

# EXHIBIT A - What is Constitutional "Income?"

1 The premise of Exhibit A is that "income" defined in our modern-day language is quite different  
2 than the original intent of the framers of tax laws and especially the income tax code. Over the  
3 course of decades the terminology and definitions for income have been manipulated in the  
4 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  
17 provided where the citizen may be heard to urge that the law fails to conform to the limits set  
18 upon the use of a granted power. When such a contention comes here we naturally require a  
19 showing that by no reasonable possibility can the challenged legislation fall within the wide  
20 range of discretion permitted to the Congress. How great is extent that range, when the subject  
21 is the promotion of the general welfare of the United States, we hardly need remark. But, despite  
22 the breadth of the legislative discretion, our duty to hear and to render judgment remains as. If  
23 the statute plainly violates the stated principal of the Constitution we must so declare." *United*  
24 *States v. Butler*, 297 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" - 16<sup>th</sup>  
44 amendment, and is also ONLY on those serving in a public office or working for the  
45 government.

46 "A tax upon the privilege of selling property at the exchange,...differs radically from a tax upon  
47 every sale made in any place. A sale at an exchange differs from a sale made at a man's private  
48 office or on his farm, or by a partnerships because, although the subject matter of the sale may be  
49 the same in each case, there are at an exchange certain advantages, in the way of finding a  
50 market, obtaining a price, the saving of time, and in the security of payments and other matters,  
51 which are more easily obtained there than at an office or a farm." *Nicol v. Ames*, 173 U.S. 509  
52 (1899).

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

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

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

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

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

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

78 The IR Code defines "income" as:

79 Section 22 GROSS INCOME:

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

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

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

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

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

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

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

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

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

119 "A man is free to lay hand upon his own property. To acquire and possess property is a right, not  
120 a privilege ... The right to acquire and possess property cannot alone be made the subject of an  
121 excise .... nor, generally speaking, can an excise be laid upon the mere right to possess the fruits  
122 thereof, as that right is the chief attribute of ownership." Jerome H. Sheip Co. v. Amos, 100 Fla.  
123 863, 130 So. 699, 705 (1930).

124 "Can be said with any degree of sense were just as that the property which a man has been his  
125 labor which is the foundation of all property in which is the only capital of so large majority of  
126 the citizens of our country is not property; or, at least, not that character of property which can  
127 demand boom of protection from the government? We think not." Jones v. Leslie, 112 P. 81  
128 (1910).

129 "Though the earth and all inferior creatures the common to all men, that every man has a  
130 property in his own person; this no Body has any right to but himself. The labor of his body and  
131 the work of his hands, we may say, are properly his." John Locke, "2nd Treatise of government  
132 (1690), Sec. 27.

133 "Property is everything which has an exchangeable value, in the right of property includes the  
134 power to dispose of that according to the will of the owner. Labor is property, and as such merits  
135 protection. The right to make it available is next in importance to the rights of life and liberty. It

136 lives to a large extend the foundation of most other forms of property, and of all solid individual  
137 and national prosperity." Slaughter - House Cases, 83 U.S. 36, at 127 (1873).

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

140 "We all have the innate ability to earn income based on our natural intelligence and physical  
141 strength...the income from the skills is in part to return to earlier investments in food, shelter, and  
142 clothing." A. Parkman, "The Recognition of Human Capital As Property in Divorce Settlements,  
143 40 Arkansas Law Review, 439, 441 (winter 1987).

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

151 "To a slave, as such, there appertains and can appertain no relation, civil or political, with the  
152 state or the government. He is himself strictly property, to be used in subserviency to the  
153 interests, the convenience, or the will, of his owner." Dred Scott v. Sandford, 19 How. 393, at  
154 475 -- 476 (1856).

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

159 "In our opinion that section, in particular mentioned, in an invasion of the personal liberty, as  
160 well as of the right of property, guaranteed by that Amendment (Fifth). Such liberty and right  
161 embraces the right to make contracts for the purchase of the labor of others and equally the right  
162 to make contracts for the sale of one's own labor;... The right of a person to sell his labor upon  
163 such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to  
164 prescribe the conditions upon which he will accept such labor from the person offering to sell  
165 it... In all such particulars the employer and the employee have the quality of right, and any  
166 legislation that disturbs that equality is an arbitrary interference of liberty of contract which no  
167 government can legally justify a free land." Adair v. United States, 208 U. S. 161, at 172-175  
168 (1908).

169 "Included in the right of personal liberty and the right of private property -- are taking of the  
170 nature of each -- is the right to make contracts for the acquisition of property. The chief among

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

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

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

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

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

200 In the above case, it clearly shows that someone who puts regular, consistent efforts into making  
201 a living is engaged in a trade or business, NOT related to U.S. government employment, whether  
202 they are employed by another party or were employed themselves. Concerning my own  
203 employment, I have pursued my occupation of selling my labor, energy and skills on a full-time  
204 basis, in good faith, continuity and regularity, representing a constant and large-scale effort over  
205 many years, for the production of income for a livelihood, with skills being required and applied.  
206 It is not a sporadic activity, a mere hobby, or an amusement diversion. These very facts, being  
207 applied to all Americans across the country, should, at the very least, allow each and every one

208 of them to deduct all living expenses required to maintain their personal property which is used  
209 in making a living.

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

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

216 Section 1001(a);

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

219 Section 1001(b);

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

222 Section 1011:

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

226 Section 1012:

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

228 The cost of property purchased under contract is its fair market value as evidenced by the  
229 contract itself, provided neither the buyer nor the seller were acting under compulsion in entering  
230 into the contract, and both were fully aware of all of the facts regarding the contract. See  
231 Terrance developmental Co. v. C.I.R., 345 F.2d 933 (1965); Bankers Trust Co. v. U.S., 518 F.2d  
232 1210 (1975); Bar L Ranch, Inc. v. Phinney, 426 F.2d 995 (1970); Jack Daniel Distillery v. U.S.,  
233 379 F.2d 569 (1967).

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

239 the service.

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

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

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

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

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

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

261 The freedom and right to earn a living through any lawful occupation is EXEMPT from taxation  
262 by the federal government! U. S. Supreme Court in *Grosjean v. American Press Co.*, 297 U.S.  
263 233 (1936); *Jones v. Opelika*, 316 U.S. 584, 56 S.Ct. 444 (1943); *Follett v. McCormick*, 321 U.S.  
264 573 64 S.Ct. 717 (1944); *Harper v. Virginia Bd. Of Elections*, 383 U.S. 663, 86 S.Ct. 1079  
265 (1966).

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

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



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

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

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

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

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

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

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

307 Any exchange of my labor cannot be devalued below the value of the wage I received in order to  
308 attempt to show that I received a "profit," and possibly make me "liable" for a tax. My labor is  
309 valued EQUAL TO the wage I receive. Neither can the wage I make be counted in its entirety as  
310 a "profit," or this makes my labor or service worth nothing. I exchange my labor or service,  
311 which I value exactly equal to the income I receive. There is NO material difference between the  
312 values for either my labor or service provided, and the income received FOR labor or service.

313 I have the freedom and right to value my labor at any amount, and can, therefore, accept ANY  
314 amount of income as equal value to any labor or service I provide any party. Anything short of  
315 this that is taxed is clearly due to slave labor, and is theft by coercion, fraud and conversion, and

316 is clearly unconstitutional and against common law and case law. (See Attachments C and that  
317 the legal application of taxation against some citizen's are those that are in the "employee" of the  
318 IRS and U.S. Government - See 26 USC 3401(d)).

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

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

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

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

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

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

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

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

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

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

361 Section 22 GROSS INCOME:

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

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

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

375 "An unapportioned direct tax on anything which is not income would be unconstitutional." -  
376 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.  
377 764, 75 S. Ct. 870, 349 U.S. 948, 99 L. Ed. 1274.

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

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

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

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

404 "[Income is] derived--from--capital--the--gain--derived--from--capitol, etc. Here we have the  
405 essential matter--not gain accruing to capitol, not growth or increment of value in the  
406 investment; but a gain, a profit, something of exchangeable value...severed from capitol however  
407 invested or employed and coming in, being "derived", that is received or drawn by the recipient  
408 for his separate use, benefit and disposal--that is the income derived from property. Nothing else  
409 answers the description...". [emphasis in original]... "After examining dictionaries in common  
410 use (Bouv. L.D.; Standard Dict.; Webster's Internat. Dict.; Century Dict.), we find little to add to  
411 the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909  
412 (Stratton's Independence v. Howbert, 231 U.S. 399, 415; Doyle v. Mitchell Bros. Co, 247 U.S.  
413 179, 185) "Income may be defined as the gain derived from capital, from labor, or from both  
414 combined, provided it be understood to include profit gained through a sale or conversion of  
415 capital assets..." Doyle v. Mitchell, 247 U.S. 179-185 (1920); Stratton's Indep. v. Howbert, 231  
416 U.S. 339 (1913); So. Pacific v. Lowe, 247 U.S. 330 (1918); Eisner v. Macomber, 252 US 189  
417 (1920); Merchant's Loan v. Smietanka, 255 U.S. 509 (1921).

418 "The claim that salaries, wages, and compensation for personal services are to be taxed as an  
419 entirety and therefore must be returned by the individual who has performed the services which  
420 produce the gain is without support, either in the language of the Act or in the decisions of the  
421 courts construing it. Not only this, but it is directly opposed to provisions of the Act and to  
422 regulations of the U.S. Treasury Department, which either prescribed or permits that  
423 compensations for personal services not be taxed as a entirety and not be returned by the  
424 individual performing the services. It has to be noted that, by the language of the Act, it is not  
425 salaries, wages or compensation for personal services that are to be included in gross income.  
426 That which is to be included is gains, profits, and income derived from salaries, wages, or  
427 compensation for personal services." The United States Supreme Court, Lucas v. Earl, 281 U.S.  
428 111 (1930)

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

434 "The task of interpretation must therefore be to discover what was the meaning common to each  
435 of these terms at the time the Constitution was adopted." Francis W. Bird, Constitutional Aspects  
436 of the Federal Tax on the Income of Corporations, 24 Harvard Law Review 31, 32 (1911).

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

441 "The Treasury cannot by interpretive regulations, make income of that which is not income  
442 within the meaning of revenue acts of Congress, nor can Congress, without apportionment, tax as

443 income that which is not income within the meaning of the 16<sup>th</sup> Amendment." *Helvering v.*  
444 *Edison Bros. Stores*, 133 F2d 575. (1943)

445 "It is not a function of the United States Supreme Court to sit as a super-legislature and create  
446 statutory distinctions where none were intended. " *American Tobacco Co. v. Patterson*, 456 US  
447 63, 71 L Ed 2d 748, 102 S Ct. 1534 (1982)

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

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

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

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

464 "...we are of the opinion that there is a clear distinction in this particular between an individual  
465 and a corporation, and that the latter has no right to refuse to submit its books and papers for an  
466 examination at the suit of the state. The individual may stand upon his constitutional rights as a  
467 citizen. He is entitled to carry on his private business in his own way. His power to contract is  
468 unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his  
469 doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the  
470 state, since he receives nothing therefrom, beyond the protection of his life and property. His  
471 rights are such as existed by the law of the land long antecedent to the organization of the state,  
472 and can only be taken from him by due process of law, and in accordance with the Constitution.  
473 He owes nothing to the public so long as her does not trespass upon their rights." *Hale v. Henkel*,  
474 201 U.S. 74 (1905):

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

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

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

483 "For 1936, taxable income tax returns filed represented only 3.9% of the population," and, "The

484 largest portion of consumer incomes in the United States is not subject to income taxation.  
485 likewise, only a small proportion of the population of the United States is covered by the income  
486 tax." Treasury Department's Division of Tax Research publication, 'Collection at Source of the  
487 Individual Normal Income Tax,' 1941."

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

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

499 "Under the Internal Revenue Act of 1954 if there is no gain, there is no income." - 26 U.S.C.A.  
500 '54, Sec. 61(a).

501 "There must be gain before there is 'income' within the 16<sup>th</sup> Amendment." U.S.C.A. Const. Am  
502 16.

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

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

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

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

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

523 "The phraseology of form 1040 is somewhat obscure...But it matters little; the statute and the  
524 statute alone determines what is income to be taxed. It taxes income 'derived' from many

525 different sources; one does not 'derive income' by rendering services and charging for them." -  
526 Edwards v. Keith, 231 Fed. Rep. (Note: Webster's Dictionary defines "derived" as: "to obtain  
527 from a parent substance." The property or compensation would be the parent substance and the  
528 "gain or profit" would be a separate "derivative" obtained from the substance (property or  
529 compensation). "From" means "to show removal or separation.")

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

534 The Preface of 1939 Internal Revenue Code states:

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

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

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

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

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

553 Sec. 30 Judicial Definitions of income. By the rule of construction, noscitur a sociis, however,  
554 the words in this statute must be construed in connection with those to which it is joined,  
555 namely, gains and profits; and it is evidently the intention, as a general rule, to tax only the profit  
556 of the taxpayer, not his whole revenue." Roger Foster, A treatise on the Federal Income Tax  
557 Under the Act of 1913, 142.

### 558 **Congressional Testimony:**

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

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

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

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

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

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

582 "The right to labor and to its protection from unlawful interference is a constitutional as well as a  
583 common-law right. Every man has a natural right to the fruits of his own industry." 48 Am Jur  
584 2d. 2, Page 80.

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

588 "As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is  
589 not, in any proper sense, an income tax law. This court had decided in the Pollock case that the  
590 income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid  
591 because not apportioned according to populations, as prescribed by the Constitution. The act of  
592 1909 avoided this difficulty by imposing not an income tax [direct], but an excise tax [indirect]  
593 upon the conduct of business in a corporate capacity, measuring however, the amount of tax by  
594 the income of the corporation". Stratton's Independence, LTD. v. Howbert, 231 US 399, 414  
595 (1913).

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

598 "An examination of these and other provisions of the Act (Corporation Excise Tax Act of August  
599 5, 1909) make it plain that the legislative purpose was not to tax property as such, or the mere  
600 conversion of property, but to tax the conduct of the business of corporations organized for profit  
601 upon the gainful returns from their business operations." Doyle v. Mitchell Bros., 247 U.S. 179,  
602 183 (1918).

603 "Nothing can be clearer than that what the constitution intended to guard against was the  
604 exercise by the general government of the power of directly taxing persons and property within  
605 any state through a majority made up from the other states." Pollock vs. Farmers' Loan and Trust



606 Co. on original intent, 157 US 429, 582 (1895).

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

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

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

631 "It is obvious that these decisions in principle rule the case bar if the word "income" has the  
632 same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of  
633 1909, and that it has the same scope of meaning was in effect decided in Southern Pacific Co. V.  
634 Lowe 247 U.S. 330, 335, where it was assumed for the purpose of decision that there was no  
635 difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There  
636 can be no doubt that the word must be given the same meaning and content in the Income Tax  
637 Acts of 1916 and 1917 that it had in the act of 1913. When to this we add that in Eisner v.  
638 Macomber, supra, a case arising under the same Income Tax Act of 1916 which is here involved,  
639 the definition of "income" which was applied was adopted from Stratton's Independence v.  
640 Howbeit, arising under the Corporation Excise Tax Act of 1909, with the addition that it should  
641 include "profit gained through sale or conversion of capital assets," there would seem to be no  
642 room to doubt that the word must be given the same meaning in all Income Tax Acts of Congress  
643 that was given to it in the Corporation Excise Tax Act, and that what that meaning is has now  
644 become definitely settled by decisions of this Court."

645 "...it [income] should include *profit gained through a sale or conversion of capital assets*.' There  
646 would seem to be no room to doubt that the word must be given the same meaning in all of the  
647 Income Tax Acts of Congress that it was given to it in the Corporation Excise Tax Act, and what  
648 that meaning is has now become definitely settled by decisions of this court. In determining the  
649 definition of the word "income" thus arrived at, this court has consistently refused to enter into  
650 the refinements of lexicographers or economists and has approved, in the definitions quoted,

651 what is believed to be the commonly understood meaning of the term ['gains and profits'] which  
652 must have been in the minds of the people when they adopted the Sixteenth Amendment to the  
653 Constitution..."Merchants Loan & Trust Co. v. Smietanka. 225 U.S. 509, 518, 519 (1923).

654 "Before the 1921 Act this Court had indicated (see Eisner v. Macomber, 252 U.S. 189, 207, 64  
655 L.ed 521, 9 A.L.R. 1570, 40 S. Ct. 189), what it later held, that 'income,' as used in the revenue  
656 acts taxing income, adopted since the 16th Amendment, has the same meaning that it had in the  
657 Act of 1909. Merchants; Loan & T. Co. v. Smietanka, 255 U.S. 509, 519, 65 L.ed. 751, 755, 15  
658 A.L.R. 1305, 41 S. Ct. 386; see Southern Pacific Co. v. Lowe. 247 U.S. 330, 335, 62 L.ed. 114,  
659 1147, 38 S. Ct. 540." Burnet vs. Harmel 287 US 103.

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

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

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

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

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

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

690 **Earnings:** "That which is earned; money earned; the price of services performed; the reward of  
691 labor; money or the fruits of proper skill, experience, industry; ...derived without the aid of  
692 capital, merited by labor, services, or performances. Earnings are not income." Saltzman v. City

693 *of Council Bluffs*. 214 Iowa, 1033, 243 N.W. 161, 161.

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

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

708 Black's 3rd Law Dictionary: Income: "Income is the gain which proceeds from [the investment  
709 of capital received from] labor, business or property;..." *Trefry v. Putnam*, 116 N.E. "Income is  
710 the *gain* derived from capital, from labor or from both combined; something of exchangeable  
711 value, proceeding from the property, *severed from the capital...and* drawn by the recipient for his  
712 separate use..." *Eisner v. Macomber*, 40 S. Ct 189, 252 U.S. 189, L. Ed. 521, 9 A.L.R. 1570.  
713 *Goodrich v. Edwards*, 41 5. Ct. 390, 255 U.S. 527, 65 L. Ed 758. "*Income* is something that *has*  
714 *grown out of capital, leaving the capital unimpaired and intact.*" *Gavit v. Irwin*. (D.C.) 275 F.  
715 643, 645. "Income is used...in law in contradistinction [contrast, opposition] to *capital*." 21 C.J.  
716 397. "Income, [gains and profits] ...is something produced by capital without impairing such  
717 capital, the property being left intact. and nothing can be called income which takes away from  
718 the property itself" - *Sargent Land Co. v. Von Baumbach*, (D.C.), 207 F. 423, 430. (Emphasis  
719 added).

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

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

727 U.S. Supreme Court *GOODRICH v. EDWARDS*, 255 U.S. 527 (1921) 255 U.S. 527  
728 *GOODRICH v. EDWARDS*, Collector of Internal Revenue.No. 663. Argued March 10 and 11,  
729 1921. Decided March 28, 1921. Mr. Justice CLARKE delivered the opinion of the Court.  
730 ..... "And the definition of 'income' approved by this Court is: "The gain derived from capital,  
731 from labor, or from both combined, provided it be understood to include profits gained through  
732 sale or conversion of capital assets.'" *Eisner v. Macomber*, 252 U.S. 189, 207, 40 S. Sup. Ct. 189,  
733 193 (64 L. Ed. 521, 9 A. L. R. 1570)."...

734 U.S. Supreme Court *MILES v. SAFE DEPOSIT & TRUST CO. OF BALTIMORE*, 259 U.S.  
735 247 (1922) 259 U.S. 247 *MILES*, Collector of Internal Revenue, v. *SAFE DEPOSIT & TRUST*

736 CO. OF BALTIMORE. No. 416. Argued Dec. 16, 1921. Decided May 29, 1922. Mr. Justice  
737 PITNEY delivered the opinion of the Court. ...."In that as in other recent cases this court has  
738 interpreted 'income' as including gains and profits derived through sale or conversion of capital  
739 assets, whether done by a dealer or trader, or casually by a non-trader, as by a trustee in the  
740 course of changing investments. Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 517-  
741 520, 41 Sup. Ct. 386, 15 A. L. R. 1305"....

742 "[1]... The meaning of income in its everyday sense is a gain... the amount of such gain  
743 recovered by an individual in a given period of time." Webster's Seventh New Collegiate  
744 Dictionary, p. 425 "Income is more or less than realized gain." Shuster v. Helvering, 121 F. 2d  
745 643 (2nd Cir. 1941). "it [income] is not synonymous with receipts." 47 C.J.S. Internal Revenue  
746 98, p. 226."

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

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

756 "...I therefore recommend an amendment imposing on all corporations an excise tax measured by  
757 2% in the net income of such corporations. This is an excise on the privilege of doing business as  
758 an artificial entity." President Taft, Congressional Record, June 16, 1909, Pg. 3344.

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

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

765 "[The Pollock court] recognized the fact that taxation on income was in its nature an excise  
766 entitled to be enforced as such unless and until it was concluded that to enforce it would amount  
767 to accomplishing the result which the requirement as to apportionment of direct tax was adapted  
768 to prevent, in which case the duty would arise to disregard the form and consider the substance  
769 alone and hence subject the tax to the regulation of apportionment which otherwise as an excise  
770 would not apply." Brushaber v. Union Pacific RR Co., 240 US 1 (1916).

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

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

783 The 16<sup>th</sup> Amendment overturned the Pollock Decision by way of a constitutional amendment  
784 allowing income taxes on net income from real estate and personal property to be levied  
785 according to the rule of uniformity instead of the rule of apportionment.

786 "Indeed, in light of the history which we have given and of the decision in the Pollock Case, and  
787 the ground upon which the ruling in that case was based, there can be no escape from the  
788 conclusion that the (16<sup>th</sup>) Amendment was drawn for the purpose of doing away from the future  
789 with the principle upon which the Pollock Case was decided." *Brushaber v. Union Pac. R.R. Co.*,  
790 240 U.S. 1, 18 (1916).

791 Decided cases have made the distinction between wages and income and have refused to equate  
792 the two in withholding or similar controversies. See *Peoples Life Ins. Co. v. United States*, 179  
793 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); *Humble Pipe Line Co. v. United States*, 194 Ct. Cl.  
794 944, 950, 442 F.2d 1353, 1356 (1971); *Humble Oil & Refining Co. v. United States*, 194 Ct. Cl.  
795 920, 442 F.2d 1362 (1971); *Stubbs, Overbeck & Associates v. United States*, 445 F.2d 1142  
796 (CA5 1971); *Royster Co. v. United States*, 479 F.2d, at 390; *Acacia Mutual Life Ins. Co. v.*  
797 *United States*, 272 F. Supp. 188 (Md. 1967).

798 "It is a basic principle of statutory construction that courts have no right first to determine the  
799 legislative intent of a statute and then, under the guise of its interpretation, proceed to either add  
800 words to or eliminate other words from the statute's language." *DeSoto Securities Co. v.*  
801 *Commissioner*, 235 F.2d 409, 411 (7th Cir. 1956); see also 2A *Sutherland Statutory Construction*  
802 § 47.38 (4th ed. 1984).

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

804 "At the very threshold of the case is the question whether an income tax is, under the provisions  
805 of the fourteenth amendment of the state constitution, a property tax, as the respondents contend,  
806 or whether it is an excise tax, as appellants contend. That question has recently been squarely  
807 presented to this court and has been definitely determined by it." *Culliton v. Chase*, 174 Wash.  
808 363, 25 P.2d 81.

809 In that case, it was held that the state income tax law of 1932 (initiative measure 69, chapter 5,  
810 Laws of 1933, p. 49, Rem. 1933 Sup., SS 11200-1 et seq.) was unconstitutional and void.  
811 Although four members of the court dissented, it was held by the majority that, under our  
812 constitution, income is property, and that an income tax is a property tax, and not an excise tax.  
813 Nothing was said, or intended to be suggested, in any of the opinions that the court, as then  
814 constituted, had receded from its former emphatic declaration that, under our constitution,  
815 income is property, and that an income tax is a property tax." *Jensen v. Henneford*, 185 Wash.  
816 209, 53 P.2d 607 (1936).

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

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

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

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

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

836 **More testimony and Case law:**

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

842 "If money is wanted by rulers who have in any manner oppressed the People, they may retain it  
843 until their grievances are redressed, and thus peaceably procure relief, without trusting to  
844 despised petitions or disturbing the public tranquility." *Continental Congress To The Inhabitants  
845 Of The Province Of Quebec. Journals of the Continental Congress. 1774 -1789. Journals 1: 105-  
846 13.*

847 "Although the [enforcement] power provisions of the Internal Revenue Code are to be liberally  
848 construed, a court must be careful to insure that its construction will not result in a use of the  
849 power beyond that permitted by law." United States v. Humble Oil & Refining Co., 488 F.2d  
850 953 at 958 (5th Cir. 1974).

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

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

860 "A statute must be set out in terms that the ordinary person exercising ordinary common sense  
861 can sufficiently understand and comply with, without sacrifice to the public interest." *See Arnett*  
862 *v. Kennedy*, 416 U.S. 134, 159, 40 L. Ed. 2d 15, 94 S. Ct. 1633 (1974) (quoting *United States*  
863 *Civil Serv. Commission v. National Association of Letter Carriers*, 413 U.S. 548, 579, 37 L. Ed.  
864 *2d* 796, 93 S. Ct. 2880 (1973).

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

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

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

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