

EXHIBIT A - What is Constitutional "Income?"

1 The premise of Attachment A is that "income" defined in our modern-day language is quite
2 different than the original intent of the framers of tax laws and especially the income tax code.
3 Over the course of decades the terminology and definitions for income have been manipulated in
4 the public consciousness for less than honorable purposes.

5 The argument is stated thus: "Income" is not all that comes in and was never intended to be
6 wages, salary or compensation for labor. Income is a completely different category of creature,
7 which excludes "wages, salaries and compensation," and where Constitutional and legal
8 "income" exists, it must be taxed Constitutionally and legally. The right to work and obtain
9 "wages, salaries and compensation," is inalienable, and cannot be taxed contrary to original
10 intent of Congress, The People, or the Constitution. Taxation applies to specific isolated
11 categories of activities and entities, NOT the People's living.

12 The IRS creates a presumption in the minds of all Americans that all Americans are liable for
13 taxes on wages, salaries and compensation...

14 "Every presumption is to be in the oldest in favor of faithful compliance by Congress with the
15 mandates of the fundamental law (the Constitution-JTM). Courts are reluctant to adjudge any
16 statute in contravention of them. But, under our frame of government, no other places is provided
17 where the citizen may be heard to urge that the law fails to conform to the limits set upon the use
18 of a granted power. When such a contention comes here we naturally require a showing that by
19 no reasonable possibility can the challenged legislation fall within the wide range of discretion
20 permitted to the Congress. How great is extent that range, when the subject is the promotion of
21 the general welfare of the United States, we hardly need remark. But, despite the breadth of the
22 legislative discretion, our duty to hear and to render judgment remains as. If the statute plainly
23 violates the stated principal of the Constitution we must so declare." *United States v. Butler*, 297
24 U.S. (1935).

25 Disputable presumption: "A species of evidence that may be accepted and acted upon when there
26 is no other evidence to uphold contention for which it stands; and when evidence is introduced
27 supporting such contention, evidence takes place of presumption, and there is no necessity for
28 indulging in any presumption. A rule of law to be laid down by the court, which shifts to the
29 party against whom it operates the burden of evidence, merely." *Black's 6th Law Dictionary*.

30 This attachment provides such evidence against this "presumption."

31 "The general term "income" is not defined in the Internal Revenue Code." *US v Ballard*, 535 F2d
32 400, 404, (1976).

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

36 "...Taxation on income is in its nature an excise entitled to be enforced as such" (in other words
37 indirectly as a tax upon an optional exercise of privilege, and taxed uniformly across the country
38 to everyone.)

39 "Since the right to receive income or earnings is a right belonging to every persons, this right
40 cannot be taxed as privilege."(Excise or "income" tax) *Jack Cole Company v. Alfred T,*
41 *MacFarland, Commissioner*, 206 Tenn. 694, 337 S.W.2d 453 Sup. Court of Tennessee (1960).

42 In other words, income taxation is legally and constitutionally ONLY on privilege, i.e. Corporate
43 profits (after expenses and salaries) and unearned income "from whatever source derived" - 16th
44 amendment, and is also ONLY on those serving in a public office or working for the government.

45 "A tax upon the privilege of selling property at the exchange,...differs radically from a tax upon
46 every sale made in any place. A sale at an exchange differs from a sale made at a man's private
47 office or on his farm, or by a partnerships because, although the subject matter of the sale may be
48 the same in each case, there are at an exchange certain advantages, in the way of finding a
49 market, obtaining a price, the saving of time, and in the security of payments and other matters,
50 which are more easily obtained there than at an office or a farm." *Nicol v. Ames*, 173 U.S. 509
51 (1899).

52 "Every presumption is to be in the oldest in favor of faithful compliance by Congress with the
53 mandates of the fundamental law (the Constitution-JTM). Courts are reluctant to adjudge any
54 statute in contravention of them. But, under our frame of government, no other places is provided
55 where the citizen may be heard to urge that the law fails to conform to the limits set upon the use
56 of a granted power. When such a contention comes here we naturally require a showing that by
57 no reasonable possibility can the challenged legislation fall within the wide range of discretion
58 permitted to the Congress. How great is extent that range, when the subject is the promotion of
59 the general welfare of the United States, we hardly need remark. But, despite the breadth of the
60 legislative discretion, our duty to hear and to render judgment remains... If the statute plainly
61 violates the stated principal of the Constitution we must so declare." *United States v. Butler*, 297
62 U.S. (1935).

63 26 CFR 39.21-1 (1956).. Meaning of net income. (a) The tax imposed by chapter 1 is upon
64 income. Neither income exempted by statute or fundamental law, nor expenses incurred in
65 connection therewith, other than interest, enter into the computation of net Income as defined by
66 section 21

67 26 CFR 39.22(b)-1 Exemption--Exclusions from gross income. Certain items of income
68 specified in section 22(b) are exempt from tax and may be excluded from gross income. These
69 items however, are exempt only to the extent and in the amount specified. No other items may be
70 excluded from gross income except (a) those items of income which are under the Constitution,
71 not taxable by the Federal government;"

72 Today's regulations put it this way: CFR - 1.61-1 (Current)

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

75 The "excluded by law" clause refers to constitutional forms of taxation and all other applicable
76 laws as set forth herein.

77 The IR Code defines "income" as:

78 Section 22 GROSS INCOME:

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

81 "Gross income and not 'gross receipts' is the foundation of income tax liability... The general
82 term 'income' is not defined in the Internal Revenue Code... 'gross income' means the total sales,
83 less the cost of goods sold, plus any income from investments and from incidental or outside
84 operations or sources." U.S. v. BALLARD, 535 F2d 400 (1976).

85 My gross income is NOT a "gain, profit or income," that is "DERIVED FROM" anything but my
86 labor, which is NOT my "profit." Actual "gross income," as defined in IR Code, and in keeping
87 with case law and Congressional records, is any "profit" or "gain" that is "derived FROM" my
88 income. Example: I receive \$10,000 wage for service or labor provided. This is an equal
89 exchange, with NO "**material difference**" in the exchange - (*Material difference case law -*
90 *COTTAGE SAVINGS ASSN v. COMMISSIONER, 499 U.S. 554 (1991)*). My labor or service is
91 equal in value to the payment (or other compensation) received. This is NOT taxable under law.

92 I take this \$10,000, and invest it in some way, and receive a "profit" or "gain" FROM this income
93 I received, as interest, or what is termed "unearned income." I exerted NO personal labor, (which
94 I own,) and received an actual "profit" or "gain" from the investment. THIS, and ONLY this
95 "gain," is possibly taxable, but ONLY according to constitutional law across the country, and
96 ONLY according to other personal tax liability defined in IR Code and the issues presented
97 throughout this document. The actual principle amount is NOT diminished in any way, and
98 ONLY the profit or gain "DERIVED FROM" the principle is possibly taxable. The tax is for the
99 privilege of gaining MORE wealth, and the tax is for the functioning of government at the same

100 time.

101 "Income Tax: A tax on the yearly profits arising from property, professions and trades, and
102 offices." Henry Campbell Black, A Law Dictionary 612 (1910).

103 Income tax: An 'income tax' is a tax which relates to product or income from property or from
104 business pursuits." Levi v. City of Louisville, 30 S.W. 973, 974, 97 Ky. 394, 28 L.R.A. 480.

105 "The term 'income tax' includes a tax on the gross receipts of a corporation or business." Parker
106 v. North British Ins. Co. 7 South. 599, 600, 42 La. Ann. 428.

107 My labor is my property which I am free to use and dispose of as I wish:

108 "Among these unalienable rights, as proclaimed in the Declaration of Independence, is the right
109 of men to pursue their happiness, by which is meant, the right to pursue any lawful business or
110 vocation, in any manner not inconsistent with the equal rights of others, which may increase their
111 prosperity or develop their faculties, so as to give them their highest enjoyment... It has been well
112 said that, the property which every man has in his own labor, as it is the original foundation of all
113 other property, (without said property, ((labor or service, which allows the receipt of money
114 FROM which someone may produce "income")) so it is the most sacred and inviolable ...to
115 hinder his employing..., in what manner he thinks proper, without injury to his neighbor, is a plain
116 violation of the most sacred property." Butchers' Union Co. V. Crescent City, CO., 111 U.S. 746,
117 757 (1883).

118 "A man is free to lay hand upon his own property. To acquire and possess property is a right, not
119 a privilege ... The right to acquire and possess property cannot alone be made the subject of an
120 excise nor, generally speaking, can an excise be laid upon the mere right to possess the fruits
121 thereof, as that right is the chief attribute of ownership." Jerome H. Sheip Co. v. Amos, 100 Fla.
122 863, 130 So. 699, 705 (1930).

123 "Can be said with any degree of sense were just as that the property which a man has been his
124 labor which is the foundation of all property in which is the only capital of so large majority of
125 the citizens of our country is not property; or, at least, not that character of property which can
126 demand boom of protection from the government? We think not." Jones v. Leslie, 112 P. 81
127 (1910).

128 "Though the earth and all inferior creatures the common to all men, that every man has a property
129 in his own person; this no Body has any right to but himself. The labor of his body and the work
130 of his hands, we may say, are properly his." John Locke, "2nd Treatise of government (1690),
131 Sec. 27.

132 "Property is everything which has an exchangeable value, in the right of property includes the

133 power to dispose of that according to the will of the owner. Labor is property, and as such merits
134 protection. The right to make it available is next in importance to the rights of life and liberty. It
135 lives to a large extent the foundation of most other forms of property, and of all solid individual
136 and national prosperity." Slaughter - House Cases, 83 U.S. 36, at 127 (1873).

137 The issue of whether a man's labor is his actual property rests in the fact that a person's labor or
138 service has value, and that it can be exchanged for something of similar value.

139 "We all have the innate ability to earn income based on our natural intelligence and physical
140 strength...the income from the skills is in part to return to earlier investments in food, shelter, and
141 clothing." A. Parkman, "The Recognition of Human Capital As Property in Divorce Settlements,
142 40 Arkansas Law Review, 439, 441 (winter 1987).

143 In order to produce labor or service in exchange for wages or compensation, there must be a
144 reasonable amount of support structure such as food, shelter, clothing, health support, adequate
145 rest, reasonable amount of recreation, etc. Without these basic elements, the ability to produce
146 labor, wages, and such is impossible. Human energy in the form of labor and service is a
147 commodity. It is something that can be bought or sold for a price. Anything that has economic
148 value inevitably raises the question of who owns it. If I do not own my personal ability to labor
149 and produce, then who does?

150 "To a slave, as such, there appertains and can appertain no relation, civil or political, with the
151 state or the government. He is himself strictly property, to be used in subserviency to the
152 interests, the convenience, or the will, of his owner." Dred Scott v. Sandford, 19 How. 393, at
153 475 -- 476 (1856).

154 To own slaves meant that their labor can be owned as a form of legal property or capital asset.
155 The principal of slavery is at work with anyone who is deprived under power and color of law of
156 the right to claim their labor as their property. Human labor has all the essential legal
157 prerogatives and attributes of property.

158 "In our opinion that section, in particular mentioned, in an invasion of the personal liberty, as
159 well as of the right of property, guaranteed by that Amendment (Fifth). Such liberty and right
160 embraces the right to make contracts for the purchase of the labor of others and equally the right
161 to make contracts for the sale of one's own labor;... The right of a person to sell his labor upon
162 such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to
163 prescribe the conditions upon which he will accept such labor from the person offering to sell it...
164 In all such particulars the employer and the employee have the quality of right, and any
165 legislation that disturbs that equality is an arbitrary interference of liberty of contract which no
166 government can legally justify a free land." Adair v. United States, 208 U. S. 161, at 172-175
167 (1908).

168 "Included in the right of personal liberty and the right of private property -- are taking of the
169 nature of each -- is the right to make contracts for the acquisition of property. The chief among
170 such contracts instead of personal employment, by which in labor and other services are
171 exchanged for money or other forms of property. If this right be struck down or arbitrarily
172 interfered with, there is a substantial impairment of liberty in the long-established constitutional
173 sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the
174 vast majority of persons have no other artists away to begin to acquire property, save by working
175 for money... The right to follow any lawful vocation and to make contracts is as completely
176 within the protection of the Constitution as the right to hold property free from unwarranted
177 seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by
178 contract. The right, therefore, to contract cannot be infringed by the legislature without violating
179 the letter and spirit of the Constitution. Every citizen is protected in his right to work where and
180 for whom he will. He may select not only his employer, but also his associates." "Coppage v.
181 Kansas, 236 U.S. 1, at 14, 23-24 (1915).

182 Thus, a contract for labor is a contract for sale of property;

183 "The time and labor provided by the employees of the Chattanooga city school system were
184 purchased with public funds and thus became property, with an easily determined value, which
185 belonged to the city. The appellant converted the proceeds of those public funds to his own use to
186 repay favors and a creating more comfortable home for himself and his girlfriend. The statute
187 was sufficiently clear to place the appellant, or any other public official, on notice that the
188 embezzlement of the labor of employees of the state of Tennessee or any County or municipality
189 therein, is a criminal act." State v. Brown, 791 S.W. 2d 31, 32 (1990).

190 "Property... corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal;
191 everything that has an exchangeable value." Blacks Law Dictionary, 1979 edition.

192 "We conclude that if one's gambling activities pursued full-time, in good faith, and with
193 regularity, to the production of income for a livelihood, and is not a mere hobby, it is a trade or
194 business within the meaning of the statutes which we are here concerned. Respondents
195 Groetzinger satisfied that test in 1978. Constant and large -- scale effort on his part was made.
196 Skill was required and supplied. He did what he did for a livelihood, though with a less than
197 successful result. This was not a hobby or a passing fancy or an occasional debt for amusement."
198 Commissioner v. Groetzinger, 480 U.S. 23 (1987).

199 In the above case, it clearly shows that someone who puts regular, consistent efforts into making
200 a living is engaged in a trade or business, NOT related to U.S. government employment, whether
201 they are employed by another party or were employed themselves. Concerning my own
202 employment, I have pursued my occupation of selling my labor, energy and skills on a full-time
203 basis, in good faith, continuity and regularity, representing a constant and large-scale effort over

204 many years, for the production of income for a livelihood, with skills being required and applied.
205 It is not a sporadic activity, a mere hobby, or an amusement diversion. These very facts, being
206 applied to all Americans across the country, should, at the very least, allow each and every one of
207 them to deduct all living expenses required to maintain their personal property which is used in
208 making a living.

209 Corporations and the self-employed have the luxury of deducting many expenses related to the
210 production of income or profit, yet the common employee is not able to deduct one penny for
211 expenses related to their production of income. This is an inequity that cannot be overlooked.

212 IR Code Sections 1001, 1011 and 1012 and their regulations, 26 C.F. R. Sections 1.1001-1(a)
213 1.1011-1 and 1.1012-1(a), provide the method for determining the gain derived from the sale of
214 property:

215 Section 1001(a);

216 "The gain from the sale or other disposition of property shall be the excess of the amount realized
217 therefrom over the adjusted basis provided in section 1011 for determining gain..."

218 Section 1001(b);

219 The amount realized from the sale or other disposition of property shall be the sum of any money
220 received plus the fair market value of the property (other than money) received."

221 Section 1011:

222 The adjusted basis for determining the gain or loss from the sale or other disposition of property,
223 whenever acquired, shall be the basis (determined under section 1012...) adjusted as provided in
224 section 1016."

225 Section 1012:

226 "The basis of property shall be the cost of such property..."

227 The cost of property purchased under contract is its fair market value as evidenced by the
228 contract itself, provided neither the buyer nor the seller were acting under compulsion in entering
229 into the contract, and both were fully aware of all of the facts regarding the contract. See
230 Terrance developmental Co. v. C.I.R., 345 F.2d 933 (1965); Bankers Trust Co. v. U.S., 518 F.2d
231 1210 (1975); Bar L Ranch, Inc. v. Phinney, 426 F.2d 995 (1970); Jack Daniel Distillery v. U.S.,
232 379 F.2d 569 (1967).

233 In other words, if an employer and employee agree that the employee will exchange one hour of

234 his time in return for a certain amount of money, the cost, or basis under Section 1012, of the
235 employee's labor is the pay agreed upon. By the same token, if an attorney, doctor or other
236 independent contractor agrees to perform a certain service for an agreed upon amount of
237 compensation, the value of the service to be performed is the amount agreed upon as payment for
238 the service.

239 In the case of the sale of labor, none of the provisions of Section 1016 are applicable, and the
240 adjusted basis of the labor under Section 1011 is the amount paid. Therefore, when the employer
241 pays the employee the amount agreed upon, or the professional is paid for his or her services,
242 there is no excess amount realized over the adjusted basis, and there is no gain under Section
243 1001. There being no gain, there is no "income" in the constitutional sense, and no "gross
244 income" under Section 61(1).

245 If one has no gain, one would not have sufficient "gross income" to require the filing of a federal
246 personal income tax return under Section 6012. Likewise, without gain, there can be no "self-
247 employment income," and one who is self-employed would not be required to file a federal
248 personal income tax return under Section 6017.

249 All other issues such as FICA tax, Railroad Retirement Tax, Federal Unemployment Tax, W4's,
250 etc., would be null because no gain or "income" has actually been realized.

251 "In principle, there can be no difference between the case of selling labor and the case of selling
252 goods." *Adkins v. Children's Hospital*, 261 U.S. at 558.

253 The sale of one's labor constitutes personal property. The IR Code specifically provides that only
254 the amount received in EXCESS of the fair market value of personal property upon its sale
255 constitutes "gain." 26 U.S.C. Sections 1001, et seq. Reading Court;

256 "It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be
257 unconstitutional... A state [or federal government-JTM] may not impose a charge for the
258 enjoyment of a right (working-JTM) granted by the federal Constitution." - *Murdock v*
259 *Pennsylvania*, 319 US 105, at 113; 480-487; 63 S Ct at 875; 87 L Ed at 1298 (1943).

260 The freedom and right to earn a living through any lawful occupation is EXEMPT from taxation
261 by the federal government! U. S. Supreme Court in *Grosjean v. American Press Co.*, 297 U.S.
262 233 (1936); *Jones v. Opelika*, 316 U.S. 584, 56 S.Ct. 444 (1943); *Follett v. McCormick*, 321 U.S.
263 573 64 S.Ct. 717 (1944); *Harper v. Virginia Bd. Of Elections*, 383 U.S. 663, 86 S.Ct. 1079
264 (1966).

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

268 "Citizens under our Constitution and laws mean free inhabitants ... Every citizen and freeman is
269 endowed with certain rights and privileges to enjoy which no written law or statute is required.
270 These are fundamental or natural rights, recognized among all free people... That the right to...
271 accept employment as a laborer for hire as a fundamental right is inherent in every free citizen,
272 and is indisputable..." United States v. Morris, 125 F. Rept. 325, 331.

273 Taxation Key, West 53 - "The legislature cannot name something to be a taxable privilege unless
274 it is first a privilege."

275 Taxation Key, West 933 - "The Right to receive income or earnings is a right belonging to every
276 person and realization and receipts of income is therefore not a privilege that can be taxed".

277 The term [liberty] ... denotes not merely freedom from bodily restraint but also the right of the
278 individual to contract, to engage in any of the common occupations of life... and generally to
279 enjoy those privileges long recognized at common law as essential to the orderly pursuit of
280 happiness by free men... The established doctrine is that this liberty may not be interfered with,
281 under the guise of protecting public interest, by legislative action..." Meyer v. Nebraska, 262 U.S.
282 390, 399, 400. referencing also Slaughter-House Cases, 16 Wall. 36; Butchers' Union Co. v.
283 Crescent City Co., 111 U.S. 746, 4 Sup. Ct. 652; Yick Wo v. Hopkins, 118 U.S. 356, 6 Sup. Ct.
284 1064; Minnesota v. Barber, 136 U.S. 313, 10 Sup. Ct. 862; Allegeyer v. Louisiana, 165 U.S. 578
285, 17 Sup. Ct. 427; Lochner v. New York, 198 U.S. 45, 25 Sup. Ct. 539, 3 Ann. Cas. 1133;
286 Twining v. New Jersey 211 U.S. 78, 29 Sup. Ct. 14; Chicago, B. & Q. R. R. v. McGuire, 219
287 U.S. 549, 31 Sup. Ct. 259; Truax v. Raich, 239 U.S. 33, 36 Sup. Ct. 7, L. R. A. 1916D, 545,
288 Ann. Cas. 1917B, 283; Adams v. Tanner, 224 U.S. 590, 37 Sup. Ct. 662, L. R. A. 1917F, 1163,
289 Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U.S. 357, 38 Sup. Ct. 337, Ann.
290 Cas. 1918E, 593; Truax v. Corrigan, 257 U.S. 312, 42 Sup. Ct. 124; Adkins v. Children's
291 Hospital (April 9, 1923), 261 U.S. 525, 43 Sup. Ct. 394, 67 L. Ed. --; Wyeth v. Cambridge
292 Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep. 439, 23 L. R. A. (N. S.) 147."

293 My labor has a value, just as an employer or customer's money has value. I agree to my
294 employer's wage or customer's money for my merchandise, and they agree to the labor or service
295 I will "exchange" FOR that income. The process is an even exchange... (See COTTAGE
296 SAVINGS ASSN v. COMMISSIONER, 499 U.S. 554 (1991).

297 "The right to hold specific private employment and to follow a chosen profession free from
298 unreasonable government interference comes within the 'liberty' and 'property' concepts of the
299 Fifth Amendment." Greene v. McEleroy, 360 U.S. 424, 492 (1959).

300 This means the right to hold a job to generate a living is a "use" or a "holding of property for the
301 production of income."

302 The exchange of labor for wages, salary or compensation, materially, has NO difference in value,
303 and therefore, there is nothing which is an actual "profit" that can be taxed. My labor cannot be
304 valued LESS THAN the value of the money or wage paid to me for my labor or service, but this
305 is what takes place when my wage is directly or indirectly taxed.

306 Any exchange of my labor cannot be devalued below the value of the wage I received in order to
307 attempt to show that I received a "profit," and possibly make me "liable" for a tax. My labor is
308 valued EQUAL TO the wage I receive. Neither can the wage I make be counted in its entirety as
309 a "profit," or this makes my labor or service worth nothing. I exchange my labor or service,

310 which I value exactly equal to the income I receive. There is NO material difference between the
311 values for either my labor or service provided, and the income received FOR labor or service.

312 I have the freedom and right to value my labor at any amount, and can, therefore, accept ANY
313 amount of income as equal value to any labor or service I provide any party. Anything short of
314 this that is taxed is clearly due to slave labor, and is theft by coercion, fraud and conversion, and
315 is clearly unconstitutional and against common law and case law. (See Attachments C and that
316 the legal application of taxation against some citizen's are those that are in the "employee" of the
317 IRS and U.S. Government - See 26 USC 3401(d)).

318 The following case law on "material difference" help to clarify "income" facts:

319 **An example of "no material difference" in the exchange of labor for wage, salary or**
320 **compensation:**

321 John has hundred dollar bills but needs some twenty dollar bills. Mary has twenty dollar bills, but
322 needs some hundred dollar bills. They agree to work for each other because John wants some
323 twenties for his \$100 bills, and Mary wants some \$100 bills for her twenties. They agree to work
324 for each other for the day. John agrees to give Mary one, one hundred dollar bill for the day, and
325 Mary agrees to give John 5, twenty dollar bills for the day. At the end of the day's work for each
326 other, they pay each other, or, exchange the bills. Question: Which one of them has made a
327 "profit" from the exchange made?

328 When someone works for a wage or salary, they have agreed to exchange their labor for the
329 money offered by the employer or customer. The person has agreed that their labor is worth
330 whatever the employer or customer is willing to offer, (or is willing to accept the pay even
331 though they value their labor at MORE than what is paid, thereby causing them a "material
332 LOSS"). The process is simply an "exchange" of value, 1 to 1. There is NO "profit" being made
333 by either at the point. The employee has his labor and needs cash, while the employer has cash,
334 and needs labor performed.

335 If they both are considered to have made a "profit," just from the exchange of labor for money, in
336 what way has this occurred? What "material difference" is there between the one, one hundred
337 dollar bill, and the 5, twenty dollar bills? What "material difference" is there between the
338 exchange of labor for cash? Are they not equal in value to each other? What "profit" has been
339 made by labor or service provided in exchange for money or service? How has an actual profit
340 occurred unless the actual labor or service is valued at zero value and ALL that was received was
341 "profit?"

342 In the same way, EVERY "exchange" of labor or service for compensation, in whatever form,
343 has NO "material difference" between either. To suggest otherwise, is to effectively make all
344 labor and services of NO intrinsic value, and we become slaves through that process.

345 Another example: A company, receives money for services or products provided. This money is
346 received and used by all those engaged as part of this enterprise. This cash or money is NOT
347 considered a "profit" for this company because of expenses, costs of doing their work or service.
348 After all wage expenses, material costs, and purchases to improve their business, the remaining
349 money is, today, being classified as "income." However, the cash or money... compensation or
350 whatever that a private individual receives, IS considered a "profit" even though THEY, too,
351 have costs and expenses in providing THEIR labor, which they spent money in various ways to

352 be able to provide.

353 I have requested the IRS or any related agency to explain this "material difference" - See
354 *COTTAGE SAVINGS ASSN v. COMMISSIONER, 499 U.S. 554 (1991)* for legal case law on
355 "material difference" legal issue, and how "all that someone receives as wages or compensation
356 is "profit" is a gross inaccuracy.

357 Case Law Proving Labor is property, and wages, salary and compensation (all income as termed
358 today) is NOT subject to the income tax:

359 **Legal and intended Definition of "Income," and law affecting Respondent's Actions;**

360 Section 22 GROSS INCOME:

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

363 Gross Income Defined: Section 213. That for the purposes of this title (except as otherwise
364 provided in section 233, [Gross Income Of Corporations Defined -JTM]) the term gross income-
365 (a) includes gains, profits, and income derived from salaries, wages, and compensation for
366 personal service (including in the case of the President of the United States, the judges of the
367 Supreme and lower inferior of the United States, and all other officers and employees, whether
368 elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof or
369 the District of Columbia, the compensation received as such).

370 Said "gains, profits, and income" are all classified as being "DERIVED FROM" salaries, wages
371 or compensation... This is in keeping with the original intent of the 16th Amendment and what the
372 so-called "Income" tax was designed for... to tap the unearned "income" the wealthy had an
373 abundance of:

374 "An unapportioned direct tax on anything which is not income would be unconstitutional." -
375 *C.I.R. v. Obear-Nester Glass Co., C.A. 7, 1954, 217 F.2d, 75 S. Ct. 570 348 U.S. 982, 99L.Ed.*
376 *764, 75 S. Ct. 870, 349 U.S. 948, 99 L. Ed. 1274.*

377 "When a court refers to an income tax as being in the nature of an excise, it is merely stating that
378 the tax is not on the property itself, but rather it is a fee for the privilege of receiving gain from
379 the property. The tax is based upon the amount of the gain, not the value of the property." C.R.S.
380 Report Congress 92-303A (1992) by John R. Lackey, Legislative attorney with the library of
381 Congress:

382 "The meaning of "income" in this amendment is the gain derived from or through the sale or
383 conversion of capital assets: from labor or from both combined; not a gain accruing to capital or
384 growth or increment of value in the investment, but a gain, a profit, something of exchangeable
385 value, proceeding from the property, severed from the capital however employed and coming in
386 or being "derived", that is, received or drawn by the recipient for his separate use, benefit, and
387 disposal." Taft v. Bowers, N.Y. 1929, 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460.

388 "It becomes essential to distinguish between what is, and what is not "income"... Congress may
389 not, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the
390 Constitution, from which alone it derives its power to legislate, and within whose limitations

391 alone, that power can be lawfully exercised....[Income is] Derived--from--capital--the--gain--
392 derived--from--capital, etc. Here we have the essential matter--not gain accruing to capital, not a
393 growth or increment of value in the investment; but a gain, a profit something of exchangeable
394 value...severed from the capital however invested or employed, and coming in, being "derived,"
395 that is received or drawn by the recipient for his separate use, benefit and disposal-- that is the
396 income derived from property. Nothing else answers the description.... "The words 'gain' and
397 'income' mean the same thing. They are equivalent terms..." - Congressional Globe, 37th
398 Congress 2nd Session, pg. 1531.

399 "The word "income" as used in this [16th] amendment does not include a stock dividend, since
400 such a dividend is capital and not income and can be taxed only if the tax is apportioned among
401 the several state in accordance with Art. 1 Sec. 2, cl.3 and Art. 1, Sec. 9, cl. 4 of the
402 Constitution." Eisner v. Macomber. N.Y. 1929, 40 5.Ct 189, 252 U.S. 189, 64 L.Ed. 521.

403 "[Income is] derived--from--capital--the--gain--derived--from--capitol, etc. Here we have the
404 essential matter--not gain accruing to capitol, not growth or increment of value in the investment;
405 but a gain, a profit, something of exchangeable value...severed from capitol however invested or
406 employed and coming in, being "derived", that is received or drawn by the recipient for his
407 separate use, benefit and disposal--that is the income derived from property. Nothing else
408 answers the description...". [emphasis in original]... "After examining dictionaries in common
409 use (Bouv. L.D.; Standard Dict.; Webster's Internat. Dict.; Century Dict.), we find little to add to
410 the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909
411 (Stratton's Independence v. Howbert, 231 U.S. 399, 415; Doyle v. Mitchell Bros. Co, 247 U.S.
412 179, 185) "Income may be defined as the gain derived from capital, from labor, or from both
413 combined, provided it be understood to include profit gained through a sale or conversion of
414 capital assets..." Doyle v. Mitchell, 247 U.S. 179-185 (1920); Stratton's Indep. v. Howbert, 231
415 U.S. 339 (1913); So. Pacific v. Lowe, 247 U.S. 330 (1918); Eisner v. Macomber, 252 US 189
416 (1920); Merchant's Loan v. Smietanka, 255 U.S. 509 (1921).

417 "The claim that salaries, wages, and compensation for personal services are to be taxed as an
418 entirety and therefore must be returned by the individual who has performed the services which
419 produce the gain is without support, either in the language of the Act or in the decisions of the
420 courts construing it. Not only this, but it is directly opposed to provisions of the Act and to
421 regulations of the U.S. Treasury Department, which either prescribed or permits that
422 compensations for personal services not be taxed as a entirety and not be returned by the
423 individual performing the services. It has to be noted that, by the language of the Act, it is not
424 salaries, wages or compensation for personal services that are to be included in gross income.
425 That which is to be included is gains, profits, and income derived from salaries, wages, or
426 compensation for personal services." The United States Supreme Court, Lucas v. Earl, 281 U.S.
427 111 (1930)

428 The original intent of the founders of the Constitution was NOT to tax wages or salaries of the
429 people of the several states. The word "income" had a completely different meaning then,
430 compared to what is presumed to be the meaning today. Not only Supreme Court Case law, but
431 hundreds of Congressional Records of the time (as documented in the book "Constitutional
432 Income: Do you have any?") clearly show what the "income" tax was understood to be:

433 "The task of interpretation must therefore be to discover what was the meaning common to each
434 of these terms at the time the Constitution was adopted." Francis W. Bird, Constitutional Aspects

435 of the Federal Tax on the Income of Corporations, 24 Harvard Law Review 31, 32 (1911).

436 "The Constitution was written to be understood by the voters; its words and phrases were used in
437 their normal and ordinary [meaning] as distinguished from [their] technical meaning; where the
438 intention is clear there is no room for construction and no excuse for interpolation or addition."
439 United States v. Sprague, 282 U.S. 716, 731 (1930).

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

444 "It is not a function of the United States Supreme Court to sit as a super-legislature and create
445 statutory distinctions where none were intended. " American Tobacco Co. v. Patterson, 456 US
446 63, 71 L Ed 2d 748, 102 S Ct. 1534 (1982)

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

450 Gains, profits, and income all relate back to one another as being equal, and quite distinct from
451 "wages and salaries." Working for wages or salaries or other compensation to provide for family
452 and livelihood were NOT "income" nor intended to be taxed. Such taxation diminishes the ability
453 to provide for "Life, Liberty and the pursuit of happiness," and diminishes wealth... diminishes
454 the "principle" and therefore makes one poorer because of it.

455 "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of
456 political controversy, to place them beyond the reach of majorities and officials and to establish
457 them as legal principles to be applied by the courts. One's right to life, liberty and property, to
458 free speech, a free press, freedom of worship and assembly, and other fundamental rights may not
459 be submitted to vote; they depend on the outcome of no elections." West Virginia State Board of
460 Education v. Barnette - 319 U.S. 623

461 Such property was NOT to be taxes, but the "gains, profits, and income" from such property
462 WAS available to be taxed, but ONLY according to Constitutional law.

463 "...we are of the opinion that there is a clear distinction in this particular between an individual
464 and a corporation, and that the latter has no right to refuse to submit its books and papers for an
465 examination at the suit of the state. The individual may stand upon his constitutional rights as a
466 citizen. He is entitled to carry on his private business in his own way. His power to contract is
467 unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his
468 doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the
469 state, since he receives nothing therefrom, beyond the protection of his life and property. His
470 rights are such as existed by the law of the land long antecedent to the organization of the state,
471 and can only be taken from him by due process of law, and in accordance with the Constitution.
472 He owes nothing to the public so long as her does not trespass upon their rights." Hale v. Henkel,
473 201 U.S. 74 (1905):

474 "Privilege" was what "could" be taxed by the "income" tax. Such privilege was NOT the
475 "RIGHT" to work. "Right" and "privilege" are two distinctly different things.

476 It was not the intention of the American people to tax the wages and salaries of the working man,
477 but ONLY to reach the "gains, profits and unearned income" of the country... something that was
478 fought by big business and the wealthy of the country, and something which most people in the
479 nation did NOT have...

480 "We are bound to interpret the Constitution in the light of the law as it existed at the time it was
481 adopted." *Mattox v. U.S.* 156 U.S. 237, 243 (1895).

482 "For 1936, taxable income tax returns filed represented only 3.9% of the population," and, "The
483 largest portion of consumer incomes in the United States is not subject to income taxation.
484 likewise, only a small proportion of the population of the United States is covered by the income
485 tax." Treasury Department's Division of Tax Research publication, 'Collection at Source of the
486 Individual Normal Income Tax,' 1941."

487 Are we to believe that only 3.9% of the entire population of America worked for a living, making
488 wages and salaries in 1936? Despite the incorrect definition for the word "income," the Treasury
489 Department clearly shows how "incomes," while mis-defined, also shows that wages and salaries
490 (what they believed to be income) were not yet the focus of "income" taxes.

491 Constitutional income" means what We the People say it Means. Any word or term used in the
492 Constitution has the meaning the People intended that word or term to mean at the time the
493 Constitution was ratified. Or, in the case of an amendment to the Constitution, we use the words
494 therein as the American People understood them to mean at the time the amendment was
495 (supposedly) ratified by the several States. To understand what the meaning of the word
496 "income" is, we must examine the history of income taxes in America prior to the ratification of
497 the 16th Amendment.

498 "Under the Internal Revenue Act of 1954 if there is no gain, there is no income." - 26 U.S.C.A.
499 '54, Sec. 61(a).

500 "There must be gain before there is 'income' within the 16th Amendment." U.S.C.A. Const. Am
501 16.

502 "The true function of the words 'gains' and profits' is to limit the meaning of the word 'income'
503 and to show its use only in the sense of receipts which constituted an accretion to capital. So the
504 function of the word 'income' should be to limit the meaning of the words 'gains' and profits."
505 *Southern Pacific v. Lowe*. Federal Reporter Vol. 238 pg. 850. See also, *Walsh v. Brewster*. Conn.
506 1921, 41 S.Ct. 392, 255 U.S. 536, 65 L.Ed. 762..

507 "I assume that every lawyer will agree with me that we can not legislatively interpret meaning of
508 the word "income." That is a purely judicial matter... The word "income" has a well defined
509 meaning before the amendment of the Constitution was adopted. It has been defined in all of the
510 courts of this country [as gains and profits-PH]... If we could call anything that we pleased
511 income, we could obliterate all the distinction between income and principal. The Congress can
512 not affect the meaning of the word "income" by any legislation whatsoever... Obviously the
513 people of this country did not intend to give to Congress the power to levy a direct tax upon all
514 the property of this country without apportionment." 1913 Congressional Record, pg. 3843, 3844
515 Senator Albert B. Cummins.

516 Compensation:"...Giving an equivalent or substitute of equal value...giving back an equivalent in
517 either money, which is but the measure of value..." Black's Law Dictionary.

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

520 "All are agreed that an income tax is a "direct tax" on gain or profits..." Bank of America
521 National T. & Sav. Ass'n. V United States, 459 F.2d 513, 517 (Ct.Cl 1972).

522 "The phraseology of form 1040 is somewhat obscure...But it matters little; the statute and the
523 statute alone determines what is income to be taxed. It taxes income 'derived' from many
524 different sources; one does not 'derive income' by rendering services and charging for them." -
525 Edwards v. Keith, 231 Fed. Rep. (Note: Webster's Dictionary defines "derived" as: "to obtain
526 from a parent substance." The property or compensation would be the parent substance and the
527 "gain or profit" would be a separate "derivative" obtained from the substance (property or
528 compensation). "From" means "to show removal or separation.")

529 Public Salary Act of 1939, TITLE I - SECTION 1. "22(a) of the Internal Revenue Code relating
530 to the definition of 'gross income,' is amended after the words 'compensation for personal service'
531 the following: including personal service as an officer or employee of a State, or any political
532 subdivision thereof, or any agency or instrumentality of any one or more of the foregoing.

533 The Preface of 1939 Internal Revenue Code states:

534 "The whole body of internal revenue laws in effect January 2 1939, therefore, has its ultimate
535 origin in 164 separate enactments of Congress. The earliest of these was approved July 1. 1862."

536 "And be it further enacted, that on and after the first day of August, 1862 there shall be levied
537 collected and paid on all salaries of officers, or payments to persons in the civil military, naval,
538 other employment or service of the United States, including senators and representatives and
539 delegates in Congress..."

540 This law was later expanded to include, "employees of the United States, the District of
541 Columbia or any agency or instrumentality thereof whether elected or appointed." The Public
542 Salary Act of 1939 added employee and officers of the States and Municipalities as subjects of
543 the income tax.

544 "Income" as the framers and people of America understood it, was not "all that comes in"... (S.
545 Pacific v. Lowe, 247 F. 330. (1918)) but was, as The United States Supreme Court, Lucas v. Earl,
546 281 U.S. 111 (1930), above, states it, was "gains and profits DERIVED FROM salaries, wages,
547 etc." In other words, wages were NOT income, but interest FROM wages sitting in a bank, or
548 profit received FROM property, or interest FROM a loan to another WAS "INCOME"... but was
549 STILL subject to Constitutional law in HOW that "income" is taxed.

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

552 Sec. 30 Judicial Definitions of income. By the rule of construction, noscitur a sociis, however,
553 the words in this statute must be construed in connection with those to which it is joined, namely,
554 gains and profits; and it is evidently the intention, as a general rule, to tax only the profit of the

555 taxpayer, not his whole revenue." Roger Foster, A treatise on the Federal Income Tax Under the
556 Act of 1913, 142.

557 **Congressional Testimony:**

558 Mr. Heflin. "An income tax seeks to reach the unearned wealth of the country and to make it pay
559 its share." 45 Congressional Record. 4420 (1909) Mr. Heflin. "But sir, when you tax a man on his
560 income, it is because his property is productive., He pays out of his abundance because he has got
561 the abundance." 45 Congressional Record. 4423 (1909)

562 "There can be no tax upon a man's right to live and earn his bread by the sweat of his brow."
563 O'Connell v. State Bd. of Equalization, 25 P.2d 114, 125 (Mont. 1933).

564 "...Every man has a natural right to the fruits of his own labor, as generally admitted; and no
565 other person can rightfully deprive him of those fruits; and appropriate them against his will..."
566 The Antelope, 23 U.S. 66, 120.

567 "So that, perhaps, the true question is this: is income property, in the sense of the constitution,
568 and must it be taxed at the same rate as other property? The fact is, **property is a tree; income is**
569 **the fruit**; labour is a tree; income the fruit; capital, the tree; income the fruit. The fruit, if not
570 consumed (severed) as fast as it ripens, will germinate from the seed...and will produce other
571 trees and grow into more property; but so long as it is fruit merely, and plucked (severed) to eat...
572 it is no tree, and will produce itself no fruit." Waring v. City of Savannah. 60 Ga. 93, 100 (1878).
573 (Emphasis added).

574 Louisiana Civil Code: "Art. 551. Kinds of fruits; "Fruits are things that are produced by or
575 derived from another thing **without diminution of its substance**. There are two kinds of fruits;
576 natural fruits and civil fruits. Natural fruits are products of the earth or of animals. Civil fruits are
577 revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals,
578 interest, and certain corporate distributions." (Emphasis added).

579 The point being that "income" is something which comes FROM the "tree," or "wages..."
580 Interest derived FROM wages.

581 "The right to labor and to its protection from unlawful interference is a constitutional as well as a
582 common-law right. Every man has a natural right to the fruits of his own industry." 48 Am Jur
583 2d. 2, Page 80.

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

587 "As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is
588 not, in any proper sense, an income tax law. This court had decided in the Pollock case that the
589 income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because
590 not apportioned according to populations, as prescribed by the Constitution. The act of 1909
591 avoided this difficulty by imposing not an income tax [direct], but an excise tax [indirect] upon
592 the conduct of business in a corporate capacity, measuring however, the amount of tax by the
593 income of the corporation". Stratton's Independence, LTD. v. Howbert, 231 US 399, 414 (1913).

594 "The legislature has no power to declare as a privilege and tax for revenue purposes, occupations
595 that are of common right" Sims vs. Ahrens, 167 Ark. 557; 271 S.W. 720, 730-733 (1925).

596 "An examination of these and other provisions of the Act (Corporation Excise Tax Act of August
597 5, 1909) make it plain that the legislative purpose was not to tax property as such, or the mere
598 conversion of property, but to tax the conduct of the business of corporations organized for profit
599 upon the gainful returns from their business operations." Doyle v. Mitchell Bros., 247 U.S. 179,
600 183 (1918).

601 "Nothing can be clearer than that what the constitution intended to guard against was the exercise
602 by the general government of the power of directly taxing persons and property within any state
603 through a majority made up from the other states." Pollock vs. Farmers' Loan and Trust Co. on
604 original intent, 157 US 429, 582 (1895).

605 "We have considered the act only in respect of the tax on income derived from real estate, and
606 from invested personal property, and have not commented on so much of it as bears on gains or
607 profits from business, privileges, or employments, in view of the instances in which taxation on
608 business, privileges, or employments has assumed the guise of an excise tax and been sustained
609 as such. It is evident that the income from realty formed a vital part of the scheme for taxation
610 embodied therein. If that be stricken out, and also the income from all investments of all kinds, it
611 is obvious that by far the largest part of the anticipated revenue would be eliminated, and this
612 would leave the burden of the tax to be borne by professionals, trades, employments, or
613 vocations; and in that way what was intended as a tax on capital would remain in substance as a
614 tax on occupations and labor. We cannot believe that such was the intention of Congress. We do
615 not mean to say that an act laying by apportionment a direct tax on all real estate and personal
616 property, or the income thereof, might not lay excise taxes on business, privileges, employments
617 and vocations. But this is not such an act; and the scheme must be considered as a whole."
618 Pollock, 158 U.S. at 635-637.

619 **Guise:** "A superficial seeming: an artful or simulated appearance (as of property or worth).
620 Webster's Third New International Dictionary.

621 "We are of the opinion that a tax on the gross income of an individual is embraced by the words
622 "capitation, or other direct tax," in the Constitution, and should be assessed and collected on the
623 principle of apportionment and not of uniformity, and that the several sections of the Internal
624 Revenue act imposing such tax are therefore unconstitutional. We are further of opinion that no
625 decision of the Supreme Court of the United States precludes this view, or discourages the
626 expectation that it will receive the sanction of the court. On the contrary, there are dicta and
627 suggestions in the only decisions bearing upon the subject which tend to confirm the opinion we
628 have expressed." 13 Internal Revenue Record 76.

629 "It is obvious that these decisions in principle rule the case bar if the word "income" has the same
630 meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909,
631 and that it has the same scope of meaning was in effect decided in Southern Pacific Co. V. Lowe
632 247 U.S. 330, 335, where it was assumed for the purpose of decision that there was no difference
633 in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no
634 doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916
635 and 1917 that it had in the act of 1913. When to this we add that in Eisner v. Macomber, supra, a
636 case arising under the same Income Tax Act of 1916 which is here involved, the definition of
637 "income" which was applied was adopted from Stratton's' Independence v. Howbeit, arising

638 under the Corporation Excise Tax Act of 1909, with the addition that it should include "profit
639 gained through sale or conversion of capital assets," there would seem to be no room to doubt
640 that the word must be given the same meaning in all Income Tax Acts of Congress that was
641 given to it in the Corporation Excise Tax Act, and that what that meaning is has now become
642 definitely settled by decisions of this Court."

643 "...it [income] should include *profit gained through a sale or conversion of capital assets*'. There
644 would seem to be no room to doubt that the word must be given the same meaning in all of the
645 Income Tax Acts of Congress that it was given to it in the Corporation Excise Tax Act, and what
646 that meaning is has now become definitely settled by decisions of this court. In determining the
647 definition of the word "income" thus arrived at, this court has consistently refused to enter into
648 the refinements of lexicographers or economists and has approved, in the definitions quoted,
649 what is believed to be the commonly understood meaning of the term ['gains and profits'] which
650 must have been in the minds of the people when they adopted the Sixteenth Amendment to the
651 Constitution..."Merchants Loan & Trust Co. v. Smietanka. 225 U.S. 509, 518, 519 (1923).

652 "Before the 1921 Act this Court had indicated (see Eisner v. Macomber, 252 U.S. 189, 207, 64
653 L.ed 521, 9 A.L.R. 1570, 40 S. Ct. 189), what it later held, that 'income,' as used in the revenue
654 acts taxing income, adopted since the 16th Amendment, has the same meaning that it had in the
655 Act of 1909. Merchants; Loan & T. Co. v. Smietanka, 255 U.S. 509, 519, 65 L.ed. 751, 755, 15
656 A.L.R. 1305, 41 S. Ct. 386; see Southern Pacific Co. v. Lowe. 247 U.S. 330, 335, 62 L.ed. 114,
657 1147, 38 S. Ct. 540." Burnet vs. Harmel 287 US 103.

658 "... the Corporation Tax, as imposed by Congress in the Tariff Act of 1909, is not a direct tax but
659 an excise; it does not fall within the apportionment clause of the Constitution; but is within, and
660 complies with, the provision for uniformity throughout the United States; it is an excise on the
661 privilege of doing business in the corporate capacity..."

662 "The requirement to pay [excise] taxes involves the exercise of privilege." Flint v. Stone Tracey
663 Company, 220 U.S. 107, 108 (1911).

664 By this decision, the Court stated that it would accept only one definition of "income" [under the
665 16th Amendment] and that any tax law that Congress wanted to pass under the authority of the
666 16th Amendment would have to use just that one definition of "income" - and that definition was
667 the one Congress used in the 1909 Corporate Tax Act! In short, the Court was telling Congress
668 that since the 16th Amendment was a part of the Constitution, its meaning must be fixed and
669 permanent, and since Congress could not be trusted to stick to one single definition, the Court
670 was giving Congress one single definition with which to work if it wished its income tax acts to
671 pass Constitutional scrutiny by the Court.

672 "The obligation to pay an excise is based upon the voluntary action of the person taxed in
673 performing the act, enjoying the privilege, or engaging in the occupation which is the subject of
674 the excise, and the element of absolute and unavoidable demand is lacking." People ex rel. Atty
675 Gen. v Naglee, 1 Cal 232; Bank of Commerce & T. Co. v. Seater, 149 Tenn. 441, 381 Sw 144.

676 "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The
677 corporation is an artificial entity which owes its existence and charter power to the State, but the
678 individual's right to live and own property are natural rights for the enjoyment of which an excise
679 cannot be imposed." Redfield v. Fisher, 292 Oregon 814, 817.

680 "Yet it is plain, we think, that by the true intent and meaning of the Act the entire proceeds of a
681 mere conversion of capital assets were not to be treated as income. Whatever difficulty there may
682 be about a precise and scientific definition of 'income,' it imports, as used here, something
683 entirely distinct from principle or capital either as a subject of taxation or as a measure of the tax;
684 conveying rather the idea of gain or increase arising from corporate activities. **We must reject in**
685 **this case...the broad contention submitted in behalf of the Government that all receipts -**
686 **everything that comes in - are income within the proper definition of the term 'gross**
687 **income'**..." Doyle v. Mitchell Brother, Co., 247 US 179 (1918). (Emphasis added).

688 **Earnings:** "That which is earned; money earned; the price of services performed; the reward of
689 labor; money or the fruits of proper skill, experience, industry; ...derived without the aid of
690 capital, merited by labor, services, or performances. Earnings are not income." *Saltzman v. City*
691 *of Council Bluffs*. 214 Iowa, 1033, 243 N.W. 161, 161.

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

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

706 Black's 3rd Law Dictionary: Income: "Income is the gain which proceeds from [the investment of
707 capital received from] labor, business or property;..." *Trefry v. Putnam*, 116 N.E. "Income is the
708 *gain* derived from capital, from labor or from both combined; something of exchangeable value,
709 proceeding from the property, severed from the capital...and drawn by the recipient for his
710 separate use..." *Eisner v. Macomber*, 40 S. Ct 189, 252 U.S. 189, L. Ed. 521, 9 A.L.R. 1570.
711 *Goodrich v. Edwards*, 41 S. Ct. 390, 255 U.S. 527, 65 L. Ed 758. "*Income* is something that *has*
712 grown out of capital, leaving the capital unimpaired and intact." *Gavit v. Irwin*. (D.C.) 275 F.
713 643, 645. "Income is used...in law in contradistinction [contrast, opposition] to *capital*." 21 C.J.
714 397. "Income, [gains and profits] ...is something produced by capital without impairing such
715 capital, the property being left intact. and nothing can be called income which takes away from
716 the property itself - *Sargent Land Co. v. Von Baumbach*, (D.C.), 207 F. 423, 430. (Emphasis
717 added).

718 *Conner v. United States*. 303 F. Supp. 1187 (1969) pg. 1191: "[1] ..It [income] is not
719 synonymous with receipts." 47 C.J.S. Internal Revenue 98, Pg. 226.

720 "Income, as defined by the supreme Court means, 'gains and profits as a result of corporate
721 activity and profit gained through the sale or conversion of capital assets.'" *Stanton v. Baltic*
722 *Mining Co.* 240 U.S. 103, *Stratton's Independence v. Howbert* 231 U.S. 399. *Doyle v. Mitchell*

723 Bros. Co. 247 U.S. 179, Eisner v. Macomber 252 U.S. 189, Evans v. Gore 253 U.S. 245,
724 Merchants Loan & Trust Co. v. Smietanka 225 U.S. 509. (1921).

725 U.S. Supreme Court GOODRICH v. EDWARDS, 255 U.S. 527 (1921) 255 U.S. 527
726 GOODRICH v. EDWARDS, Collector of Internal Revenue.No. 663. Argued March 10 and 11,
727 1921. Decided March 28, 1921. Mr. Justice CLARKE delivered the opinion of the Court.
728"And the definition of 'income' approved by this Court is: "'The gain derived from capital,
729 from labor, or from both combined, provided it be understood to include profits gained through
730 sale or conversion of capital assets.'" Eisner v. Macomber, 252 U.S. 189, 207, 40 S. Sup. Ct. 189,
731 193 (64 L. Ed. 521, 9 A. L. R. 1570)."...

732 U.S. Supreme Court MILES v. SAFE DEPOSIT & TRUST CO. OF BALTIMORE, 259 U.S.
733 247 (1922) 259 U.S. 247 MILES, Collector of Internal Revenue, v. SAFE DEPOSIT & TRUST
734 CO. OF BALTIMORE. No. 416. Argued Dec. 16, 1921. Decided May 29, 1922. Mr. Justice
735 PITNEY delivered the opinion of the Court."In that as in other recent cases this court has
736 interpreted 'income' as including gains and profits derived through sale or conversion of capital
737 assets, whether done by a dealer or trader, or casually by a non-trader, as by a trustee in the
738 course of changing investments. Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 517-
739 520, 41 Sup. Ct. 386, 15 A. L. R. 1305"....

740 "[1]... The meaning of income in its everyday sense is a gain... the amount of such gain recovered
741 by an individual in a given period of time." Webster's Seventh New Collegiate Dictionary, p. 425
742 "Income is more or less than realized gain." Shuster v. Helvering, 121 F. 2d 643 (2nd Cir. 1941).
743 "it [income] is not synonymous with receipts." 47 C.J.S. Internal Revenue 98, p. 226."

744 "[2] Whatever may constitute income, therefore, must have the essential feature of gain to the
745 recipient. This was true when the 16th amendment became effective, it was true at the time of the
746 decision in Eisner v. Macomber (supra), it was true under section 22(a) of the Internal Revenue
747 Code of 1939, and it is true under section 61(a) of the Internal Revenue Code of 1954. **If there is**
748 **no gain, there is no income.**" Conner v. United States. 303 F. Supp. 1187 (1969) pg. 1191.
749 (Emphasis added).

750 **INCOME TAX:** Blacks Law Dictionary - 2nd Edition: "A tax on the yearly profits arising from
751 property, professions, trades and offices." -See also 2 Steph. Comm 573. Levi v. Louisville, 97
752 Ky. 394, 30 S.W. 973. 28 L.R.A. 480; Parker Insurance Co., 42 La. Ann 428, 7 South. 599.

753 "...I therefore recommend an amendment imposing on all corporations an excise tax measured by
754 2% in the net income of such corporations. This is an excise on the privilege of doing business as
755 an artificial entity." President Taft, Congressional Record, June 16, 1909, Pg. 3344.

756 While a "cash dividend" represents profit to the shareholder, and is thus "income" under the 16th
757 Amendment, a "stock dividend" is not profit that has been "severed from capital" as is required to
758 meet the definition of income under the 16th Amendment (ibid, Eisner).

759 The Eisner quote featured above clearly illustrates that the apportionment clause of the
760 Constitution is alive and well and has not been repealed or substantially altered by the 16th
761 Amendment.

762 "[The Pollock court] recognized the fact that taxation on income was in its nature an excise
763 entitled to be enforced as such unless and until it was concluded that to enforce it would amount

764 to accomplishing the result which the requirement as to apportionment of direct tax was adapted
765 to prevent, in which case the duty would arise to disregard the form and consider the substance
766 alone and hence subject the tax to the regulation of apportionment which otherwise as an excise
767 would not apply." *Brushaber v. Union Pacific RR Co.*, 240 US 1 (1916).

768 What the *Brushaber* court is saying is that any income tax, which has been structured as an excise
769 tax, but is enforced in such a way as to effectively convert the tax to a direct tax, would cause the
770 court to declare it unconstitutional due to lack of apportionment. What type of enforcement might
771 effectively convert an excise tax to a direct tax? Once the demand for the tax money is
772 unavoidable, and I can no longer avoid the demand and/or the collection of the tax, even when I
773 have not engaged in any excise taxable activity, that is when the Executive Branch's enforcement
774 of the tax has converted the tax, in substance, from an excise into a direct tax.

775 The 16th Amendment only pertains to "income" in the form of dividends, patronage dividends,
776 and interest from corporate investment. The 16th Amendment tax is upon the privilege (to
777 shareholders) of operating a business as an artificial entity. The 16th Amendment tax is not upon
778 "income"; the income is only the yardstick used to determine the value of the privilege, and
779 hence the amount of tax to be paid.

780 The 16th Amendment overturned the *Pollock* Decision by way of a constitutional amendment
781 allowing income taxes on net income from real estate and personal property to be levied
782 according to the rule of uniformity instead of the rule of apportionment.

783 "Indeed, in light of the history which we have given and of the decision in the *Pollock* Case, and
784 the ground upon which the ruling in that case was based, there can be no escape from the
785 conclusion that the (16th) Amendment was drawn for the purpose of doing away from the future
786 with the principle upon which the *Pollock* Case was decided." *Brushaber v. Union Pac. R.R. Co.*,
787 240 U.S. 1, 18 (1916).

788 Decided cases have made the distinction between wages and income and have refused to equate
789 the two in withholding or similar controversies. See *Peoples Life Ins. Co. v. United States*, 179
790 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); *Humble Pipe Line Co. v. United States*, 194 Ct. Cl.
791 944, 950, 442 F.2d 1353, 1356 (1971); *Humble Oil & Refining Co. v. United States*, 194 Ct. Cl.
792 920, 442 F.2d 1362 (1971); *Stubbs, Overbeck & Associates v. United States*, 445 F.2d 1142
793 (CA5 1971); *Royster Co. v. United States*, 479 F.2d, at 390; *Acacia Mutual Life Ins. Co. v.*
794 *United States*, 272 F. Supp. 188 (Md. 1967).

795 "It is a basic principle of statutory construction that courts have no right first to determine the
796 legislative intent of a statute and then, under the guise of its interpretation, proceed to either add
797 words to or eliminate other words from the statute's language." *DeSoto Securities Co. v.*
798 *Commissioner*, 235 F.2d 409, 411 (7th Cir. 1956); see also 2A *Sutherland Statutory Construction*
799 § 47.38 (4th ed. 1984).

800 **To further show the Respondents' confusing the income tax issue, we have the following:**

801 "At the very threshold of the case is the question whether an income tax is, under the provisions
802 of the fourteenth amendment of the state constitution, a property tax, as the respondents contend,
803 or whether it is an excise tax, as appellants contend. That question has recently been squarely
804 presented to this court and has been definitely determined by it." *Culliton v. Chase*, 174 Wash.
805 363, 25 P.2d 81.

806 In that case, it was held that the state income tax law of 1932 (initiative measure 69, chapter 5,
807 Laws of 1933, p, 49, Rem. 1933 Sup., SS 11200-1 et seq.) was unconstitutional and void.
808 Although four members of the court dissented, it was held by the majority that, under our
809 constitution, income is property, and that an income tax is a property tax, and not an excise tax.
810 Nothing was said, or intended to be suggested, in any of the opinions that the court, as then
811 constituted, had receded from its former emphatic declaration that, under our constitution,
812 income is property, and that an income tax is a property tax." *Jensen v. Henneford*, 185 Wash.
813 209, 53 P.2d 607 (1936).

814 The court in this case definitively ruled that income was property, and is being taxed "directly,"
815 which forces such taxation to be apportioned according to constitutional provisions for direct
816 taxes.

817 However, since income has been ruled as "property," and such property is obviously used in the
818 production of income, under excise tax laws, such income can possibly become subject to excise
819 taxation, of course, under the rules of uniformity ONLY. In addition to this, under 26 U.S.C 212,
820 "all the ordinary and necessary expenses paid or incurred during the taxable year" for the
821 production of income and for "the management, conservation, or maintenance of property held
822 for the production of income..." would be tax deductible from ANY income taxes we would
823 otherwise be subject to.

824 Despite the disregard for higher Court case law, this concession was made:

825 "Of course, we recognize the necessity for expenditures for such items as food, shelter, clothing,
826 and proper health maintenance. They provide both the mental and physical nourishment essential
827 to maintain the body at a level of effectiveness that will permit it's labor to be productive. We do
828 not even deny that a certain similarity exists between the 'cost of doing labor' and the 'cost of
829 goods sold' concept." *Reading v. Commissioner*, 70 T.C. 733, 734 (1978) case

830 "Excise: In current usage the term has been extended to include various license fees and
831 practically every Internal Revenue tax except the income tax." *Blacks Law Dictionary*, Sixth
832 Edition, 1990.

833 **More testimony and Case law:**

834 "The privilege of giving or withholding our money is an important barrier against the undue
835 exertion of prerogative which if left altogether without control may be exercised to our great
836 oppression; and all history shows how efficacious its intercession for redress of grievances and
837 reestablishment of rights, and how important would be the surrender of so powerful a mediator."
838 Thomas Jefferson: Reply to Lord North, 1775, Papers 1:225.

839 "If money is wanted by rulers who have in any manner oppressed the People, they may retain it
840 until their grievances are redressed, and thus peaceably procure relief, without trusting to
841 despised petitions or disturbing the public tranquility." *Continental Congress To The Inhabitants
842 Of The Province Of Quebec. Journals of the Continental Congress. 1774 -1789. Journals 1: 105-
843 13.*

844 "Although the [enforcement] power provisions of the Internal Revenue Code are to be liberally
845 construed, a court must be careful to insure that its construction will not result in a use of the
846 power beyond that permitted by law." *United States v. Humble Oil & Refining Co.*, 488 F.2d 953

847 at 958 (5th Cir. 1974).

848 "Under the facts and the law, the Court should satisfy itself, via sworn testimony of the
849 Defendant, that the IRS is not acting arbitrarily and capriciously, and that there was a plausible
850 reason for believing fraud is being practiced on the revenue. The Court is free to act in a judicial
851 capacity, free to disagree with the administrative enforcement actions if a substantial question is
852 raised or the minimum standard is not met. The District Court reserves the right to prevent the
853 "arbitrary" exercise of administrative power, by nipping it in the bud." *United States v. Morton*
854 *Salt Co.*, 338 U.S. 632, 654.

855 "The IRS at all times must use the enforcement authority in good-faith pursuit of the authorized
856 purposes of Code." *U.S. v. La Salle N.B.*, 437 U.S. 298 (1978).

857 "A statute must be set out in terms that the ordinary person exercising ordinary common sense
858 can sufficiently understand and comply with, without sacrifice to the public interest." *See Arnett*
859 *v. Kennedy*, 416 U.S. 134, 159, 40 L. Ed. 2d 15, 94 S. Ct. 1633 (1974) (quoting *United States*
860 *Civil Serv. Commission v. National Association of Letter Carriers*, 413 U.S. 548, 579, 37 L. Ed.
861 *2d 796*, 93 S. Ct. 2880 (1973).

862 "Eight decades of amendments...to [the] code have produced a virtually impenetrable maze...The
863 rules are unintelligible to most citizens...The rules are equally mysterious to many government
864 employees who are charged with administering and enforcing the law." - Shirley Peterson, former
865 IRS Commissioner, April 14, 1993 at Southern Methodist University.

866 The Constitution and case law are clear; Petitioner is NOT made liable to pay taxes on wages,
867 salary and compensation for work performed, and since the Respondent cannot
868 "Constitutionally" collect taxes themselves, depends on ignorance and "willful" compliance with
869 what is believed to be "law." In any case, **fraud is still involved with this scheme, violating**
870 **Petitioner's Constitutional Rights.**

871 "Waivers of constitutional rights not only must be voluntary, they must be knowingly intelligent
872 acts done with sufficient awareness of the relevant circumstances and consequences." *Brady v.*
873 *U.S.* 397 U.S. 742 at 748.

874 **Based upon the above case law and other evidence, Petitioner believes beyond any doubt**
875 **that "income" is NOT "wages, salary or compensation," and therefore does not apply to my**
876 **wages, salary or compensation, and excludes me from being a "taxpayer," and any liability**
877 **for filing a 1040 form, or reporting wages, salary or compensation, or maintaining records**
878 **of same, until proven otherwise in law.**

879 http://www.tax_freedom.com/WhatIsIncome.htm for more info on this topic

880 <https://www.youtube.com/watch?v=q5anjybm5lo> Introduction to IRS fraud - Are you a
881 "taxpayer?"

882 <https://www.youtube.com/watch?v=nji1qOR9okE> What is Income-video