

BUT NO OTHERS !

all enforced under Article I, Section 8, clause 18

The "***Necessary and Proper***" enforcement clause

But **NONE OF THESE enforceable indirect TAXES, TOUCH**

We the People's RIGHT TO WORK

(outside of ATF biz, petroleum fuels, etc., so **no personal jurisdiction** exists !)

(so **all civil actions** for income tax under **Article I** should be ***dismissed*** under
Fed.R.Civ.P. Rule 12(b)(2), **unless** you are a ***person involved in ATF*** or one of
these other ***excise taxable activities***, and **NOT** many people are!).

personal jurisdiction of the federal court, (**lacking** under FRCP R. 12(b)(2)), is necessary for the
enforcement of the indirect taxes authorized under Article I; and is based **only** on your
participation in the identified taxable activities. Where **no taxable activity is conducted**
by you, **no personal jurisdiction** exists **over your person to allow** any federal court to
enforce any income taxing powers under Article I upon your wages.

NO personal jurisdiction exists for the federal courts to enforce (under
Article I) **an indirect income tax** on the **wages** derived from the **simple**
exercise of the American citizen's ***Right to Work***, because the taxation
of all wages **is not part** of the ***indirect taxation powers*** of Article I !

16th Amendment

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.

Underwood-Simmons Tariff Act of Oct. 3, 1913

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

SECTION II.

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

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

...

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

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

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

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

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

U.S. Supreme Court

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

Brushaber v. Union Pacific Railroad Company

No. 140

Argued October 14, 15, 1915

Decided January 24, 1916

240 U.S. 1

Syllabus

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

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

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

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

U.S. Supreme Court

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

240 U.S. 1

FRANK R. BRUSHABER, Appt.,

v.

UNION PACIFIC RAILROAD COMPANY.

No. 140.

Argued October 14 and 15, 1915.

Decided January 24, 1916.

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

Mr. Henry W. Clark for appellee.

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

[240 U.S. 1, 9]

Mr. Chief Justice White delivered the opinion of the court:

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

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

[240 U.S. 1, 21]

....

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

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

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

“We are of opinion, however, that **the confusion is not inherent**, but rather **arises from the conclusion** that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. **And the far-reaching effect of this erroneous assumption will be made clear...**” *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 11 (1916)

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

(T.D. 2313)

Income tax

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

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

To collectors of internal revenue:

Who is
subject ?

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

Who is
liable ?

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

Who files
Form 1040 ?
Regarding
whose
income ?

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

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

Title 26 United States Code

§ 7701 Definitions.

(a) When used in this Title ...

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

§ 1441 Withholding of Tax on Nonresident Aliens.

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

§ 1442 Withholding of tax on foreign corporations.

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

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

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

§ 1443 Foreign Tax Exempt Organizations

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

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

§ 1461 Liability for withheld tax.

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

26 U.S. Code § 1441 - Withholding of tax on nonresident aliens

....

(b) INCOME ITEMS

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

- (1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or
- (2) in the case of an individual who is not a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii), granted by—
 - (A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),
 - (B) a foreign government,
 - (C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or
 - (D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,as a scholarship or fellowship for study, training, or research in the United States. In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

Report No. 79-131 A 714/275

SOME CONSTITUTIONAL QUESTIONS
REGARDING THE FEDERAL INCOME TAX LAWS

by

Howard Zaritsky
Legislative Attorney
American Law Division



May 25, 1979

CONGRESSIONAL
RESEARCH
SERVICE

HJ 4625 U.S.A

CRS-3

decision and the new constitutional provision.

The Sixteenth Amendment provides that:

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

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

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

240 U.S. at 18-19 (1916).

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

Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged.

240 U.S. at 112 (1916).

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

6. Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.

Some assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and thus, U.S. citizens and residents are not subject to federal income tax laws.

The Law: The constitutionality of the Sixteenth Amendment has invariably been upheld when challenged. And numerous courts have both implicitly and explicitly recognized that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal tax laws as applied are valid. In *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited to *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12-19 (1916), and noted that the U.S. Supreme Court has recognized that the “sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation.”

Relevant Case Law:

In *re Becraft*, 885 F.2d 547 (9th Cir. 1989) – the court affirmed a failure to file conviction, rejecting the taxpayer’s frivolous position that the Sixteenth Amendment does not authorize a direct non-apportioned income tax.

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) – the court found defendant’s argument that the Sixteenth Amendment does not authorize a direct, non-apportioned tax on United States citizens similarly to be “devoid of any arguable basis in law.”

Lovell v. United States, 755 F.2d 517, 518 (7th Cir. 1984) – the court rejected the argument that the Constitution prohibits imposition of a direct tax without apportionment and upheld the district court’s frivolous return penalty assessment and the award of attorneys’ fees to the government “because [the taxpayers’] legal position was patently frivolous.” The appeals court imposed additional sanctions for pursuing “frivolous arguments in bad faith.”

Broughton v. United States, 632 F.2d 706 (8th Cir. 1980) – the court rejected a refund suit, stating that the Sixteenth Amendment authorizes imposition of an income tax without apportionment among the states.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), aff’d, 436 F.3d 533 (5th Cir. 2006) – the court imposed sanctions totaling \$25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court’s holding, the Fifth Circuit granted the government’s request for further sanctions of \$6,000 against the taxpayer for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional \$6,000 sanctions on its own, for total additional sanctions of \$12,000

subject-matter jurisdiction of the federal courts to enforce Tax Law

under the U.S. Constitution

which provides for the Federal power of TAXATION both

as **DIRECT** & **INDIRECT** taxation.

under the:

16th Amendment

& Art I, Sec 2, cl. 3

& Art. I, Section 8, cl. 1

but only as an

where the tax is: **UN-apportioned** and **with no enforcement clause** to authorize Congress to write law.

SO THIS IS NEVER MADE ENFORCEABLE !

So **NO** law can be lawfully written by Congress to enforce this alleged **direct** taxing power !

BUT, THIS IS WHAT THE I.R.S. administratively enforces!

Art. I direct tax is apportioned to the 50 states for collection not to us, and

Impost or Duty or Excise (on foreign activity and imports) (on exports) (on corporations, commodities (ATF), tax collections, & products.

enforced under the Article I, Section 8, clause 18.

"Necessary and Proper" enforcement clause

But **NONE OF THESE enforceable INDIRECT TAXES, TOUCH**

We the People's RIGHT TO WORK

(**ALL dismissed** under F.R.C.P. Rule 12(b)(1)) (neither **directly** nor **indirectly** - SO: no **personal jurisdiction** exists !)
(**They're unenforceable in federal court !**) (so **all Art. I tax claims** get **dismissed** under Fed.R.Civ.P. Rule 12(b)(2))

subject-matter jurisdiction must be **taken under an authorized statute** of the USC, or it is **lacking** under FRCP R.12(b)(1)
subject-matter jurisdiction of the court, derives from a statute that **Congress is constitutionally authorized to write.**

Where **no law from Congress is authorized** by the 16th Amendment, **no jurisdiction exists** for any federal court to enforce any alleged new taxing power, **beyond that already established** under Article 1, Section 8, clauses 1 and 18 !

NO subject-matter jurisdiction exists for the federal courts to enforce a **direct** income tax under the 16th Amendment on the **wages** derived from the simple exercise of the **Right to Work !**

And then the 16th Amendment was adopted in 1913. BUT WHERE IS the REQUIRED enabling enforcement clause? IT DOESN'T EXIST!

The Supreme Court says the tax on income is **inherently indirect**
see: *Brushaber & Baltic Mining* (1916)

UNITED STATES STATUTES AT LARGE

CONTAINING THE

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

1939

AND

TREATIES, INTERNATIONAL AGREEMENTS OTHER
THAN TREATIES, AND PROCLAMATIONS

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

VOLUME 53

PART 1

INTERNAL REVENUE CODE

APPROVED FEBRUARY 10, 1939



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1939

4 CODIFICATION OF INTERNAL REVENUE LAWS

SUPPLEMENT P—FOREIGN PERSONAL HOLDING COMPANIES

- Sec. 331. Definition of foreign personal holding company.
- Sec. 332. Foreign personal holding company income.
- Sec. 333. Stock ownership.
- Sec. 334. Gross income of foreign personal holding companies.
- Sec. 335. Undistributed supplement P net income.
- Sec. 336. Supplement P net income.
- Sec. 337. Corporation income taxed to United States shareholders.
- Sec. 338. Information returns by officers and directors.
- Sec. 339. Information returns by shareholders.
- Sec. 340. Penalties.

SUPPLEMENT Q—MUTUAL INVESTMENT COMPANIES

- Sec. 361. Definition.
- Sec. 362. Tax on mutual investment companies.

SUPPLEMENT R—EXCHANGES AND DISTRIBUTIONS IN OBEDIENCE TO ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION

- Sec. 371. Nonrecognition of gain or loss.
- Sec. 372. Basis for determining gain or loss.
- Sec. 373. Definitions.

CHAPTER 1—INCOME TAX SUBCHAPTER A—INTRODUCTORY PROVISIONS

SEC. 1. APPLICATION OF CHAPTER.

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

SEC. 2. CROSS REFERENCES.

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

SEC. 3. CLASSIFICATION OF PROVISIONS.

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

Subchapter A—Introductory provisions,

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

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

SEC. 4. SPECIAL CLASSES OF TAXPAYERS.

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

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

(b) Members of partnerships,—Supplement F.

(c) Insurance companies,—Supplement G.

(d) Nonresident alien individuals,—Supplement H.

(e) Foreign corporations,—Supplement I.

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

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

INCOME TAX 5

- (h) China Trade Act corporations,—Supplement K.
- (i) Foreign personal holding companies and their shareholders,—Supplement P.
- (j) Mutual investment companies—Supplement.

SUBCHAPTER B—GENERAL PROVISIONS

Part I—Rates of Tax

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25.

SEC. 12. SURTAX ON INDIVIDUALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of—

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

(2) every surviving spouse (as defined in section 2 (a)),

a tax determined in accordance with the following table:

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

(b) Heads of households

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

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

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

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

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

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 7703)

§ 63 - Taxable income defined

(a) IN GENERAL

Except as provided in subsection (b), for purposes of this subtitle, the term “taxable income” means gross income minus the deductions allowed by this chapter (other than the standard deduction).

(b) INDIVIDUALS WHO DO NOT ITEMIZE THEIR DEDUCTIONS

In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term “taxable income” means adjusted gross income, minus—

- (1) the standard deduction,
- (2) the deduction for personal exemptions provided in section 151,
- (3) any deduction provided in section 199A, and
- (4) the deduction provided in section 170(p).

(c) STANDARD DEDUCTION

For purposes of this subtitle—...

§ 62 - Adjusted gross income defined

(a) GENERAL RULE

For purposes of this subtitle, the term “adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

(1) TRADE AND BUSINESS DEDUCTIONS

The deductions allowed by this chapter...

§ 61 - Gross income defined

(a)GENERAL DEFINITION

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

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

(b)CROSS REFERENCES

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

SEC. 61. GROSS INCOME DEFINED.



[Sec. 61(a)]

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

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

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

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

26 USCS § 61

INCOME TAXES

§ 61. Gross income defined.

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

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

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

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

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law:
IRC 1939, § 22(a).

Another version also shows
Section 22 as the prior law.

SEC. 22. GROSS INCOME.

Exhibit G2

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

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

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

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

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

(Parts 500 to 599)

SUBCHAPTER G--REGULATIONS UNDER TAX CONVENTIONS

Tax conventions are tax treaties !

Part		Page
500	[Reserved]	
501	Australia	4
502	Greece	13
503	Germany	22
504	Belgium	32
505	Netherlands	69
506	Japan	108
507	United Kingdom	115
509	Switzerland	190
510	Norway	216
511	Finland	244
512	Italy	272
513	Ireland	280
514	France	294
515	Honduras	329
516	Austria	337
517	Pakistan	349
518	New Zealand	358
519	Canada	368
520	Sweden	399
521	Denmark	412
522 — 599	[Reserved]	

And Part 519 is the Canadian Tax Treaty

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

SEC. 61. GROSS INCOME DEFINED.

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

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

**NEW
1986**

Last amendment.—Sec. 61(u)(1) appears above as amended by Sec. 531(c) of Public Law 98-369, July 18, 1984 (which inserted "fringe benefits" after "commissions") effective (Sec. 531(f) of P.L. 98-369, amended by Sec. 13207(d) of P.L. 99-272, Apr. 7, 1986) January 1, 1985. Sec. 61(u)(1) as it read before this amendment is in P11 Cumulative Changes.

95-134 (commonly referred to as the Omnibus Territories Act of 1977). This section shall be effective for taxable years beginning after December 31, 1975.

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

SEC. 61. GROSS INCOME DEFINED.

[Sec. 61(a)]

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

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

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

Internal Revenue Code

Sec. 61(a)

**OLD
1954**

**MISSING
FOOTNOTE**

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

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

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

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

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

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

SEC. 22. GROSS INCOME.

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

**OLDER
1939**

CFR INDEX

USC/CFR PARALLEL TABLE

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

25 U.S.C.-Continued	CFR	25 U.S.C.-Continued	CFR
450b	34 Parts 250, 410	880	25 Part 211
450e	24 Part 905	1401 et seq.	25 Parts 61, 76
	29 Parts 1, 5	1411-1420	25 Part 45
	34 Part 221	1452	34 Part 221
450f	25 Part 271	1466	25 Part 151
	34 Part 410	1469	25 Part 101
450g-450h	42 Part 36	1495	25 Part 151
450h	25 Parts 151, 272, 276	1498	25 Part 103
450i	25 Part 275	1574	25 Part 286
450k	25 Part 11	1612-1613	42 Part 36
	42 Part 36	1615	42 Part 36
450m	25 Part 11	1633	29 Parts 1, 5
451	25 Part 151	1652	42 Part 36
452-457	34 Part 410	1672	42 Part 36
452-456	25 Part 273	1674	42 Part 36
454	25 Part 21	1815	25 Part 41
458	25 Part 274	1952	25 Part 13
458c	25 Part 277	2001-2003	25 Part 36
458d	25 Part 274	2006	25 Part 33
464-465	25 Part 151	2008	25 Part 39
466	25 Parts 163, 166	2010	25 Part 32
471	25 Part 40	2011	25 Part 38
472	25 Part 5	2013	25 Part 32
	42 Part 36	2015	25 Part 38
	43 Part 20	2101 et seq.	30 Parts 202,
473a	25 Parts 52, 53, 216	203, 206, 207, 210, 212, 216, 218, 241	
474	25 Part 125		43 Part 3590
476-477	25 Parts 211, 213, 225	2101-2108	25 Parts 211, 225
476	25 Parts 81, 82, 89, 166	2201-2211	25 Part 179
477	25 Parts 52, 53, 151, 162	2601-2651	34 Part 250
479	25 Part 5	2601-2606	34 Part 252
483	25 Part 152	2601	34 Part 251
487-489	25 Part 151	2602	34 Part 253
487	25 Part 179	2604	34 Part 253
490	7 Part 1823	2621-2622	34 Part 256
501-509	25 Part 16	2621	34 Part 254
501-502	25 Parts 151, 216	2623	34 Part 263
503	25 Parts 52, 53	2624	34 Part 255
509	25 Parts 211, 213	2624(c)	34 Part 25
573-574	25 Part 151	2631	34 Part 257
576	25 Part 151	2651	34 Parts 252, 255, 263
607	25 Part 179		
	43 Part 4	26 U.S.C. (1939 I.R.C.)	
608-608a	25 Part 151	22	26 Part 519
610-610a	25 Part 151	40	26 Part 1
622	25 Part 151	62	26 Parts 509, 513, 514, 520, 521
624	25 Part 151	143-144	26 Part 521
635	25 Part 162	211	26 Part 521
640c-1	25 Part 41	231	26 Part 521
640d	25 Part 700	800-938	26 Part 507
640d-8	25 Part 168	3791	26 Parts 509, 514, 520
640d-10	25 Part 151	26 U.S.C. (1954 I.R.C.)	
640d-18	25 Part 168	1 note	26 Part 13
677-677aa	25 Part 217	25	26 Part 1
786-788	25 Part 16	28	26 Part 1
		38	26 Part 1
		41	26 Part 1

USC-44

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

Part 519 is listed in a former version of the Code of Federal Regulations in Part

CFR INDEX PARRALLEL TABLE 1991 enabling sections

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

500 to 599 under subchapter G (reprinted to the far right). Part 500 to 599 gives the "regulations under tax conventions" (tax

provisions that currently exist concerning "foreign earned income."

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

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

CHAPTER 1—INTERNAL REVENUE DEPARTMENT OF THE TREASURY—

(Parts 500 to 599)

SUBCHAPTER G—REGULATIONS UNDER TAX CO

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

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

DEPARTMENT OF THE TREASURY (Continued)

SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTION

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



Department of the Treasury
Internal Revenue Service

Notice 609

(Revised April 1992)

Privacy Act Notice

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

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

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

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

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

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

Cat. No. 45963A

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

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

Notice 609
(Rev. April 1992)

GPO : 1992 O - 326-518

§ 7501 - LIABILITY FOR TAXES WITHHELD OR COLLECTED

a) General rule

Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(b) Penalties

For penalties applicable to violations of this section, see sections [6672](#) and [7202](#).

OTHER TAX LIABILITY STATUTES

[26 U.S.C. §§ 2032A](#) and 2056A specifically state who is liable for the Estate Tax;

[26 U.S.C. § 3102](#)(b) specifically states who is liable for the FICA tax;

[26 U.S.C. § 3202](#) specifically states who is liable for the Railroad Retirement Tax;

[26 U.S.C. § 3505](#) specifically imposes liability for Employment Taxes;

[26 U.S.C. §§ 4002](#) and [4003](#) specify who is liable for the Luxury Passenger Auto Excise Tax;

[26 U.S.C. §§ 4051](#) and 4052 (Heavy Trucks and Trailers Excise Tax);

[26 U.S.C. § 4071](#) (Tire Manufacture Excise Tax);

[26 U.S.C. § 4219](#) (Manufacturers Excise Tax);

[26 U.S.C. § 4401](#) (Tax on Wagers);

[26 U.S.C. § 4411](#) (Wagering Occupational Tax);

[26 U.S.C. § 4483](#) (Vehicle Use Tax);

[26 U.S.C. § 4611](#) (Tax on Petroleum);

[26 U.S.C. § 4662](#) (Tax on Chemicals);

[26 U.S.C. § 4972](#) (Tax on Contributions to Qualified Employer Pension Plans);

[26 U.S.C. § 4980B](#) (Excise Tax on Failure to Satisfy Cont. Cvrage Req of Grp Health Plans);

[26 U.S.C. § 4980D](#) (Excise Tax on Failure to Meet Certain Group ... Plan Requirements);

[26 U.S.C. § 4980F](#) (Excise Tax on Failure of Applicable Plans Reducing Benefit Accruals);

[26 U.S.C. § 5005](#) (Gallonage Tax on Distilled Spirits);

[26 U.S.C. § 5043](#) (Gallonage Tax on Wines);

[26 U.S.C. § 5232](#) (Storage Tax on Imported Distilled Spirits);

[26 U.S.C. § 5364](#) (Tax on Wine Imported in Bulk);

[26 U.S.C. § 5418](#) (Tax on Beer Imported in Bulk);

[26 U.S.C. § 5703](#) (Excise Tax on Manufacture of Tobacco Products); and

[26 U.S.C. § 5751](#) (Tax on Purchase, Receipt, Possession or Sale of Tobacco Products)

[26 U.S.C. § 1461](#) states who is made liable for the payment of the federal personal income tax withheld by the “*Withholding Agent*” (from foreigners) under Subtitle A; and,

[26 U.S.C. § 3403](#) states who is liable for the payment of the federal personal income tax that is collected and withheld by *employers* under Subtitle C “Employment Tax “; and,

[26 U.S.C. § 7501](#) states who is liable for the payment of the federal personal income tax that is withheld and collected

SUBTITLE A

§ 1461. Liability for withheld tax

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

§ 1463. Tax paid by recipient of income

If—

- (1) any person, in violation of the provisions of this chapter, **fails to deduct and withhold any tax** under this chapter, **and**
- (2) **thereafter the tax** against which such tax may be credited **is paid**,

the tax so required to be deducted and withheld shall not be collected from such person; but this section shall in **no case relieve** such person **from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.**

(emphasis added)

SUBTITLE C

§3403. Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101, OMB Control numbers.

(a) *Purpose.* This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part (together with 26 CFR 601.9000) comply with the requirements of §§ 1320.7(f), 1320.12, 1320.13, and 1320.14 of 5 CFR part 1320

(OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collections of information of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Cross-reference.* For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collections of information in the Statement of Procedural

Exhibit E

§ 602.101

26 CFR (4-1-94 Edition)

Rules (26 CFR part 601), see 26 CFR 601.9000.

(c) *Display.*

CFR part or section where identified and described	Current OMB control No.
1.1-1	1545-0067
1.23-5	1545-0074
1.25-11	1545-0022
	1545-0030

CFR part or section where identified and described	Current OMB control No.
1.50A-6	1545-0005
1.50A-7	1545-0005
1.50B-1	1545-0005
1.50B-2	1545-0005
1.50B-3	1545-0005
1.50B-4	1545-0005
1.50B-5	1545-0005
1.51-1	1545-0219
	1545-0241

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

The Forms' OMB Document Control Number Id's.

The only Form listed for Code Section 1

Is this why Form 1040 is not shown as being authorized for use by IRS employees under IRC Sec. 6020(b)? As shown in IRM 5291 and the corresponding Delegation Order #182 ?

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

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

For the year Jan. 1-Dec. 31, 1993, or other tax year beginning , 1993, ending , 19

IRS Use Only—Do not write or staple in this space. **OMB No. 1545-0074**

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

L A B E L

Your first name and initial Last name

If a joint return, spouse's first name and initial Last name

Home address (number and street). If you have a P.O. box, see page 12. Apt. no.

Your social security number

Spouse's social security number

For Privacy Act and Paperwork Reduction

Form 2555

Department of the Treasury
Internal Revenue Service

Foreign Earned Income

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

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

Name shown on Form 1040

Your social security number

BUT THIS DOES !

OMB No. 1545-0067

1993

Attachment
Sequence No. 34

Part I General Information

1 Your foreign address (including country)

2 Your occupation

P33

Form **2555****Foreign Earned Income**

OMB No. 1545-0067

1993Department of the Treasury
Internal Revenue Service

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

Attachment
Sequence No. **34****For Use by U.S. Citizens and Resident Aliens Only**

Name shown on Form 1040

Your social security number

Part I General Information

1 Your foreign address (including country)

2 Your occupation

3 Employer's name ▶

4a Employer's U.S. address ▶

b Employer's foreign address ▶

5 Employer is (check ▶)

a ☐ A foreign entityb ☐ A U.S. companyc ☐ Selfany that apply: d ☐ A foreign affiliate of a U.S. companye ☐ Other (specify) ▶

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

b If you did not file Form 2555 or 2555-EZ after 1981 to claim either of the exclusions, check here ▶ ☐ and go to line 7 now.c Have you ever revoked either of the exclusions? ☐ Yes ☐ No

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

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

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

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

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

Next, complete either Part II or Part III. If an item does not apply, write "NA." If you do not give the information asked for, any exclusion or deduction you claim may be disallowed.**Part II Taxpayers Qualifying Under Bona Fide Residence Test (See page 2 of the instructions.)**

10 Date bona fide residence began ▶ , and ended ▶

11 Kind of living quarters in foreign country ▶ a ☐ Purchased house b ☐ Rented house or apartment c ☐ Rented room
d ☐ Quarters furnished by employer12a Did any of your family live with you abroad during any part of the tax year? ☐ Yes ☐ No

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

13a Have you submitted a statement to the authorities of the foreign country where you claim bona fide residence that you are not a resident of that country? (See instructions.) ☐ Yes ☐ Nob Are you required to pay income tax to the country where you claim bona fide residence? (See instructions.) ☐ Yes ☐ No**If you answered "Yes" to 13a and "No" to 13b, you do not qualify as a bona fide resident. Do not complete the rest of Part II.**14 If you were present in the United States or its possessions during the tax year, complete columns (a)-(d) below. **Do not include the income from column (d) in Part IV, but report it on Form 1040.**

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

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

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

c Did your visa limit the length of your stay or employment in a foreign country? If "Yes," attach explanation ☐ Yes ☐ Nod Did you maintain a home in the United States while living abroad? ☐ Yes ☐ No

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

For the year Jan. 1–Dec. 31, 2023, or other tax year beginning _____, 2023, ending _____, 20		See separate instructions.
Your first name and middle initial _____ Last name _____		Your social security number _____
If joint return, spouse's first name and middle initial _____ Last name _____		Spouse's social security number _____
Home address (number and street). If you have a P.O. box, see instructions. _____ Apt. no. _____		Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. <input type="checkbox"/> You <input type="checkbox"/> Spouse
City, town, or post office. If you have a foreign address, also complete spaces below. _____ State _____ ZIP code _____		
Foreign country name _____ Foreign province/state/county _____ Foreign postal code _____		

Filing Status

☐ Single ☐ Head of household (HOH)
☐ Married filing jointly (even if only one had income)
☐ Married filing separately (MFS) ☐ Qualifying surviving spouse (QSS)

Check only one box.

If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent: _____

Digital Assets At any time during 2023, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) ☐ Yes ☐ No

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness **You:** ☐ Were born before January 2, 1959 ☐ Are blind **Spouse:** ☐ Was born before January 2, 1959 ☐ Is blind

Dependents (see instructions):

(1) First name Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instructions):	Child tax credit	Credit for other dependents
If more than four dependents, see instructions and check here <input type="checkbox"/>				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

Income	1a Total amount from Form(s) W-2, box 1 (see instructions) b Household employee wages not reported on Form(s) W-2 c Tip income not reported on line 1a (see instructions) d Medicaid waiver payments not reported on Form(s) W-2 (see instructions) e Taxable dependent care benefits from Form 2441, line 26 f Employer-provided adoption benefits from Form 8839, line 29 g Wages from Form 8919, line 6 h Other earned income (see instructions) i Nontaxable combat pay election (see instructions) 1i	1a _____ 1b _____ 1c _____ 1d _____ 1e _____ 1f _____ 1g _____ 1h _____ 1i _____
	z Add lines 1a through 1h 1z	_____
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld. If you did not get a Form W-2, see instructions.	2a Tax-exempt interest 2a	_____
	3a Qualified dividends 3a	_____
	4a IRA distributions 4a	_____
	5a Pensions and annuities 5a	_____
	6a Social security benefits 6a	_____
	c If you elect to use the lump-sum election method, check here (see instructions) <input type="checkbox"/>	_____
Standard Deduction for— • Single or Married filing separately, \$13,850 • Married filing jointly or Qualifying surviving spouse, \$27,700 • Head of household, \$20,800 • If you checked any box under Standard Deduction, see instructions.	7 Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>	_____
	8 Additional income from Schedule 1, line 10	_____
	9 Add lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your total income	_____
	10 Adjustments to income from Schedule 1, line 26	_____
	11 Subtract line 10 from line 9. This is your adjusted gross income	_____
	12 Standard deduction or itemized deductions (from Schedule A)	_____
	13 Qualified business income deduction from Form 8995 or Form 8995-A	_____
	14 Add lines 12 and 13	_____
	15 Subtract line 14 from line 11. If zero or less, enter -0-. This is your taxable income	_____
	15	_____

NO ENFORCEMENT STATUTES / IRS REGULATIONS APPLICABLE TO INDIVIDUAL INCOME TAX

National Archives



Washington, DC 20408

May 16, 1994

Richard Durjak
5506 West 22nd Place
Cicero, IL 60650

**THE TRUTH IS IN
THE FEDERAL REGISTER**

Dear Mr. Durjak:

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

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

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

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

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

I hope this information will be useful to you.

Sincerely,

Michael L. White
Attorney
Office of the Federal Register

Enclosure

26 U.S.C.

§ 6201. Assessment authority

(a) Authority of Secretary.

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, **which have not been duly paid by stamp** at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return.

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

(2) Unpaid taxes payable by stamp. ...”

§ 6020 - RETURNS PREPARED FOR OR EXECUTED BY SECRETARY

(a) PREPARATION OF RETURN BY SECRETARY

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) EXECUTION OF RETURN BY SECRETARY

(1) AUTHORITY OF SECRETARY TO EXECUTE RETURN

If any person **fails to make any return required** by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, **the Secretary shall make such return** from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) STATUS OF RETURNS

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

refusal to file under the provisions of the Internal Revenue Code.

(4) In instances where the delinquent taxpayer has turned the records over to a tax practitioner for preparation and completion of the return(s), the Collection employee will continue to look to the taxpayer for filing compliance except where power of attorney has been given to the practitioner.

5282 (6-12-87)

Subsequent Activity

(1) Generally, IMF cases where no return has been secured and Policy Statement P-5-133 does not apply, the Collection function employee have the following alternatives:

(a) Referral to the Criminal Investigation Division, see IRM 52(10)1;

(b) Summons, see IRM 5283;

(c) Referral to Examination, see IRM 52(10)2; or,

(d) Referral to Substitute for Return Unit, see IRM 52(10)5

(2) Refusal to file employment and excise tax return(s) should be processed by Collection under IRC 6020(b) procedures.

5283 (11-15-85)

Summons Procedures

5283.1 (11-15-85)

Procedures

Revenue Officers should review the summons procedures provided in IRM 52(12)0 and Chapter 600 of IRM 57(16)0, Legal Reference Guide for Revenue Officers.

5283.2 (11-15-85)

Taxpayer Response to Summons

(1) Accept the return(s) when a taxpayer presents the return(s) completed and signed.

(2) If the return(s) has not been prepared, the Revenue Officer will prepare the return(s) if the taxpayer's records are such that the skills of a Revenue Agent or Tax Auditor are not required.

(3) If the records presented by the taxpayer are such that the skills of a Revenue Agent or Tax Auditor are required, the Examination person designated to be on standby should be contacted.

5281

IR Manual

MT 5200-14

5283.3 (8-18-86)

Summons Follow-up Action

If the taxpayer does not comply with the summons, the Revenue Officer should prepare a Form 4443, Summons Referral. See IRM 52(12)(14).21.

5290 (11-15-85)

Refusal to File—IRC 6020(b) Assessment Procedure

5291 (11-15-85)

Scope

(1) The procedure applies to employment, excise and partnership tax returns. Generally, the following returns will be involved.

(a) Form 940, Employer's Annual Federal Unemployment Tax Return;

(b) Form 941, Employer's Quarterly Federal Tax Return;

(c) Form 942, Employer's Quarterly Tax Return for Household Employees;

(d) Form 943, Employer's Annual Tax Return for Agricultural Employees;

(e) Form 11-B, Special Tax Return—Gaming Devices; (The Revenue Act of 1978, P.L. 95-600 repealed the coin-operated gaming device tax effective June 30, 1980. Therefore, Form 11-B is not required for gaming devices after June 30, 1980. These procedures are provided to cover delinquent situations prior to June 30, 1980.)

(f) Form 720, Quarterly Federal Excise Tax Return

(g) Form 2290, Federal Use Tax Return on Highway Motor Vehicles;

(h) Form CT-1, Employer's Annual Railroad Retirement Tax Return.

(i) Form 1065, U.S. Partnership Return of Income.

5292 (6-12-87)

General

(1) Revenue officers, ACS and CSF managers, GS-9 and above, are authorized to execute returns under IRC 6020(b).

(2) When the taxpayer is contacted, the Collection employee will set a specific date for filing and secure sufficient information so that an accurate return can be prepared if the taxpayer fails to file by the specified date.

What forms?

INTERNAL REVENUE SERVICE SOUTHWEST REGION OKLAHOMA CITY DISTRICT	Order No. DD-OKC-150, Rev. 5 CR: SD-61	
DELEGATION ORDER	DATE OF ISSUE NOV 27 1987	EFFECTIVE DATE NOV 27 1987

SUBJECT

AUTHORITY TO EXECUTE RETURNS

Authority is redelegated to Revenue Officers, GS-9 and above to prepare and execute the following returns on behalf of the District Director under Section 6020(b) of the Internal Revenue Code:

Form 940, Employer's Annual Federal Unemployment Tax Return;
Form 941, Employer's Quarterly Federal Tax Return;
Form 942, Employer's Quarterly Tax Return for Household Employees;
Form 943, Employer's Annual Tax Return for Agricultural Employees;
Form 11-B, Special Tax Return - Gaming Services;
Form 720, Quarterly Federal Excise Tax Return;
Form 2290, Federal Use Tax Return on Highway Motor Vehicles;
Form CT-1, Employer's Annual Railroad Retirement Tax Return; and
Form 1065, U.S. Partnership Return of Income

This Authority may not be redelegated.

This order supersedes Delegation Order DD-OKC-150 (Rev. 4) dated December 13, 1984.

Reference: Treasury Regulations 301.6020-1(b)
Commissioner Delegation Order No. 182, (Rev. 1)
IRM 5292

K. J. Sawyer
K. J. Sawyer
District Director

Delegates:

District Director
Chief, Collection & TPS Division
Chief, Special Procedures Staff
Chief, Collection Support Function
Chief, Field Branch I
Chief, Field Branch II
Group Managers, Collection
ARC-Collection, Southwest Region
Regional Management Staff: Regional Office Library

DISTRIBUTION:



GAO

Accountability • Integrity • Reliability

United States General Accounting Office
Washington, D.C. 20548

General Government Division

B-284524

February 17, 2000

The Honorable Daniel P. Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

Subject: Internal Revenue Service: Preparing Substitute for Returns for Individuals

Dear Senator Moynihan:

On November 22, 1999, we briefed your office about the Substitute for Return (SFR) program at the Internal Revenue Service (IRS). In accordance with statutory authority granted to the Secretary of the Treasury and his designees, IRS prepares a substitute for return for individuals who do not appear to have filed a required tax return (i.e., potential nonfilers). IRS prepares these substitute for returns using information maintained in IRS' computer files.¹

This letter summarizes the points we made at the briefing and answers six questions raised by your office. To prepare the briefing, we used information about nonfilers and the SFR program that we had collected during previous work. To answer questions raised at the briefing, we interviewed responsible IRS officials in the Customer Service and Collection Divisions at the National Office. We also reviewed related IRS documents. We did our work in Washington, D.C., and New Carrollton, Maryland, from November 1999 through January 2000 in accordance with generally accepted government auditing standards.

Results in Brief

As discussed at the briefing, IRS prepares a substitute for return for certain individuals classified as potential nonfilers for whom (1) it has what it considers to be adequate information about income and (2) the estimated tax liability is at or above a certain level. IRS receives this income information from third parties, such as banks and employers, who make payments to individuals. IRS believes that potential nonfilers who receive a substitute for return will be encouraged to respond by either filing a more accurate return or showing that they have no filing requirement. IRS is to give the potential nonfilers up to two chances to

¹In its response to this letter, IRS officials indicated that they do not generally prepare actual tax returns. Instead, they said IRS prepares substitute documents that propose assessments. Although IRS and legislation refer to this as the substitute for return program, these officials said that the document does not look like an actual tax return.

respond to information showing the proposed amount of the substitute for return. If these individuals do not respond, IRS is to assess the tax shown on the substitute for return and seek payment of the balance due through its regular collection process. Enclosure I contains more detailed information about these and other points made at the briefing.

In response to questions raised at the briefing:

- IRS can contact potential nonfilers who are not selected for the SFR program to solicit a tax return. These contacts can be made through telephone calls or visits by IRS staff.
- IRS has a few criteria to guide decisions on whether to create a substitute for return through automated or manual means. IRS is to use the automated method rather than the manual method when the sources of income are less complex, such as when they have little or no self-employment income from business activities. The automated method accounts for most substitute for returns.
- When preparing a substitute for return, IRS allows for a filing status of either "single" or, if the most recently filed return showed the taxpayer as married, "married filing separately." According to IRS officials, IRS has always allowed for only these two filing status claims on a substitute for return. IRS cannot use "married filing jointly" because the tax law only allows this filing status when taxpayers elect to use it upon filing a tax return.
- IRS rarely receives information other than income information from third parties in preparing a substitute for return.
- A balance-due account created from a substitute for return has no special priority over those created through other means. IRS is to use the same formula to set collection priorities for all types of accounts that involve the collection of unpaid assessments from individuals.
- IRS does not routinely collect data on the costs to prepare and process substitute for returns and on the impacts of the SFR program on compliance. For example, IRS does not collect data on whether the taxpayer files for future tax years. IRS does track the number of substitute for returns and whether the taxpayer responds to the notice on the related tax, penalty, and interest assessments.

Enclosure II responds to these questions in more detail.

Agency Comments

We requested comments on a draft of this letter from the Commissioner of Internal Revenue or his designee. On February 9, 2000, we received comments from responsible IRS officials in the Examination and Customer Service Divisions. Although the Examination Division said it had no comments, Customer Service Division officials commented on the phrase "Substitute for Return." They asked us to emphasize that even though the program is commonly referred to as the SFR program, no actual tax return is prepared. Instead, these officials noted that IRS prepares a document that substitutes for the return and that proposes an assessment, which

NO ACTUAL TAX RETURN IS PREPARED !

Under what statutory authority is a "proposed assessment" simply "posted to the taxpayer's account" without a subscribed signature ?

is posted to the taxpayer's account and is subject to the collection process. We added a footnote to the letter to explain this and revised references in the draft to clarify this point.

Unless you publicly announce its contents earlier, we plan no further distribution of this letter until 15 days after its date. We will then send copies to Senator William V. Roth, Jr., Chairman, Committee on Finance, and Representatives William Archer, Chairman, and Charles B. Rangel, Ranking Minority Member, House Committee on Ways and Means. We also will send copies to the Honorable Lawrence H. Summers, Secretary of the Treasury; the Honorable Charles O. Rossotti, Commissioner of Internal Revenue; and other interested parties.

A key contributor to this report was Louis Roberts. If you have any questions, please contact me or Tom Short on (202) 512-9110.

Sincerely yours,

Cornelia M. Ashby

Cornelia M. Ashby
Associate Director, Tax Policy and
Administration Issues



Internal Revenue Service

United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 11-01-2018
 Response Date: 11-01-2018
 Tracking Number: 100415302016

FORM NUMBER: 1040A
 TAX PERIOD: Dec. 31, 2009

TAXPAYER IDENTIFICATION NUMBER: XXX-XX-7595

FIKE

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	82,287.00	
ACCRUED INTEREST:	0.00	AS OF: Nov. 12, 2018
ACCRUED PENALTY:	0.00	AS OF: Nov. 12, 2018

ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	82,287.00
---	-----------

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:	01
FILING STATUS:	Married Filing Separate
ADJUSTED GROSS INCOME:	169,879.00
TAXABLE INCOME:	161,405.00
TAX PER RETURN:	0.00
SE TAXABLE INCOME TAXPAYER:	47,800.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	9,017.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)	Aug. 16, 2012
PROCESSING DATE	Sep. 10, 2012

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Substitute tax return prepared by IRS		09-10-2012	\$0.00
n/a	28210-888-00000-2			
960	Appointed representative		11-16-2009	\$0.00
570	Additional account action pending		09-10-2012	\$0.00

This CODE "150" transaction is the PROOF of the FRAUD by computer FRAUD that has been perpetrated because NO SFR document is ever factually created, "subscribed", or exists.

Headnote:

Reference(s):

Full Text:

Issues

1. Are documents made by the Internal Revenue Service, as authorized under section 6020(b) of the Internal Revenue Code, joint returns of income tax for the husband and wife?
2. Is a document prepared by the Service under section 6020(a) and executed by a husband and wife a joint return of income tax for the husband and wife?
3. Is a Form 870 prepared by the Service and executed by a husband and wife a joint return of income tax for the husband and wife?

Situation 1

Taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers did not provide the revenue agent all information necessary for the preparation of the return. The revenue agent made separate returns using information from other sources using tax rates applicable to married individuals filing separate returns. The taxpayers did not sign the documents made by the revenue agent.

Situation 2

The taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers provided the revenue agent with all information necessary for the preparation of the return and expressed their intention to file a joint return. The revenue agent prepared a joint return using the information provided by the taxpayers. The taxpayers signed the joint return prepared by the revenue agent under penalties of perjury.

Situation 3

The taxpayers, husband and wife, failed to file a return for the 1999 tax year. A revenue agent was assigned to secure the return. The taxpayers did not provide the revenue agent

all information necessary for the preparation of the return. The revenue agent did not prepare a joint return and instead prepared a Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, and the taxpayers consented to the immediate assessment of taxes for the 1999 tax year by signing the Form 870. Form 870 is not verified by a written declaration that it is made under the penalties of perjury.

Law

In general, a document filed with the Service is treated as a return if the document: (1) contains sufficient data to calculate the tax liability; (2) purports to be a return; (3) represents an honest and reasonable attempt to satisfy the requirements of the tax law; and (4) is executed under penalties of perjury. Beard v. Commissioner, 82 T.C. 766, 777 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986) (citing Badaracco v. Commissioner, 464 U.S. 386 (1984); Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (1934); and Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453 (1930)).

Section 6013 generally authorizes a husband and wife to make a single return jointly of income tax. Section 1.6013-1(a)(1) of the Income Tax Regulations provides that a husband and wife may elect to make a joint return. Taxpayers must make an election to make a joint return on a validly filed return.

Section 6020(a) authorizes the Secretary to prepare a return for a taxpayer who fails to make and file a return if the taxpayer discloses all information necessary for the preparation of the return. If the taxpayer signs the return prepared by the Secretary, the return may be received as the taxpayer's return.

If a taxpayer fails to make a return, or makes a false or fraudulent return, section 6020(b) authorizes the Secretary to make a return from his own knowledge and from such information as he can obtain through testimony or otherwise.

Section 6065 requires that a return “shall contain or be verified by a written declaration that it is made under the penalties of perjury.”

Joint return filing status under section 6013(a) is predicated on the husband and wife making an election and intending to file a joint return. Accordingly, the Service may not elect joint filing status on behalf of taxpayers in a return it prepares and signs under the authority of section 6020(b). See Millsap v. Commissioner, 91 T.C. 926 (1988), acq. in result, 1991-2 C.B. 1 (filing status used by IRS in preparing return under section 6020(b) does not bind taxpayers in later deficiency proceeding).

Analysis

Situation 1

In Situation 1, the documents made by the revenue agent under the authority of section 6020(b) are not returns of income tax filed by the husband and wife for purposes of section 6013 because they did not sign the returns under penalties of perjury. The documents made by the revenue agent under the authority of section 6020(b) also do not constitute valid elections to file a joint return under section 6013.

Situation 2

In Situation 2, the document prepared by the revenue agent under the authority of section 6020(a) was signed by the husband and wife under penalties of perjury. The section 6020(a) document (1) contains sufficient data to calculate the tax liability, (2) purports to be a return, (3) represents an honest and reasonable attempt to satisfy the requirements of the tax law, and (4) is executed under penalties of perjury. The section 6020(a) document, therefore, constitutes a valid return under the four-part Beard test and, because it is signed by both the husband and wife, it is a joint return of income tax for purposes of section 6013.

Situation 3

A Form 870, although signed by both husband and wife, is not verified by a written declaration that it is made under the penalties of perjury. A Form 870 is not a return under the Beard test because it does not purport to be a return and it is not signed under penalties of perjury as required by section 6065. Beard, 82 T.C. at 777.

In Rev. Rul. 74-203, 1974-1 C.B. 330, the Service determined that a Form 870 signed by taxpayers, husband and wife, was a return of the taxpayers for purposes of section 6020(a) and a valid election to file a joint return under section 6013. Rev. Rul. 74-203 is inconsistent with Beard and the cases cited therein on what constitutes a valid return, because a Form 870 does not purport to be a return and is not executed under penalties of perjury.

Holdings

ISSUE 1. Documents made under the authority of section 6020(b) that are not signed by the taxpayers under penalties of perjury are not returns filed by the taxpayers for purposes of section 6013 and are not valid elections to file a joint return.

ISSUE 2. A document prepared by the Service under the authority of section 6020(a) that is signed by the taxpayers under penalties of perjury is a return of the taxpayers for purposes of section 6013 and constitutes a valid election to file a joint return.

ISSUE 3. A Form 870, which includes a waiver signed by the taxpayers, is not a return filed by the taxpayers for purposes of section 6013 and does not constitute a valid election to file a joint return. This holding also applies to Form 1902, Report of Individual Income Tax Audit Changes (obsoleted 1988), and Form 4549, Income Tax Examination Changes, and any successor forms to these forms.

Effect On Other Documents

Rev. Rul. 74-203 is revoked. A Form 870 signed by taxpayers, husband and wife, is not a return under section 6020(a) and it is not an election to file a joint return under section 6013. This holding also applies to Form 1902, Report of Individual Income Tax Audit Changes (obsoleted 1988), and Form 4549, Income Tax Examination Changes, and any successor forms to these forms, because these documents do not purport to be returns and do not contain a jurat with a penalties of perjury clause.

Drafting Information

The principal author of this revenue ruling is Michael E. Hara of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Michael E. Hara on (202) 622-4910 (not a toll-free call).

Document Title: Rev. Rul. 2005-59, 2005-37 IRB, 08/22/2005
Checkpoint Source: Revenue Rulings (1954 - Present)



© Copyright 2005 RIA. All rights reserved.

Form W-4 (2019)

Future developments. For the latest information about any future developments related to Form W-4, such as legislation enacted after it was published, go to www.irs.gov/FormW4.

Purpose. Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

Exemption from withholding. You may claim exemption from withholding for 2019 if **both** of the following apply.

- For 2018 you had a right to a refund of **all** federal income tax withheld because you had **no** tax liability, **and**
- For 2019 you expect a refund of **all** federal income tax withheld because you expect to have **no** tax liability.

If you're exempt, complete **only** lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2019 expires February 17, 2020. See Pub. 505, Tax Withholding and Estimated Tax, to learn more about whether you qualify for exemption from withholding.

General Instructions

If you aren't exempt, follow the rest of these instructions to determine the number of withholding allowances you should claim for withholding for 2019 and any additional amount of tax to have withheld. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

You can also use the calculator at www.irs.gov/W4App to determine your tax withholding more accurately. Consider

using this calculator if you have a more complicated tax situation, such as if you have a working spouse, more than one job, or a large amount of nonwage income not subject to withholding outside of your job. After your Form W-4 takes effect, you can also use this calculator to see how the amount of tax you're having withheld compares to your projected total tax for 2019. If you use the calculator, you don't need to complete any of the worksheets for Form W-4.

Note that if you have too much tax withheld, you will receive a refund when you file your tax return. If you have too little tax withheld, you will owe tax when you file your tax return, and you might owe a penalty.

Filers with multiple jobs or working spouses. If you have more than one job at a time, or if you're married filing jointly and your spouse is also working, read all of the instructions including the instructions for the Two-Earners/Multiple Jobs Worksheet before beginning.

Nonwage income. If you have a large amount of nonwage income not subject to withholding, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you might owe additional tax. Or, you can use the Deductions, Adjustments, and Additional Income Worksheet on page 3 or the calculator at www.irs.gov/W4App to make sure you have enough tax withheld from your paycheck. If you have pension or annuity income, see Pub. 505 or use the calculator at www.irs.gov/W4App to find out if you should adjust your withholding on Form W-4 or W-4P.

Nonresident alien. If you're a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

Specific Instructions

Personal Allowances Worksheet

Complete this worksheet on page 3 first to determine the number of withholding allowances to claim.

Line C. Head of household please note:

Generally, you may claim head of household filing status on your tax return only if you're unmarried and pay more than 50% of the costs of keeping up a home for yourself and a qualifying individual. See Pub. 501 for more information about filing status.

Line E. Child tax credit. When you file your tax return, you may be eligible to claim a child tax credit for each of your eligible children. To qualify, the child must be under age 17 as of December 31, must be your dependent who lives with you for more than half the year, and must have a valid social security number. To learn more about this credit, see Pub. 972, Child Tax Credit. To reduce the tax withheld from your pay by taking this credit into account, follow the instructions on line E of the worksheet. On the worksheet you will be asked about your total income. For this purpose, total income includes all of your wages and other income, including income earned by a spouse if you are filing a joint return.

Line F. Credit for other dependents.

When you file your tax return, you may be eligible to claim a credit for other dependents for whom a child tax credit can't be claimed, such as a qualifying child who doesn't meet the age or social security number requirement for the child tax credit, or a qualifying relative. To learn more about this credit, see Pub. 972. To reduce the tax withheld from your pay by taking this credit into account, follow the instructions on line F of the worksheet. On the worksheet, you will be asked about your total income. For this purpose, total

Separate here and give Form W-4 to your employer. Keep the worksheet(s) for your records.

W-4 Form Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate		OMB No. 1545-0074 2019	
1 Your first name and middle initial		Last name		2 Your social security number	
Home address (number and street or rural route)				3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married filing separately, check "Married, but withhold at higher Single rate."	
City or town, state, and ZIP code				4 If your last name differs from that shown on your social security card, check here. You must call 800-772-1213 for a replacement card. <input type="checkbox"/>	
5 Total number of allowances you're claiming (from the applicable worksheet on the following pages)				5 N/A	
6 Additional amount, if any, you want withheld from each paycheck				6 \$ 0.00	
7 I claim exemption from withholding for 2019, and I certify that I meet both of the following conditions for exemption. • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here 7 EXEMPT under IRC 3402(n)					
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.					
Employee's signature (This form is not valid unless you sign it.) ▶					
8 Employer's name and address (Employer: Complete boxes 8 and 10 if sending to IRS and complete boxes 8, 9, and 10 if sending to State Directory of New Hires.)				9 First date of employment	
				10 Employer identification number (EIN)	

P49



U.S. Code collection

[main page](#) [faq](#) [index](#) [search](#)

[TITLE 26](#) > [Subtitle C](#) > [CHAPTER 24](#) > [§ 3402](#)

§ 3402. Income tax collected at source

[How Current is This?](#)

(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall—

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

...

(n) Employees incurring no income tax liability

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

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

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

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

SUBTITLE “A” Liability

§ 7701 – Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) PERSON

The term “**person**” shall be construed to mean and include an individual, a trust, estate, **partnership**, association, company or **corporation**.

...

(16) WITHHOLDING AGENT

The term “**withholding agent**” means **any person required to deduct and withhold any tax** under the provisions of section **1441, 1442, 1443, or 1461.**

§ 1461 Liability for withheld tax

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

SUBTITLE “C” Liability

§3403 Liability for tax

The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.



Department
of the
Treasury

Internal
Revenue
Service

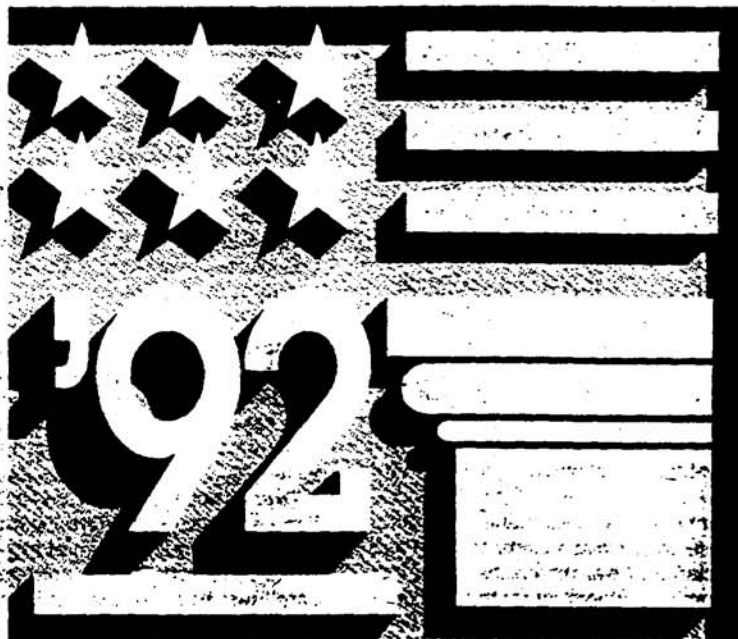
Publication 515

(Rev. Nov. 1992)

Cat. No. 15019L

Withholding of Tax on Nonresident Aliens and Foreign Corporations

For withholding
in 1993



Contents

Important Changes	1
Introduction	2
Withholding of Tax	2
Withholding Exemptions and Reductions	3
Income Subject to Withholding	6
Types of Income Subject to Withholding	8
Interest	8
Dividends	10
Certain Gains	11
Royalties	11
Real Property Income	11
Pensions, Annuities, and Alimony	11
Scholarships and Fellowship Grants	12
Compensation for Personal Services Performed	13
Other Income	17
U.S. Taxpayer Identification Numbers	17
Depositing Withheld Taxes	18
Returns Required	19
Partnership Withholding on Effectively Connected Income	20
U.S. Real Property Interest	22
Tax Treaty Tables	25
Table 1—Tax Rates on Income Other Than Personal Service Income—for Withholding in 1993	26
Table 2—Exempt Personal Service Income	28
Table 3—List of Tax Treaties	37
Index	38

Important Changes

Away-from-home expenses. For expenses paid or incurred after 1992, a deduction for away-from-home expenses is not permitted if an individual is away from his or her tax home for more than 1 year. "F," "J," or "M" visa holders who qualify for reduced withholding on scholarships and fellowship grants may not deduct these expenses on Form W-4, *Employee's Withholding Allowance Certificate*, if they expect their stay to last for more than 1 year. For more information, see *Reduced Withholding*, later under *Scholarships and Fellowship Grants*.

Backup withholding. For amounts paid after 1992, the backup withholding rate is increased to 31%. For more information about backup withholding, see *Backup withholding*, later under *U.S. Taxpayer Identification Numbers*.

Distributions of effectively connected income by publicly traded partnerships. The withholding tax rate on distributions of effectively connected income by publicly traded

- 1) 31 days during the current calendar year, and
- 2) 183 days during the current year and the 2 preceding years, counting all the days of physical presence in the current year, but only $\frac{1}{2}$ the number of days of presence in the first preceding year, and only $\frac{1}{4}$ the number of days in the second preceding year.

You generally do not count days the alien is in the United States as a teacher, student, or trainee on an "F," "J," or "M" visa.

For more information on resident and non-resident status, the tests for residence, and the exceptions to them, see Publication 519, *U.S. Tax Guide for Aliens*.

Nonresident alien individuals married to either U.S. citizens or resident aliens may choose to be treated as resident aliens for income tax purposes. However, these individuals are still subject to the withholding rules that apply to nonresident aliens for all income except wages. Wages paid to these individuals are subject to the withholding rules that apply to U.S. citizens and residents. The rules explained later under *Compensation Subject to Graduated Withholding* do not apply to these aliens. Instead, see Publication 15, Circular E, *Employer's Tax Guide*.

A foreign corporation or partnership is one that does not fit the definition of a domestic corporation or partnership. A **domestic corporation or partnership** is one that was created or organized in the United States, or under the laws of the United States or any of its states.

Guam or Northern Mariana Islands corporations. A corporation created or organized in, or under the laws of, Guam or the Commonwealth of the Northern Mariana Islands (CNMI) is not considered a foreign corporation for the purpose of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons, and
- 2) At least 20% of the corporation's gross income is derived from sources within Guam or the CNMI for the 3-year period ending with the close of the preceding tax year of the corporation (or the period the corporation has been in existence, if less).

Virgin Islands and American Samoa corporations. A corporation created or organized in, or under the laws of, the Virgin Islands or American Samoa is not considered a foreign corporation for the purposes of withholding tax for the tax year if:

- 1) At all times during the tax year less than 25% in value of the corporation's stock is owned, directly or indirectly, by foreign persons,
- 2) At least 65% of the corporation's gross income is effectively connected with the

conduct of a trade or business in the Virgin Islands, American Samoa, Guam, the CNMI, or the United States for the 3-year period ending with the close of the tax year of the corporation (or the period the corporation or any predecessor has been in existence, if less), and

- 3) No substantial part of the income of the corporation is used, directly or indirectly, to satisfy obligations to a person who is not a bona fide resident of the Virgin Islands, American Samoa, Guam, the CNMI, or the United States.

Note: The provisions discussed above for *Virgin Islands and American Samoa corporations* are extended to Guam and CNMI corporations when an implementing agreement is in effect between the United States and each of those possessions. For further information, write to the Internal Revenue Service, Assistant Commissioner (International), 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Resident of Puerto Rico. Even if an alien is a bona fide resident of Puerto Rico for the entire year and is required to pay taxes generally in the same way as a U.S. citizen, the alien is treated as a nonresident alien for the withholding rules explained here. This alien will be entitled to a credit against U.S. income tax for any income tax withheld under these rules.

Trustee, administrator, or executor. Income paid to a nonresident alien trustee, administrator, or executor of a trust or an estate is subject to these withholding rules even though all the beneficiaries of the trust or estate are citizens or residents of the United States.

Foreign private foundation. A private foundation that was created or organized under the laws of a foreign country is a foreign private foundation. Gross investment income from sources within the United States paid to a qualified foreign private foundation is subject to withholding of a 4% excise tax rather than the ordinary statutory 30% income tax. For more information on foreign private foundations, see Publication 578, *Tax Information for Private Foundations and Foundation Managers*.

Other foreign organizations, associations, and charitable institutions. An organization may be exempt from income tax under section 501(a) of the Internal Revenue Code even if it was formed under foreign law. Generally, you do not have to withhold tax on payments of income to these foreign tax-exempt organizations if the IRS has determined that they are not foreign private foundations.

Payments to these organizations, however, must be reported on Form 1042S, *Foreign Person's U.S. Source Income Subject to Withholding*, even though no tax is withheld.

You must withhold tax on the unrelated business income (as described in Publication 598, *Tax on Unrelated Business Income of Exempt*

Organizations) of foreign tax-exempt organizations in the same way that you would withhold tax on similar income of nonexempt organizations.

Withholding Exemptions and Reductions

You should withhold any required tax if facts indicate that the individual, or the fiduciary, to whom you are to pay the income is a nonresident alien. However, the alien may be allowed an exemption from withholding or a reduced rate of withholding as explained here.

Evidence of residence. If an individual gives you a written statement stating that he or she is a citizen or resident of the United States, and you do not know otherwise, you do not have to withhold tax. An alien may claim U.S. residence by filing with you, Form 1078, *Certificate of Alien Claiming Residence in the United States*. Keep the statement or form for your records. Do not file it with the IRS. Holders of visas that do not permit permanent residence in the United States should write to the Internal Revenue Service, Assistant Commissioner (International), Attention: IN:C:TPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice about filing a Form 1078 and, if filing Form 1078 is proper, about the need to make estimated tax payments.

A U.S. bank that pays income subject to withholding may decide whether to accept an individual's proof of U.S. citizenship or residence given through a foreign bank to which income is paid. If the U.S. bank accepts this proof, it will not be liable for payment of tax if later it is shown that the individual was a nonresident alien. If it accepts the proof, the U.S. bank must file Form 1042S showing the name, address, identification number, and the particular securities of the actual owner, and indicating that it is relying on proof submitted by the foreign bank as its basis for not withholding.

Partnerships and corporations. You may rely on a written statement from a partnership or corporation claiming that it is not foreign as proof that the partnership or corporation is domestic and not subject to withholding tax. It must contain the entity's employer identification number, the address of its U.S. office or place of business, and the signature of a member of the partnership or the signature and official title of the corporate officer. Keep the statement for your records. Do not file it with the IRS.

Withholding exemption for undue administrative burden. Do not withhold on income paid to a foreign partnership or corporation engaged in a trade or business in the United States if the withholding would impose an undue administrative burden for the tax year and the collection of the tax would not be jeopardized by not withholding. These facts must be

1042S required by paragraph (c) of §1.1461-2 with respect to such annuity for such calendar year.

(b) **Interest on bonds sold between interest dates.**—Except as provided by paragraph (b)(2)(ii) of §1.1441-2, the tax is not required to be withheld under §1.1441-1 on accrued interest paid by the buyer in connection with the sale of bonds between interest dates, even though the interest is subject to tax under section 871 or section 881. The exemption from withholding granted by this paragraph is not a determination that the accrued interest is not fixed or determinable annual or periodical income.

(i) **Income of foreign central bank of issue or Bank for International Settlements.** (1) Section 895 provides for the exclusion from gross income of certain income derived by a foreign central bank of issue, or by the Bank for International Settlements, from obligations of the United States or of any agency or instrumentality thereof or from bank deposits. In the absence of knowledge that a foreign central bank of issue, or the Bank for International Settlements, is operating without the scope of the exclusion granted by section 895, the withholding agent is not required to withhold under §1.1441-1 upon income derived by such bank from obligations of the United States or of any agency or instrumentality thereof, or upon interest derived from deposits with persons carrying on the banking business, if the withholding agent receives from the bank a statement certifying that the bank—

(i) Is a foreign central bank of issue, or the Bank for International Settlements, as the case may be,

(ii) Is the owner of the obligations of the United States or of any agency or instrumentality thereof, or the owner of such bank deposits, as the case may be, and

(iii) Does not, and will not, hold such obligations or such bank deposits for, or use them in connection with, the conduct of a commercial banking function or other commercial activity.

(2) A copy of the statement filed pursuant to paragraph (i)(1) of this section shall be forwarded by the withholding agent with, and attached to, the Form 1042S required by paragraph (c) of §1.1461-2 with respect to payments of income made on such obligations or bank deposits during the calendar year.

★ **○ §1.1441-5 Claiming to be a person not subject to withholding.** (TD 6187, filed 7-5-66 as amended by TD 6238, filed 6-10-57; republished in TD 6500, filed 11-25-60; amended by TD 6908, filed 12-30-66; TD 7277, filed 5-14-73; TD 7842, filed 11-2-82; TD 7977, filed 9-19-84; TD 8160, filed 9-8-87.)

(a) **Individuals.**—For purposes of chapter 3 of the Code an individual's written statement that he or she is a citizen or

resident of the United States may be relied upon by the payer of the income as proof that such individual is a citizen or resident of the United States. This statement shall be furnished to the withholding agent in duplicate. An alien may claim residence in the United States by filing Form 1078 with the withholding agent in duplicate in lieu of the above statement.

(b) **Partnerships and corporations.**—For purposes of chapter 3 of the Code a written statement from a partnership or corporation claiming that it is not a foreign partnership or foreign corporation may be relied upon by the withholding agent as proof that such partnership or corporation is domestic. This statement shall be furnished to the withholding agent in duplicate. It shall contain the address of the taxpayer's office or place of business in the United States and shall be signed by a member of the partnership or by an officer of the corporation. The official title of the corporate officer shall also be given.

(c) **Disposition of statement and form.**—The duplicate copy of each statement and form filed pursuant to this section shall be forwarded with a letter of transmittal to Internal Revenue Service Center, Philadelphia, PA 19255. The original statement shall be retained by the withholding agent.

(d) **Definitions.**—For determining whether an alien individual is a resident of the United States see §1.871-2. For definition of the terms "foreign partnership" and "foreign corporation" see section 7701(a)(4) and (5) and §301.7701-5 of this chapter. An individual with respect to whom an election to be treated as a resident under section 6013(g) is in effect is not, in accordance with §1.1441-1, a resident for purposes of this section. For definition of the term "United States" and for other geographical definitions relating to the continental shelf see section 638 and §1.638-1.

○ **§1.1441-6 Withholding pursuant to the application of a tax treaty which confers a reduced rate of, or an exemption from, United States income tax.** (TD 7157, filed 12-29-71; amended by TD 7842, filed 11-2-82; TD 7977, filed 9-19-84.)

(a) **In general.** The rate of 30 percent or 14 percent shall be reduced as may be provided by a treaty with any country. In case of payments of any of the items specified in §1.1441-2 (other than dividends) made on or before December 31, 1971, and in the case of payments of dividends made at any time, the withholding agent shall determine the applicable rate pursuant to the appropriate tax treaty and the regulations issued thereunder. In case of payment on or after January 1, 1972, of any of the items specified in §1.1441-2 (other than dividends), the requirements of paragraphs (b) and (c) of this section shall apply in lieu of the ownership certificate or

SO HOW COME the IRS, the DOJ & the LOWER FEDERAL COURTS (District & Circuit)
NOW SAY THAT IT IS A DIRECT TAX UNDER THE 16th AMENDMENT !!

THE IRS, DOJ, & lower court judges all NOW say, argue, and rule that it is *frivolous* to argue that the federal personal income tax is an *indirect* tax (*Impost, Duty, or Excise*) under Article I, Section 8, clause 1 of the U.S. Constitution, AS OPENLY DECLARED BY CONGRESS IN THE Constitutional Authority Statement, in the Congressional Record, for the NEW TRUMP TAX LAW (shown above and enacted in December 2017, - made effective as of January 2018), rather than a *direct* tax under the 16th Amendment, which is what they have been wrongfully and fraudulently arguing and ruling erroneously for 65 years. **Here is the government's ERRONEOUS position, below, verbatim, from their Frivolous Positions Document(s), published on the IRS website.**

“6. Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.

Some assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and thus, U.S. citizens and residents are not subject to federal income tax laws.

The Law: The constitutionality of the Sixteenth Amendment has invariably been upheld when challenged. And numerous courts have both implicitly and explicitly recognized that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal tax laws as applied are valid. In *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited to *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12-19 (1916), and noted that the U.S. Supreme Court has recognized that the “sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation.”

Relevant Case Law:

In re Becraft, 885 F.2d 547 (9th Cir. 1989) – the court affirmed a failure to file conviction, rejecting the taxpayer’s frivolous position that the Sixteenth Amendment does not authorize a direct non-apportioned income tax.

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990) – the court found defendant’s argument that the Sixteenth Amendment does not authorize a direct, non-apportioned tax on United States citizens similarly to be “devoid of any arguable basis in law.”

Lovell v. United States, 755 F.2d 517, 518 (7th Cir. 1984) – the court rejected the argument that the Constitution prohibits imposition of a direct tax without apportionment, and upheld the district court’s frivolous return

penalty assessment and the award of attorneys' fees to the government "because [the taxpayers'] legal position was patently frivolous." The appeals court imposed additional sanctions for pursuing "frivolous arguments in bad faith."

Broughton v. United States, 632 F.2d 706 (8th Cir. 1980) – the court rejected a refund suit, stating that the Sixteenth Amendment authorizes imposition of an income tax without apportionment among the states.

Stearman v. Commissioner, T.C. Memo. 2005-39, 89 T.C.M. (CCH) 823 (2005), *aff'd*, 436 F.3d 533 (5th Cir. 2006) – the court imposed sanctions totaling \$25,000 against the taxpayer for advancing arguments characteristic of tax-protester rhetoric that has been universally rejected by the courts, including arguments regarding the Sixteenth Amendment. In affirming the Tax Court's holding, the Fifth Circuit granted the government's request for further sanctions of \$6,000 against the taxpayer

for maintaining frivolous arguments on appeal, and the Fifth Circuit imposed an additional \$6,000 sanctions on its own, for total additional sanctions of \$12,000."

But the Supreme Court ruled in 1913 in the *Brushaber* [240 US 1 (1916)] and *Baltic Mining* [240 US 103 (1916)] decisions, that it is an *indirect* tax, **not direct**; - and that is also what Congress just wrote in the "Constitutional Authority Statement" on the Congressional Record, clearly stating the original congressional intent with respect to this new income tax law (H.R. 1), that was just passed under President Donald Trump in December of 2017, and became effective the next month in January 2018.

So shouldn't someone tell Congress that their new income tax law is deemed *frivolous* by the courts, the IRS, and the DOJ? Or is it really the DOJ, the IRS, and federal judges who have been pushing the *frivolous* **socialist** positions on the American People (virtual communism under the 2nd Plank of the Manifesto – look it up), under the *guise* and *pretense* of taxation, and in the *name of tax* **only** for 65 years.

That's 65 years of JUDICIAL FRAUD to communize America, and Americans. That's Orwellian.

CONGRESS.GOV

H.R.1 - Tax Cuts and Jobs Act

115th Congress (2017-2018)

Sponsor: [Rep. Brady, Kevin \[R-TX-8\]](#) (Introduced 11/02/2017)

Committees: House - Ways and Means

Committee Reports: [H. Rept. 115-409](#)

Latest Action: House - 11/16/2017 Motion to reconsider laid on the table Agreed.

Roll Call Votes: There has been [1 roll call vote](#)Tracker: Introduced **Passed House** Passed Senate To President Became Law

Summary (1) Text (3) Actions (22) Titles (5) Amendments (1) Cosponsors (2)

There is one summary for H.R.1. [Bill summaries](#) are authored by [CRS](#).

Shown Here:

Introduced in House (11/02/2017)

Tax Cuts and Jobs Act

This bill amends the Internal Revenue Code to reduce tax rates and modify policies, credits,

With respect to individuals, the bill:

- replaces the seven existing tax brackets (10%, 15%, 25%, 28%, 33%, 35%, and 39.6%) with three new brackets (10%, 15%, and 25%);
- increases the standard deduction;
- repeals the deduction for personal exemptions;
- establishes a 25% maximum rate on the business income of individuals;
- increases the child tax credit and establishes a new family tax credit;
- repeals the overall limitation on certain itemized deductions;
- limits the mortgage interest deduction for debt incurred after November 2, 2017;
- repeals the deduction for state and local income or sales taxes not paid or accrued in a trade or business;
- repeals the deduction for medical expenses;
- consolidates and repeals several education-related deductions and credits;
- repeals the alternative minimum tax; and
- repeals the estate and generation-skipping transfer taxes in six years.

For businesses, the bill:

- reduces the corporate tax rate from a maximum of 35% to a flat 20% rate (25% for personal services corporations);
- allows increased expensing of the costs of certain property;
- limits the deductibility of net interest expenses to 30% of the business's adjusted taxable income;
- repeals the work opportunity tax credit;
- terminates the exclusion for interest on private activity bonds;
- modifies or repeals various energy-related deductions and credits;
- modifies the taxation of foreign income; and
- imposes an excise tax on certain payments from domestic corporations to related foreign corporations.

The bill also repeals or modifies several additional credits and deductions for individuals and businesses.

Constitutional Authority Statement

[Congressional Record Volume 163, Number 178 (Thursday, November 2, 2017)]
From the Congressional Record Online through the Government Publishing Office (www.gpo.gov)
By Mr. BRADY of Texas:

H. R. 1.

Congress has the power to enact this legislation pursuant to the following:
Article I, Section 8, Clause 1 of the Constitution of the United States.
[Page H8444]

About Constitutional Authority Statements

On January 5, 2011, the House of Representatives adopted an amendment to House Rule XII. Rule XII, clause 7(c) requires that, to be accepted for introduction by the House Clerk, all bills (H.R.) and joint resolutions (H.J. Res.) must provide a document stating "as specifically as practicable the power or powers granted to Congress in the Constitution to enact the bill or joint resolution."

Constitutional Authority Statement

[Congressional Record Volume 163, Number 178 (Thursday, November 2, 2017)]
From the Congressional Record Online through the Government Publishing Office
www.gpo.gov

By Mr. BRADY of Texas:

H.R. 1.

Congress has the power to enact this legislation pursuant
to the following:

Article I, Section 8, Clause 1 of the Constitution of the

United States.

[Page H8444]

About Constitutional Authority Statements

On January 5, 2011, the House of Representatives adopted an amendment to House
Rule XII. Rule XII, clause 7(c) requires that, to be accepted for introduction by the

**THREE DIFFERENT FEDERAL COURTS (& their CIRCUIT COURTS OF APPEALS)
PROVIDE THREE DIFFERENT RULINGS ON THE CONSTITUTIONAL NATURE OF THE TAX**

1. Defendant Michael Balice, Judge **Kevin McNulty**, Trenton, NJ

New Jersey federal district court case # 2:14-cv-03937

U.S. Third Circuit cases # 17-3143, 18-2432, 18-2528

Court Rules it is a new, **Direct** taxing power under the 16th Amendment

– despite there being **no** *enabling enforcement clause* in the Amendment to authorize the U.S. Congress to write new law to enforce the new power allegedly created

– Invokes the Article 1, Sec. 8, cl. 18 enforcement powers to enforce *powers* that are **prohibited** in Article I, thus improperly using the Amendment **to destroy** 2 other Art I clauses, and removing all *limitation* upon the alleged new power to tax income (**directly** and without *limitation*)

BUT the tax is required to be the same in all 50 states. It cannot be "direct" in some, and "indirect" in others. SO THIS IS PATENTLY UNCONSTITUTIONAL !

2. Defendant Lewis Carter, Judge **Hannah Lauck**, Eastern Virginia – Richmond

Virginia district court cases# 3:15-cv-00161 & 3:16-cv-00674

U.S. Fourth Circuit cases #16-1689, 18-1471

Court Rules in this case that it is a pre-existing **Indirect** tax (and taxing power) under authority of Article I, Section 8, cl. 1 (**not** *Direct*, as held in the 3rd Circuit)

- contradicting 35 years of established precedent in the Fourth Circuit!

- But the court **refuses** to say if it is an *Impost, Duty, or Excise* thereunder!

3. Defendant Ken Cromar, Judge **Robert L. Shelby** - Central Division, Salt Lake City, Utah

District court case #**2:17-cv-01223**

Tenth Circuit cases #18-4128, 19-4035, 19-4075, 19-4125, 19-4129

This district court judge **refused to identify** or make plaintiff United States identify, on the record of the action in the court, **the constitutional nature of the tax pursued** for enforcement, as either *direct* or *indirect* (or something else?). This court allowed the plaintiff to claim that *subject-matter jurisdiction* can be established under statutes alone – arguing that **no constitutional authority** is alleged to be necessary or required, - which is legally **impossible**.

- **F.R.C.P. Rule 84, Form 2**; at one time, provided the **specific form** to be used to declare the *subject-matter jurisdiction* of the court taken in any civil legal action. It read:

“... The action arises under [the Constitution of the United States, Article ___, Section ___]; [the ___ Amendment to the Constitution of the United States, Section ___]; ...”

Neither court, nor the plaintiff United States, will speak to address the *nature* of the tax claims.

1132.75 (12-21-87)

Criminal Investigation Division

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

Citizens residing where ?

What kind of aliens ?

INCOME

88

INCOME TAX—Cont'd

Children—Cont'd

Dependents—Cont'd

Employee or both parents deceased, "dependent child" as meaning, fringe benefits, exclusion of certain fringe benefits from gross income, 26 § 132

Election to claim certain unearned income on parent's return, 26 § 1

Exemptions, post, this heading

Foster care payments, exclusion from gross income, 26 § 131

Payments to support, inclusion in gross income, exception, 26 § 71

Placed for adoption, treatment of as child by blood, "dependent" as including, deductions, personal exemptions, 26 § 152

Qualifying child,

Earned income credit, 26 § 32

Taxable year, eligibility, earned income, credit, 26 § 32

Two or more eligible individuals, earned income, credit, 26 § 32

Services,

Amounts received not included in parent's gross income, 26 § 73

Assessment against parents, 26 § 6201

Stock ownership, corporate distributions, 26 § 318

Support of,

Gross income, inclusions, applicability, 26 § 71

Seizure of property for nonpayment, exemption from levy, salary, wages or other income required, 26 § 6334

Surviving spouse, rate of tax, 26 § 2

Unearned income of minors taxed as parent's income, 26 § 1

China Trade Act Corporations, this index

Choses in action excluded from provision concerning nonrecognition of gain or loss from exchanges, 26 § 1031

Christian Science practitioner, exemption from self-employment income tax, notice to ordaining bodies, etc. of opposition to insurance, 26 § 1402

Revocation of exemption, 26 § 1402 nt

Church employee income, defined, self-employment income, 26 § 1402

Church employees, exception, self-employment income tax, 26 § 1402

Church plan. Religious Organizations, generally, this index

Churches,

Churches, this index

Defined, pension plans, etc.; defined contribution plans, 26 § 415

Religious Organizations, generally, this index

Churning transactions, cost recovery, accelerated system, exclusions, 26 § 168

Circulation expenditures,

Adjustment to basis for determining gain or loss, 26 § 1016

INCOME TAX—Cont'd

Circulation expenditures—Cont'd

Alternative minimum tax, adjustments in computing, amortization over 3-year period, individuals, 26 § 56

Citizens,

About to depart from U.S., waiver of requirements as to termination of taxable year, 26 § 6851

Living abroad, exclusion of earned income and foreign housing costs from gross income, 26 § 911

Civic leagues,

Exemption from tax, 26 § 501

Inspection of applications for tax exemption, 26 § 6104

Returns, exempt corporations, 26 § 6033

Civil penalties. Fines, penalties and forfeitures, generally, post, this heading

Civil tax purposes, determination if information sought for, treatment of conventions in certain Caribbean countries, etc., items not deductible, 26 § 274

Claim of right,

Generally, 26 § 1341

Computation where,

Substantial amount held under claim of right, tentative refund of tax under claim of right adjustment, application, etc., 26 § 6411

Taxpayer restores substantial amount held under claim of right, 26 § 1341

Claims,

Abatement of tax, 26 § 6404

Indemnification against, taxes withheld at source, 26 § 1461

Refunds, generally, post, this heading

Renegotiation of Government contracts, extension of time for filing, 26 § 6511

United States Court of Federal Claims, generally, this index

Class life system, application to section 1250 property, depreciation deduction, 26 § 167 nt

Class lives, reasonable allowance for depreciation deduction,

Application of system to section 1250 property, 26 § 167 nt

Transitional rules concerning exclusion of subsidiary assets from election concerning, 26 § 167 nt

Clean-burning fuel, defined, deduction, qualified clean-fuel vehicle property and refueling property, 26 § 179A

Clean-fuel vehicle and refueling property, qualified, deduction, 26 § 179A

Clean water facilities, contracts or arrangements involving, treatment as service contract, special rules, 26 § 7701

Clergymen,

Exclusion of rental value of parsonages from gross income, 26 § 107

Self-employment income or net earnings from self-employment, 26 § 1402

Withholding tax, exception, 26 § 3401



BOTH HAVING
TO DO WITH
FOREIGN
ACTIVITY!

ALIENS

ALIENS—Cont'd

Illegal aliens.

Border controls, improvement of, apprehension of aliens attempting to enter U.S. illegally, 8 § 1101 nt

Correctional facilities grants, violent crime control, 42 § 13701

Detention, Breached Bond/Detention Fund, expenses, 8 § 1356

Interdiction of, 8 § 1182 nt, EON 12807
High seas interdiction, 8 § 1182 nt, PN 4865

Migrant and seasonal workers, protection of, Agricultural Labor, generally, this index

Illegally in country.

Public works employment, prohibition, grants, construction, etc., of local public works projects, 42 § 6705

ALIENS—Cont'd

Income tax—Cont'd

Gross income.

From sources within U.S., 26 § 861

Nonresident aliens, post, this subheading
Guam residents, 26 § 876

Interest. Nonresident aliens, post, this subheading

Joint returns, 26 § 6013

Limitations. Nonresident aliens, post, this subheading

Nonresident aliens.

Additions to tax, failure to deduct and withhold, tax paid by recipient of income, effect on certain penalties, 26 § 1463

Adjustment and alleviation where more burdensome or discriminatory taxes imposed by foreign countries on U.S.

Nonresident alien starts here on this page, 413

EIGHT (8) PAGES LATER

Nonresident aliens is still running !

ALIENS

ALIENS—Cont'd

Income tax—Cont'd

Nonresident aliens—Cont'd

Withholding of tax—Cont'd

Puerto Ricans as included within term, "non-resident alien individual", 26 § 1441

Rate, 26 § 1441

Refunds and credits, 26 § 1464

Return deemed filed and tax considered paid, limitations on, credit or refund, 26 § 6513

Trade or business within the U.S., defined, 26 § 864

Northern Mariana Islands residents, 26 § 876

Partnership.

Foreign partners, withholding of tax, effectively connected income, 26 § 1446

Nonresident aliens, ante, this subheading
Partnerships and beneficiaries of estates and trusts, 26 § 875

Payment, departure from U.S., 26 § 6851

Puerto Rican residents, 26 § 876

Rates, citizens and corporations, certain foreign countries, 26 § 891

Refund, civil actions for, limitation on right of action, exception, U.S. Court of Federal Claims, 28 § 2502

REIT, defined, special rules, investment in U.S. real property, 26 § 897

Related person, defined, non-resident alien individuals, repeal of tax, interest from certain portfolio debt investments, 26 § 871

Rents or royalties. Nonresident aliens, ante, this subheading

Resident aliens.

Annual statements, substantial presence test, residency requirements, 26 § 7701

Canada or Mexico, commuters from, presence in U.S., residency requirements, 26 § 7701

Coordination with section 877 concerning

ALIENS—Cont'd

Income tax—Cont'd

Resident aliens—Cont'd

Lawfully admitted for permanent residence, requirements for treatment as, 26 § 7701

Limitations, teachers, trainees, and students, residency requirements, 26 § 7701

Medical conditions, exceptions for exempt individuals, substantial presence test, residency requirements, 26 § 7701

Nominal presence disregarded, residency requirements, 26 § 7701

Presence in the United States, defined, residency requirements, 26 § 7701

Professional athlete competing in charitable sports event, exempt individual, 26 § 7701

Rules and regulations, definition and residency provisions, 26 § 7701

Special rules.

First and last year of residency, 26 § 7701

Teachers, trainees, and students, residency requirements, 26 § 7701

Student, defined, residency requirements, 26 § 7701

Substantial presence test, meeting requirements of, 26 § 7701

Taxable year, 26 § 7701

Teacher or trainee, defined, residency requirements, 26 § 7701

Transit between 2 foreign points, presence in U.S., residency requirements, 26 § 7701

Withholding of tax, Virgin Islands source income, 26 § 1444

Return. Nonresident aliens, ante, this subheading

Rules and regulations. Nonresident aliens, ante, this subheading

Sale or exchange of capital assets, 26 § 871

Secretary, regulations, multiple-party financial transactions, 26

Finally ends here

Resident starts here

Resident ends here

Implementing Regulations under the Statutes

U.S. Courts have ruled that laws passed by Congress are not self-executing [*U.S. v. Murphy*, 809 F.2d 1427, 1430 (9th Cir. (1987))]; that forms are not legally recognizable unless promulgated by the Secretary of the Treasury [*U.S. v. Reinis*, 794 f.2d 506, 508 (9th Cir. 1986)]; and that, where regulations are controlling, "the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary if the Secretary were to do nothing, the Act itself would impose no penalties on anyone ... Since only those who violate these regulations may incur civil or criminal penalties, it is the actual regulation issued by the Secretary and not the broad authorizing language of the statute which is to be tested". [*California Bankers Assoc. v. Schultz*, 416 U.S. 21 26 (1974)]

These rulings establish that government agencies and employees cannot act against any *person* without published implementing regulations that apply to that *person* to provide authority to so act. I have specifically requested that you provide me with a cite of the implementing regulation(s) published in the Federal Register that you are operating under in this matter. You have repeatedly failed to do so and refuse to address this legal issue of **published authority**

Congress set forth in Title 44 U.S.C. §§ 1501 et seq. the publication requirements as to all U.S. Governmental writings (e.g.. forms, documents, regulations, etc.). It decreed that **regulations not published** in the Federal Register **lack** general **applicability** [§ 1505(a)], and **requires** that a list be produced of those regulations that have been **published** in the Federal Register [§ 1510(b)]; which has been done in the Code of Federal Regulations (CFR), Table of Authorities, Index and Finding Aids.

PARALLEL TABLE OF AUTHORITIES AND RULES

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

The table is divided into four segments: United States Code citations, United States Statutes at Large citations, public law citations, and Presidential document citations. Within each segment the citations are arranged in numerical order:

For the United States Code, by title and section;

For the United States Statutes at Large, by volume and page number;

For public laws, by number; and

For Presidential documents (Proclamations, Executive orders, and Reorganization plans), by document number.

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

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the authority citations provided by the agencies. United States Statutes at Large and public law citations are carried in the table only when there are no corresponding United States Code citations given.

This table is revised as of January 1, 2014.

SEE NOTE COMMENTS BELOW

Authorities

26 U.S.C. (1986 I.R.C.)—Continued	CFR	26 U.S.C. (1986 I.R.C.)—Continued	CFR
5044	27 Part 24	5411—5417	27 Part 25
5051—5054	27 Part 25	5415	27 Part 70
5051	27 Parts 26, 27, 28	5501—5505	27 Part 19
5054	27 Parts 27, 28	5504	27 Part 70
5056	27 Part 25	5511	27 Parts 18, 24
5061—5062	27 Parts 19, 24	5551—5555	27 Part 19
5061	27 Parts 25, 26, 27, 28, 46	5551—5552	27 Parts 24, 25
5066	27 Part 19	5552	27 Parts 18, 20, 22
5111—5114	27 Parts 17, 26	5555—5556	27 Part 25
5121—5124	27 Part 31	5555	27 Parts 20, 22, 26, 27, 28, 31, 70
5121	27 Parts 19, 22, 24, 25, 26, 27, 28	5559	27 Part 19
5122—5124	27 Parts 19, 24, 25, 26, 27	5561—5562	27 Part 19
5122	27 Part 28	5601	27 Parts 19, 29
5123	27 Parts 17, 22, 70	5603	27 Part 31
5131	27 Parts 26, 31	5607	27 Part 20
5132	27 Parts 26, 31	5612	27 Part 19
5171—5173	27 Parts 18, 19	5613	27 Part 31
5173	27 Part 24	5615	27 Part 29
5175—5176	27 Part 19	5661—5662	27 Part 24
5178—5181	27 Part 19	5671	27 Part 25
5178—5179	27 Part 18	5673	27 Part 25
5179	27 Part 29	5681	27 Part 31
5181	27 Part 71	5682	27 Part 19
5201—5204	27 Part 19	5684	27 Parts 24, 25, 70
5201	27 Parts 27, 28	5687	27 Parts 29, 31
5203	27 Parts 18, 70	5688	19 Part 162
5205	27 Parts 27, 28	5701	27 Parts 40, 41, 44
5206—5207	27 Parts 19, 31	5702	27 Parts 41, 44, 45
5206	27 Parts 17, 20, 22, 24	5703	27 Parts 40, 41, 44, 45
5207	27 Parts 26, 27, 28, 70	5704	27 Parts 40, 41, 44, 45
5211—5215	27 Part 19	5705	27 Parts 40, 41, 44, 45
5214—5215	27 Part 24	5708	27 Parts 41, 46
5214	27 Parts 20, 22	5711	27 Parts 40, 44
5221—5223	27 Part 19	5712	27 Parts 40, 41, 44, 71
5222	27 Part 25	5713	27 Parts 40, 41, 44, 71
5231—5232	27 Part 19	5721	27 Parts 40, 41, 44
5232	27 Parts 26, 27, 28	5722	27 Parts 40, 41, 44
5235—5236	27 Part 19	5723	27 Parts 40, 41, 44, 45
5241—5243	27 Part 19	5731—5734	27 Parts 40, 46
5242	27 Part 21	5731	27 Part 44
5271—5275	27 Parts 20, 22	5741	27 Parts 40, 41, 44, 45, 70
5271	27 Parts 19, 26, 71	5751	27 Parts 40, 44, 45, 46
5273	27 Parts 17, 19, 27, 28, 31	5753	26 Part 127
5275	27 Parts 26, 70		27 Part 40
5276	27 Part 26	5754	27 Parts 41, 44, 46
5291	27 Part 29	5761	27 Parts 40, 41, 46, 70
5301	27 Parts 5, 13, 19, 26, 27, 28, 31	5762	27 Parts 40, 41, 45, 46
5311—5313	27 Part 19	5763	27 Parts 40, 41, 45, 46
5311	27 Parts 20, 22	5802	27 Part 70
5313	27 Parts 27, 28	6001	26 Parts 1, 31, 41, 55, 156, 157
5314	27 Part 26		27 Parts 19, 26, 46, 53
5351	27 Parts 18, 24	6011	26 Parts 1, 26, 31, 40, 55, 156, 157, 301
5352	27 Part 31		27 Parts 25, 53, 73
5353—5354	27 Part 24	6015	26 Part 1
5354	27 Part 18	6020	27 Parts 53, 70
5356	27 Part 18	6021	27 Parts 53, 70
5356—5357	27 Part 24	6033	26 Parts 1, 301
5361—5362	27 Part 24	6035	26 Part 1
5362	27 Part 19	6036	26 Part 301
5364—5373	27 Part 24	6037	26 Part 301
5367	27 Part 70	6038—6038B	26 Part 1
5370	27 Part 19	6038D	26 Part 1
5373	27 Part 19	6039E	22 Part 51
5381—5388	27 Part 24	6039I	26 Part 1
5391—5392	27 Part 24	6041	26 Part 1
5401—5403	27 Part 25	6043	26 Part 1

CFR Index

26 U.S.C. (1986 I.R.C.)—Continued	CFR	26 U.S.C. (1986 I.R.C.)—Continued	CFR
6045	26 Parts 1, 5f		31 Parts 203, 214, 380
6046A	26 Part 1	6303	27 Parts 53, 70
6047	26 Part 35	6311	26 Part 301
6049	26 Part 1		27 Parts 19, 24, 25, 40, 53, 70
6050E	26 Part 1	6313	27 Parts 25, 40, 41, 45, 70
6050H—6050I-1	26 Part 1	6314	27 Part 70
6050K	26 Part 1	6321	27 Part 70
6050M	26 Parts 1, 301	6323	26 Part 301
6050P	26 Part 1		27 Part 70
6050S	26 Part 1	6325	26 Part 401
6051	26 Part 31		27 Part 70
6056	27 Part 22	6326	26 Part 301
6058	29 Part 2520		27 Part 70
6060	26 Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157	6331—6343	27 Part 70
6061	26 Parts 1, 156, 157, 301	6343	26 Part 301
	27 Parts 22, 25, 31, 40, 44, 53, 73	6364	26 Part 31
6064	27 Part 70	6401—6404	27 Part 70
6065	26 Part 1	6402	6 Part 11
	27 Parts 17, 18, 19, 20, 22, 24, 25, 31, 40, 44		10 Parts 15, 16
6071	26 Parts 31, 40, 41, 55, 57, 154, 156, 157		12 Part 1208
	27 Parts 31, 53		26 Parts 1, 301
6081	26 Parts 1, 20, 25, 26, 31, 53, 156, 157, 301	6404	26 Part 301
	27 Part 53		27 Parts 40, 41, 44, 53
6090	26 Part 43	6407	27 Part 70
6091	26 Parts 40, 46, 55, 156, 157	6411	26 Parts 1, 301
	27 Parts 17, 24, 25, 31, 53	6416	27 Parts 53, 70
6101—6104	27 Part 53	6423	27 Parts 40, 70
6101	26 Part 40	6426	26 Part 154
6102	27 Part 70	6427	26 Part 48
6103	20 Parts 401, 402	6501—6503	27 Part 70
	26 Parts 1, 301, 602	6511	27 Part 70
	27 Part 31	6513—6514	27 Part 70
6104	26 Part 301	6532	27 Part 70
6109	26 Parts 1, 20, 25, 26, 31, 40, 44, 53, 54, 55, 56, 150, 156, 157, 301	6601	27 Parts 46, 70
	27 Parts 17, 19, 22, 24, 25, 31, 40, 53	6602	27 Part 70
6111	26 Part 301	6611	27 Part 70
6112	26 Part 301	6621	27 Parts 46, 70
6114	26 Part 301	6622	27 Parts 46, 70
6151	26 Part 41	6651	27 Parts 24, 25, 70
	27 Parts 22, 25, 40, 44, 53	6653	27 Part 70
6155	27 Parts 53, 70	6655	26 Part 1
6157	26 Part 31	6656—6658	27 Part 70
6158	26 Part 301	6656	27 Part 25
6159	27 Part 70	6662	26 Part 1
6161	26 Parts 156, 157	6665	27 Part 70
	27 Part 53	6671—6672	27 Part 70
6201	27 Part 70	6676	27 Parts 19, 24, 25, 40
6203—6204	27 Part 70	6689	26 Part 301
6204	22 Part 504	6695	26 Parts 1, 20, 22, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157
6205	26 Part 31	6701	27 Part 70
6223	26 Part 301	6723	27 Parts 31, 70
6230	26 Part 301	6724	27 Part 31
6231	26 Part 301	6801	27 Part 70
6232	26 Part 150	6804	27 Part 26
6233	26 Part 301	6806	27 Parts 19, 22, 25, 40, 44
6241	26 Part 301	6851	26 Part 1
6245	26 Part 301	6862—6863	27 Part 70
6301	27 Parts 24, 25, 26, 40, 41, 53, 70	6901	27 Part 70
6302	26 Parts 1, 20, 25, 31, 51, 57	7011	27 Parts 40, 44, 70
	27 Parts 19, 24, 25, 26, 27, 28, 40, 41, 53	7101	27 Parts 26, 41, 70, 72
		7102	27 Parts 26, 70
		7121—7122	27 Part 70
		7207	27 Part 70

Authorities

26 U.S.C. (1986 I.R.C.)—Continued	CFR	26 U.S.C. (1986 I.R.C.)—Continued	CFR
7209	27 Part 70	9003	11 Parts 9003, 9033
7212	27 Parts 40, 41, 44, 45, 46	9004	11 Part 9004
7213	27 Part 17	9005	11 Part 9005
7214	5 Part 3101	9006	11 Part 9005
	15 Part 0	9007	11 Parts 201, 9007
	27 Part 70	9008	11 Parts 201, 9008
7216	26 Part 301	9009	11 Parts 201, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9008
7302	27 Part 24	9012	11 Part 9012
7304	27 Part 70	9031	11 Part 9031
7322—7326	27 Part 72	9032	11 Part 9032
7325	27 Part 40	9033	11 Part 9033
7327	23 Part 773	9034	11 Part 9034
7342	27 Parts 24, 25, 40, 41, 44, 45, 46	9035	11 Part 9035
7401	27 Part 70	9036	11 Part 9036
7403	27 Part 70	9037	11 Part 9037
7406	27 Part 70	9038	11 Parts 201, 9038
7423—7426	27 Part 70	9039	11 Parts 201, 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038, 9039
7429—7430	27 Part 70	9701—9708	20 Part 422
7432	27 Part 70	9801	26 Part 54
7502	26 Part 301	9833	26 Part 54
	27 Parts 24, 40, 53, 70, 73		
7503	27 Parts 24, 40, 70	27 U.S.C.	
7505	27 Part 70	202	27 Parts 6, 8, 10, 11
7506	27 Part 70	203	19 Part 12
7508	26 Part 301		27 Parts 1, 26, 28
7510	27 Part 19	204	27 Parts 1, 71
7513	27 Part 70	205	27 Parts 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 26, 28
7520	26 Parts 1, 20, 25, 301	206	27 Part 1
7601	27 Part 70	211	27 Part 1
7602	27 Parts 46, 70	215	27 Part 16
7603	27 Part 70	218	27 Part 16
7604	27 Part 70	28 U.S.C.	
7605	27 Part 70	50	32 Part 516
7606	27 Parts 24, 25, 40, 41, 44, 45, 46, 70	418	38 Part 3
7608	27 Part 70	501	28 Part 17
7609	27 Part 70	503	28 Parts 45, 85
7610	27 Part 70	509	2 Part 2867
7622—7623	27 Part 70		21 Part 1316
7623	19 Parts 10, 301		28 Parts 0, 1, 5, 8, 9, 11, 14, 15, 16, 17, 21, 26, 27, 28, 29, 35, 36, 37, 38, 42, 46, 47, 48, 50, 51, 55, 58, 61, 64, 71, 73, 76, 80, 81, 115, 500, 501, 503, 506, 511, 512, 513, 522, 523, 524, 527, 540, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, 553, 570, 571, 572, 600, 601, 602, 603
7624	26 Part 301	510	2 Part 2867
7651 <i>et seq.</i>	40 Part 76		8 Parts 3, 1003, 1103
7651	27 Parts 26, 41		21 Part 1316
7652	27 Parts 17, 26, 41		28 Parts 0, 1, 5, 8, 9, 11, 14, 15, 16, 17, 21, 26, 27, 28, 29, 35, 36, 37, 38, 42, 46, 47, 48, 50, 51, 55, 58, 61, 64, 71, 73, 76, 80, 81, 115, 500, 501, 503, 506, 511, 512, 513, 522, 523, 524, 527, 540, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552, 553, 570, 571, 572, 600, 601, 602, 603
7653	27 Part 70		48 Parts 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2819, 2822, 2823, 2824, 2825, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2842, 2845, 2846, 2852
7654	26 Parts 1, 602	513	32 Part 516
7701	26 Parts 1, 31, 301		
7702	26 Part 1		
7804	26 Parts 301, 602		
7804 <i>note.</i>	26 Part 801		
7805	19 Parts 1, 31, 40, 41, 301, 602		
	20 Parts 606, 615		
	26 Parts 1, 2, 3, 4, 5, 5c, 5e, 6a, 7, 8, 9, 11, 12, 13, 14a, 15, 15a, 16, 16a, 18, 19, 20, 22, 25, 26, 27, 28, 31, 32, 35, 35a, 36, 40, 41, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 141, 143, 145, 148, 156, 157, 301, 302, 303, 305, 400, 401, 403, 404, 420, 502, 503, 509, 514, 516, 517, 601, 602, 701, 702		
	27 Parts 5, 13, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 40, 41, 44, 45, 46, 53, 70, 71, 72, 479		
7851	27 Part 24		
7872	26 Part 1		
7874	26 Part 1		
9002	11 Part 9002		

§ 7608. Authority of internal revenue enforcement officers.

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms

Any investigator, **agent**, or other internal revenue **officer** by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions **of subtitle E** or of any other law of the United States **pertaining to the commodities subject to tax under such subtitle** for the enforcement of which the Secretary is responsible may –

- (1) carry firearms;
- (2) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;
- (3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and
- (4) in respect to the performance of such duty, **make seizures of property subject to forfeiture** to the United States.

§ 7608. Authority of internal revenue enforcement officers.

...

(b) Enforcement of laws relating to internal revenue **other than subtitle E**

(1) Any **criminal investigator of the Intelligence Division** of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, **or any other law** for which the Secretary has delegated investigatory authority to the Internal Revenue Service, **is**, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are –

- (A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;
- (B) to make arrests without warrant for any offense against the United States **relating to the internal revenue laws** committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and
- (C) to **make seizures of property subject to forfeiture under the internal revenue laws.**

§ 7809 - Deposit of collections

(a) GENERAL RULE

Except as provided in subsections (b) and (c) and in sections 6306, 7651, 7652, 7654, and 7810, the gross amount of **all taxes** and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, **shall be paid daily into the Treasury** of the United States under instructions of the Secretary as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. **A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made,** signed by the Treasurer of the United States, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Secretary.



[U.S. Code](#) > [Title 31](#) > [Subtitle I](#) > [Chapter 3](#) > Subchapter I

31 U.S. Code Subchapter I - ORGANIZATION

Current through Pub. L. [114-38](#). (See [Public Laws for the current Congress](#).)

US Code

- [§ 301 - Department of the Treasury](#)
- [§ 302 - Treasury of the United States](#)
- [§ 303 - Bureau of Engraving and Printing](#)
- [§ 304 - United States Mint](#)
- [§ 305 - Federal Financing Bank](#)
- [§ 306 - Fiscal Service](#)
- [§ 307 - Office of the Comptroller of the Currency](#)
- [§ 308 - United States Customs Service](#)
- [§ 309 - Office of Thrift Supervision](#)
- [§ 310 - Financial Crimes Enforcement Network](#)
- [§ 311 - Office of Intelligence and Analysis](#)
- [§ 312 - Terrorism and financial intelligence](#)
- [§ 313 - Federal Insurance Office](#)
- [§ 314 - Covered agreements](#)
- [§ 315 - Continuing in office](#)

Article I, Section 8, Clause 18

"To 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"

So, where is the IRS listed in the law as a Department of the Treasury, if not here ?

LII has no control over and does not endorse any external Internet site that contains links to or references LII.