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**Certified Mail # 0000-0000-0000-0000 (send with  
return receipt)**

**Date**

## **Request for Law and IR Code Clarification**

To Whom it may concern:

I am, under the Freedom of Information Act, (FOIA), or any other applicable laws governing information requests, requesting some answers to questions I cannot find answers to in either the IR Code, or from tax experts or accountants. I am liable to know what the laws say and to comply with them, and am requesting this clarification from you, the experts, to be sure of things:

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority, even though the agent himself may be unaware of limitations upon his authority." The United States Supreme Court, Federal Crop Ins. Corp, v. Merrill, 332 US 380 388 (1947).

"Persons dealing with the government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation." Ninth Circuit Court of Appeals, Lavin v Marsh, 644 f.2D 1378, (1981).

"All persons in the United States are chargeable with knowledge of the Statutes at Large... It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority." Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 9th Cir., (1981).

Since I cannot locate any such answers, I am contacting the IRS for these answers, and until I am satisfied that there are legal and constitutional laws saying otherwise, I am stating that I believe I am not a legal "taxpayer" as the IRS so often categorizes citizens without any evidence...

I am also rescinding any signature on any 1040 or other tax form in the past which might suggest that I agree that I was or am a "taxpayer" required to file 1040 forms or pay "income" taxes. I believe I was misled by the IRS and others on this issue in the past. (Emphasis mine throughout).

I wish to fully comply with the laws of the land, and am looking forward to your

response, per your own IR Mission Statement:

1.2.1.2.1 (Approved 12-18-1993)

P-1-1

1. Mission of the Service: Provide America's taxpayers top quality service by **helping them understand** and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

1.2.1.2.1 (Approved 12-18-1993)

P-1-1

2. Tax matters will be handled in a manner that will promote public confidence. All tax matters between taxpayers and the Internal Revenue Service are to be resolved within established administrative and judicial channels. Service employees, in handling such matters in their official relations with taxpayers (**I believe that is NOT me**) or the public, (**I believe that would be me**) will conduct themselves in a manner that will promote public confidence in themselves and the Service. Employees will be impartial and will not use methods which are threatening or harassing in their dealings with the public.

I am requesting the following:

1. Please tell me what type of tax, "income" tax is; Direct or Indirect, and by what rule "income" taxes are being imposed...

"Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: the rule of apportionment as to direct taxes and the rule of uniformity as to duties, imposts and excises." Pollock v. Farmers' Loan & Trust Co. 158, U.S. 601, at 637 (1895).

If the "income" tax is neither a direct or indirect tax, please state what type of tax it is and how it complies with the constitutional requirement under direct or indirect taxation.

2. I have been told that the 16<sup>th</sup> Amendment is the authority the IRS has to tax citizens as they do, however, I find conflicting case law stating otherwise:

"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 regulations of apportionment applicable to all other direct taxes. And the far reaching effect of this **erroneous assumption** will be made clear by generalizing the many contentions advanced in argument to support it..."

"But it clearly results that the proposition and the contentions under it (the 16th Amendment), 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**. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the **limitations on the taxing power**, which obviously the Amendment must have been intended to accomplish, would **create radical and destructive changes in our constitutional system and multiply confusion**."

"...the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment **from a consideration of the source**... on the contrary shows that it was drawn with the object of **maintaining the limitations of the Constitution and harmonizing their operation**." *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916). *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1, 11 (1916).

3. Please provide documentation showing where in the IR Code I am made a "taxpayer" as compared to a "non-taxpayer," and what laws are binding on me as a private human being, making me a legal taxpayer required to file a 1040 form.

"The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers and not to non-taxpayers. **The latter are without their scope. No procedure is prescribed for non-taxpayers and no attempt is made to annul any of their rights and remedies in due course of law.** With them Congress does not assume to deal, and **they are neither of the subject nor of the object of the revenue laws. Persons who are not taxpayers are not within the system and can obtain no benefit by following the procedures prescribed for taxpayers...**" *United States Court of Claims, Economy Plumbing and Heating v. United States*, 470 Fwd 585, at 589 (1972).

Absent any laws that make me a "taxpayer," I can only conclude that I am NOT a "taxpayer" until I am made so in law or through a taxable activity, or volunteer to be so.

4. Please provide documentation showing where in the IR Code it makes me personally "liable" for income taxes. I can see where the IR Code is plain about alcohol, tobacco and firearm taxes, and who is liable... those who make or sell these items.

26 U.S.C. 4002 and 4003 specify not only who is primarily liable, but who is secondarily liable for the Luxury Passenger Automobile Excise Tax. See also: 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 Continuation Coverage Requirements of Group Health Plans); 26 U.S.C. 4980D (Excise Tax on Failure to Meet Certain Group Health Plan Requirements); 26 U.S.C. 4980F (Excise Tax on Failure of Applicable Plans Reducing Benefit Accruals to Satisfy Notice Requirements); 26 U.S.C. 5005 (Gallage Tax on Distilled Spirits); 26 U.S.C. 5043 (Gallage 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), to name a few.

However, I cannot find anything making me personally liable, as a private citizen, for income taxes;

"Keeping in mind the well settled rule, that the citizen is exempt from taxation, **unless the same is imposed by clear and unequivocal language**, and that where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." *Spreckles Sugar Refining Co. vs. McLain*: 192 US 397.

The IR Code DOES NOT, in a "clear and unequivocal" manner, make liable. Can you please tell me where this liability is imposed?

5. Please provide documentation as to where in the IR Code the word "income" is legally defined. This is not a request for the general "definition" as stated in CFR - 1.61-1...

Gross income. General definition. Gross income means all income from whatever source *derived* unless excluded by law.

Or...

Section 22 GROSS INCOME:

(a): Gross income includes\* gains, profits, and income derived from salaries, wages, or compensation for personal service..."

The word "income" is not defined in either place. If no IR Code definition source is available, please provide your definition as used in law, and certify, or please provide direction as to where I can find these definitions and laws.

I can only locate such case laws and testimony regarding what "income" is through the following few examples (of which there are dozens more) of case laws:

"The statute and the statute alone determines what is income to be taxed. It taxes only income "derived" from many different sources; **one does not "derive income" by rendering services and charging for them.**" *Edwards v. Keith*, 231 F. 110 (2nd Cir. 1916).

"The general term "income" is not defined in the Internal Revenue Code." *US v Ballard*, 535 F2d 400, 404, (1976).

"...income; as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and 'profits' is to limit the meaning of the word 'income.'" *S. Pacific v. Lowe*, 247 F. 330. (1918).

"It becomes essential to distinguish between what is, and what is not "income"... Congress may not, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone, that power can be lawfully exercised....[Income is] Derived--from--capital--the--gain--derived--from--capital, etc. Here we have the essential matter--not gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit something of exchangeable value...severed from the capital however invested or employed, and coming in, being "derived," that is received or drawn by the recipient for his separate use, benefit and disposal-- that is the income derived from property. Nothing else answers the description.... "The words 'gain' and 'income' mean the same thing. They are equivalent terms..." - Congressional Globe, 37th Congress 2nd Session, pg. 1531.

"The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16<sup>th</sup> Amendment." *Helvering v. Edison Bros. Stores*, 133 F2d 575. (1943)

"Under the Internal Revenue Act of 1954 if there is no gain, there is no income." - 26 U.S.C.A. '54, Sec. 61(a).

"There must be gain before there is 'income' within the 16<sup>th</sup> Amendment." U.S.C.A. Const. Am 16.

"The true function of the words 'gains' and profits' is to limit the meaning of the word 'income' and to show its use only in the sense of receipts which constituted an accretion to capital. So the function of the word 'income' should be to limit the meaning of the words 'gains' and profits." *Southern Pacific v. Lowe*. Federal Reporter Vol. 238 pg. 850. See also, *Walsh v. Brewster*. Conn. 1921, 41 S.Ct. 392, 255 U.S. 536, 65 L.Ed. 762..

"I assume that every lawyer will agree with me that we can not legislatively interpret meaning of the word "income." That is a purely judicial matter... The word "income" has

a well defined meaning before the amendment of the Constitution was adopted. It has been defined in all of the courts of this country... If we could call anything that we pleased income, we could obliterate all the distinction between income and principal. The Congress can not affect the meaning of the word "income" by any legislation whatsoever... Obviously the people of this country did not intend to give to Congress the power to levy a direct tax upon all the property of this country without apportionment." 1913 Congressional Record, pg. 3843, 3844 Senator Albert B. Cummins.

"...Reasonable compensation for labor or services rendered is not profit..." Laureldale Cemetery Assc. v. Matthews. 47 Atlantic 2d. 277 (1946).

"Simply put, pay from a job is a 'wage,' and wages are not taxable. Congress has taxed INCOME, not compensation (wages and salaries)." - Conner v. U.S. 303 F Supp. 1187 (1969).

"The poor man or the man in moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system." Gov. A.E. Wilson on the Income Tax (16<sup>th</sup>) Amendment, N.Y. Times, Part 5, Page 13, February 26, 1911.

"Income within the meaning of the Sixteenth Amendment and Revenue Act, means 'gains' ...and in such connection 'gain' means profit...proceeding from property, severed from capital, however invested or employed and coming in, received or drawn by the taxpayer, for his separate use, benefit and disposal..." Income is not a wage or compensation for any type of labor. Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, 1937].

"There is a clear distinction between 'profit' and 'wages' or 'compensation for labor.' Compensation for labor cannot be regarded as profit within the meaning of the law...The word profit is a different thing altogether from mere compensation for labor...The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who performed the services which produced the gain is without support either in the language of the Act or in the decisions of the courts construing it and is directly opposed to provisions of the Act and to Regulations of the Treasury Department..." U.S. v. Balard, 575 F. 2D 400 (1976), c v. Halstead, 196 VA 992; 86 S.E. Rep. 2D 858:

"Income, as defined by the supreme Court means, 'gains and profits as a result of corporate activity and profit gained through the sale or conversion of capital assets.'" Stanton v. Baltic Mining Co. 240 U.S. 103, Stratton's Independence v. Howbert 231 U.S. 399. Doyle v. Mitchell Bros. Co. 247 U.S. 179, Eisner v. Macomber 252 U.S. 189, Evans v. Gore 253 U.S. 245, Merchants Loan & Trust Co. v. Smietanka 225 U.S. 509. (1921).

"Let me point this out now. **Your income tax is 100 percent voluntary tax**, and your liquor tax is 100 percent enforced tax. Now **the situation is as different as day and night**. Consequently, your same rules just will not apply," Testimony of Dwight E. Avis,

Head of the Alcohol and Tobacco Tax Division of the Bureau of Internal Revenue, before the House Ways and Means committee on Restructuring the IRS (83rd Congress, 1953).

As a private citizen, I cannot disregard precedent case law or evidence that clearly overrides the lack of legal definitions for "income" as being what the IRS claims it is... "wages, salaries and compensation."

Without any legal definition from the IRS for the word "income" that is evidence in fact, I cannot ascertain whether I have any actual, legal "income" except to accept the above case law, and cannot file any 1040 form, under oath that I have actual income to report, until such proof is forth coming that counters the IRS position on what "income" is.

6. Please provide documentation as to how the IRS can violate the Office of Management and Budget (OMB) OMB number requirements on the 1040 form, especially where the law states...

PRA Section 3507(g) and 5 CFR Section 1320.8(b)(1). Those sections mandate that OMB control numbers **must expire after three years**, even if the IRS made no changes to its 1040 form during that time. Form 1040 has had the same OMB control number for 24 years, making it a bootleg form;

"The Senate Report analysis of Sec. 3512 states that 21 [i]nformation collection requests which do not display a current control number or, if not, indicate why not are to be **considered 'bootleg' requests and may be ignored by the public....** These are the only circumstances under which a person may justify the failure to maintain information for or provide information to any agency otherwise required, by reliance on this Act. S. Rep. No. 930, 96th Cong., 2d Sess. 52, reprinted in 1980 U.S. Code Cong. & Admin. News 6241, 6292.

44 U.S.C. 3512. (4) **prohibits agencies from penalizing those who fail to respond to Federal collections of information that do not display valid OMB control numbers.** The Act also prohibits agencies from penalizing those who have not been informed that a response is not required unless the collection of information displays a valid control number. Both of these public protections "may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto."

I look forward to your help in understanding the laws so I may comply with them.

Sincerely,

\_\_\_\_\_  
Name  
address

(signature line)

(You may want to have this notarized as you sign it to make this even greater evidence... but don't sign till in front of the Notary-most banks will do this free)

I declare under penalty of perjury that the foregoing (# of pages, and title such as "IRS Clarification) was presented before me by (your name), with picture ID, and acknowledged this document on this \_\_\_\_\_ day of \_\_\_\_\_, 2009;

\_\_\_\_\_  
(NOTARY PUBLIC)

SEAL