

Attachment A - Jeffrey Thomas Maehr

What is Constitutional "Income?"

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

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

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

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

This attachment provides such evidence against this "presumption."

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

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

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

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

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

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

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

61 26 CFR 39.21-1 (1956).. Meaning of net income. (a) The tax imposed by chapter 1 is
62 upon income. Neither income exempted by statute or fundamental law, nor expenses
63 incurred in connection therewith, other than interest, enter into the computation of net
64 Income as defined by section 21

65 26 CFR 39.22(b)-1 Exemption--Exclusions from gross income. Certain items of income

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

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

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

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

75 The IR Code defines "income" as:

76 Section 22 GROSS INCOME:

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

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

84 My gross income is NOT a "gain, profit or income," that is "DERIVED FROM" anything
85 but my labor, which is NOT my "profit." Actual "gross income," as defined in IR Code,
86 and in keeping with case law and Congressional records, is any "profit" or "gain" that is
87 "derived FROM" my income. Example: I receive \$10,000 wage for service or labor
88 provided. This is an equal exchange, with NO "material difference" in the exchange -
89 (*Material difference case law - COTTAGE SAVINGS ASSN v. COMMISSIONER, 499*
90 *U.S. 554 (1991)*). My labor or service is equal in value to the payment (or other
91 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
93 income I received, as interest, or what is termed "unearned income." I exerted NO
94 personal labor, (which I own,) and received an actual "profit" or "gain" from the
95 investment. THIS, and ONLY this "gain," is possibly taxable, but ONLY according to
96 constitutional law across the country, and ONLY according to other personal tax liability

97 defined in IR Code and the issues presented throughout this document. The actual
98 principle amount is NOT diminished in any way, and ONLY the profit or gain "DERIVED
99 FROM" the principle is possibly taxable. The tax is for the privilege of gaining MORE
100 wealth, and the tax is for the functioning of government at the same time.

101 "Income Tax: A tax on the yearly profits arising from property, professions and trades,
102 and 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
104 from business pursuits." Levi v. City of Louisville, 30 S.W. 973, 974, 97 Ky. 394, 28
105 L.R.A. 480.

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

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

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

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

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

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

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

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

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

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

161 "In our opinion that section, in particular mentioned, in an invasion of the personal
162 liberty, as well as of the right of property, guaranteed by that Amendment (Fifth). Such

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

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

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

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

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

198 "We conclude that if one's gambling activities pursued full-time, in good faith, and with
199 regularity, to the production of income for a livelihood, and is not a mere hobby, it is a

200 trade or business within the meaning of the statutes which we are here concerned.
201 Respondents Groetzinger satisfied that test in 1978. Constant and large -- scale effort
202 on his part was made. Skill was required and supplied. He did what he did for a
203 livelihood, though with a less than successful result. This was not a hobby or a passing
204 fancy or an occasional debt for amusement." Commissioner v. Groetzinger, 480 U.S. 23
205 (1987).

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

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

221 IR Code Sections 1001, 1011 and 1012 and their regulations, 26 C.F. R. Sections
222 1.1001-1(a) 1.1011-1 and 1.1012-1(a), provide the method for determining the gain
223 derived from the sale of property:

224 Section 1001(a);

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

228 Section 1001(b);

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

232 Section 1011:

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

236 Section 1012:

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

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

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

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

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

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

262 "In principle, there can be no difference between the case of selling labor and the case

263 of selling goods." Adkins v. Children's Hospital, 261 U.S. at 558.

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

267 "It could hardly be denied that a tax laid specifically on the exercise of those freedoms
268 would be unconstitutional... A state [or federal government-JTM] may not impose a
269 charge for the enjoyment of a right (working-JTM) granted by the federal Constitution." -
270 Murdock v Pennsylvania, 319 US 105, at 113; 480-487; 63 S Ct at 875; 87 L Ed at 1298
271 (1943).

272 "The statute and the statute alone determines what is income to be taxed. It taxes only
273 income 'derived' from many different sources; one does not 'derive income' by
274 rendering services and charging for them." Edwards v. Keith, 231 F. 110 (2nd Cir.
275 1916).

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

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

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

287 The term [liberty] ... denotes not merely freedom from bodily restraint but also the right
288 of the individual to contract, to engage in any of the common occupations of life... and
289 generally to enjoy those privileges long recognized at common law as essential to the
290 orderly pursuit of happiness by free men... The established doctrine is that this liberty
291 may not be interfered with, under the guise of protecting public interest, by legislative
292 action..." Meyer v. Nebraska, 262 U.S. 390, 399, 400. referencing also Slaughter-House
293 Cases, 16 Wall. 36; Butchers' Union Co. v. Crescent City Co., 111 U.S. 746, 4 Sup. Ct.
294 652; Yick Wo v. Hopkins, 118 U.S. 356, 6 Sup. Ct. 1064; Minnesota v. Barber, 136 U.S.
295 313, 10 Sup. Ct. 862; Allegeyer v. Louisiana, 165 U.S. 578, 17 Sup. Ct. 427; Lochner
296 v. New York, 198 U.S. 45, 25 Sup. Ct. 539, 3 Ann. Cas. 1133; Twining v. New Jersey

297 211 U.S. 78 , 29 Sup. Ct. 14; Chicago, B. & Q. R. R. v. McGuire, 219 U.S. 549 , 31 Sup.
298 Ct. 259; Truax v. Raich, 239 U.S. 33 , 36 Sup. Ct. 7, L. R. A. 1916D, 545, Ann. Cas.
299 1917B, 283; Adams v. Tanner, 224 U.S. 590 , 37 Sup. Ct. 662, L. R. A. 1917F, 1163,
300 Ann. Cas. 1917D, 973; New York Life Ins. Co. v. Dodge, 246 U.S. 357 , 38 Sup. Ct.
301 337, Ann. Cas. 1918E, 593; Truax v. Corrigan, 257 U.S. 312 , 42 Sup. Ct. 124; Adkins
302 v. Children's Hospital (April 9, 1923), 261 U.S. 525 , 43 Sup. Ct. 394, 67 L. Ed. --;
303 Wyeth v. Cambridge Board of Health, 200 Mass. 474, 86 N. E. 925, 128 Am. St. Rep.
304 439, 23 L. R. A. (N. S.) 147."

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

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

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

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

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

326 I have the freedom and right to value my labor at any amount, and can, therefore,
327 accept ANY amount of income as equal value to any labor or service I provide any
328 party. Anything short of this that is taxed is clearly due to slave labor, and is theft by
329 coercion, fraud and conversion, and is clearly unconstitutional and against common law
330 and case law. (See Attachments C and that the legal application of taxation against
331 some citizen's are those that are in the "employee" of the IRS and U.S. Government -

332 See 26 USC 3401(d)).

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

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

336 John has hundred dollar bills but needs some twenty dollar bills. Mary has twenty dollar
337 bills, but needs some hundred dollar bills. They agree to work for each other because
338 John wants some twenties for his \$100 bills, and Mary wants some \$100 bills for her
339 twenties. They agree to work for each other for the day. John agrees to give Mary one,
340 one hundred dollar bill for the day, and Mary agrees to give John 5, twenty dollar bills
341 for the day. At the end of the day's work for each other, they pay each other, or,
342 exchange the bills. Question: Which one of them has made a "profit" from the exchange
343 made?

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

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

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

362 Another example: A company, receives money for services or products provided. This
363 money is received and used by all those engaged as part of this enterprise. This cash or
364 money is NOT considered a "profit" for this company because of expenses, costs of
365 doing their work or service. After all wage expenses, material costs, and purchases to

366 improve their business, the remaining money is, today, being classified as "income."
367 However, the cash or money... compensation or whatever that a private individual
368 receives, IS considered a "profit" even though THEY, too, have costs and expenses in
369 providing THEIR labor, which they spent money in various ways to be able to provide.

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

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

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

378 Section 22 GROSS INCOME:

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

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

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

393 "An unapportioned direct tax on anything which is not income would be
394 unconstitutional." - *C.I.R. v. Obeir-Nester Glass Co.*, C.A. 7, 1954, 217 F.2d, 75 S. Ct.
395 570 348 U.S. 982, 99L.Ed. 764, 75 S. Ct. 870, 349 U.S. 948, 99 L. Ed. 1274.

396 "When a court refers to an income tax as being in the nature of an excise, it is merely

397 stating that the tax is not on the property itself, but rather it is a fee for the privilege of
398 receiving gain from the property. The tax is based upon the amount of the gain, not the
399 value of the property." C.R.S. Report Congress 92-303A (1992) by John R. Lackey,
400 Legislative attorney with the library of Congress:

401 "The meaning of "income" in this amendment is the gain derived from or through the
402 sale or conversion of capital assets: from labor or from both combined; not a gain
403 accruing to capital or growth or increment of value in the investment, but a gain, a profit,
404 something of exchangeable value, proceeding from the property, severed from the
405 capital however employed and coming in or being "derived", that is, received or drawn
406 by the recipient for his separate use, benefit, and disposal." Taft v. Bowers, N.Y. 1929,
407 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460.

408 "It becomes essential to distinguish between what is, and what is not "income"...
409 Congress may not, by any definition it may adopt, conclude the matter, since it cannot
410 by legislation alter the Constitution, from which alone it derives its power to legislate,
411 and within whose limitations alone, that power can be lawfully exercised....[Income is]
412 Derived--from--capital--the--gain--derived--from--capital, etc. Here we have the essential
413 matter--not gain accruing to capital, not a growth or increment of value in the
414 investment; but a gain, a profit something of exchangeable value...severed from the
415 capital however invested or employed, and coming in, being "derived," that is received
416 or drawn by the recipient for his separate use, benefit and disposal-- that is the income
417 derived from property. Nothing else answers the description.... "The words 'gain' and
418 'income' mean the same thing. They are equivalent terms..." - Congressional Globe,
419 37th Congress 2nd Session, pg. 1531.

420 "The word "income" as used in this [16th] amendment does not include a stock
421 dividend, since such a dividend is capital and not income and can be taxed only if the
422 tax is apportioned among the several state in accordance with Art. 1 Sec. 2, cl.3 and
423 Art. 1, Sec. 9, cl. 4 of the Constitution." Eisner v. Macomber. N.Y. 1929, 40 5.Ct 189,
424 252 U.S. 189, 64 L.Ed. 521.

425 "[Income is] derived--from--capital--the--gain--derived--from--capitol, etc. Here we have
426 the essential matter--not gain accruing to capitol, not growth or increment of value in the
427 investment; but a gain, a profit, something of exchangeable value...severed from capitol
428 however invested or employed and coming in, being "derived", that is received or drawn
429 by the recipient for his separate use, benefit and disposal--that is the income derived
430 from property. Nothing else answers the description...". [emphasis in original]... "After
431 examining dictionaries in common use (Bouv. L.D.; Standard Dict.; Webster's Internat.
432 Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases
433 arising under the Corporation Tax Act of 1909 (Stratton's Independence v. Howbert, 231
434 U.S. 399, 415; Doyle v. Mitchell Bros. Co, 247 U.S. 179, 185) "Income may be defined

435 as the gain derived from capital, from labor, or from both combined, provided it be
436 understood to include profit gained through a sale or conversion of capital assets..."
437 Doyle v. Mitchell, 247 U.S. 179-185 (1920); Stratton's Indep. v. Howbert, 231 U.S. 339
438 (1913); So. Pacific v. Lowe, 247 U.S. 330 (1918); Eisner v. Macomber, 252 US 189
439 (1920); Merchant's Loan v. Smietanka, 255 U.S. 509 (1921).

440 "The claim that salaries, wages, and compensation for personal services are to be taxed
441 as an entirety and therefore must be returned by the individual who has performed the
442 services which produce the gain is without support, either in the language of the Act or
443 in the decisions of the courts construing it. Not only this, but it is directly opposed to
444 provisions of the Act and to regulations of the U.S. Treasury Department, which either
445 prescribed or permits that compensations for personal services not be taxed as a
446 entirety and not be returned by the individual performing the services. It has to be noted
447 that, by the language of the Act, it is not salaries, wages or compensation for personal
448 services that are to be included in gross income. That which is to be included is gains,
449 profits, and income derived from salaries, wages, or compensation for personal
450 services." The United States Supreme Court, Lucas v. Earl, 281 U.S. 111 (1930)

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

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

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

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

469 "It is not a function of the United States Supreme Court to sit as a super-legislature and

470 create statutory distinctions where none were intended. " American Tobacco Co. v.
471 Patterson, 456 US 63, 71 L Ed 2d 748, 102 S Ct. 1534 (1982)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

548 "There is a clear distinction between 'profit' and 'wages' and compensation for labor.
549 Compensation for labor CANNOT be regarded as profit within the meaning of the law.
550 The word 'profit,' as ordinarily used, means the gain made upon any business or
551 investment---a different thing altogether from mere compensation for labor." - Oliver v.
552 Halstead, 86 S.E. Rep. 2d 859. (1955).

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

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

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

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

570 The Preface of 1939 Internal Revenue Code states:

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

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

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

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

589 "Simply put, pay from a job is a 'wage,' and wages are not taxable. Congress has taxed
590 INCOME, not compensation (wages and salaries)." - Conner v. U.S. 303 F Supp. 1187
591 (1969).

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

597 **Congressional Testimony:**

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

602 (1909)

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

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

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

615 Louisiana Civil Code: "Art. 551. Kinds of fruits; "Fruits are things that are produced by or
616 derived from another thing without diminution of its substance. There are two kinds of
617 fruits; natural fruits and civil fruits. Natural fruits are products of the earth or of animals.
618 Civil fruits are revenues derived from a thing by operation of law or by reason of a
619 juridical act, such as rentals, interest, and certain corporate distributions."

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

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

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

635 "The legislature has no power to declare as a privilege and tax for revenue purposes,
636 occupations that are of common right" Sims vs. Ahrens, 167 Ark. 557; 271 S.W. 720,
637 730-733 (1925).

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

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

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

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

664 "We are of the opinion that a tax on the gross income of an individual is embraced by
665 the words "capitation, or other direct tax," in the Constitution, and should be assessed
666 and collected on the principle of apportionment and not of uniformity, and that the
667 several sections of the Internal Revenue act imposing such tax are therefore
668 unconstitutional. We are further of opinion that no decision of the Supreme Court of the
669 United States precludes this view, or discourages the expectation that it will receive the
670 sanction of the court. On the contrary, there are dicta and suggestions in the only

671 decisions bearing upon the subject which tend to confirm the opinion we have
672 expressed." 13 Internal Revenue Record 76.

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

688 "...it [income] should include *profit gained through a sale or conversion of capital*
689 *assets*'. There would seem to be no room to doubt that the word must be given the
690 same meaning in all of the Income Tax Acts of Congress that it was given to it in the
691 Corporation Excise Tax Act, and what that meaning is has now become definitely
692 settled by decisions of this court. In determining the definition of the word "income" thus
693 arrived at, this court has consistently refused to enter into the refinements of
694 lexicographers or economists and has approved, in the definitions quoted, what is
695 believed to be the commonly understood meaning of the term ['gains and profits'] which
696 must have been in the minds of the people when they adopted the Sixteenth
697 Amendment to the Constitution..."Merchants Loan & Trust Co. v. Smietanka. 225 U.S.
698 509, 518, 519 (1923).

699 "Before the 1921 Act this Court had indicated (see Eisner v. Macomber, 252 U.S. 189,
700 207, 64 L.ed 521, 9 A.L.R. 1570, 40 S. Ct. 189), what it later held, that 'income,' as used
701 in the revenue acts taxing income, adopted since the 16th Amendment, has the same
702 meaning that it had in the Act of 1909. Merchants; Loan & T. Co. v. Smietanka, 255
703 U.S. 509, 519, 65 L.ed. 751, 755, 15 A.L.R. 1305, 41 S. Ct. 386; see Southern Pacific
704 Co. v. Lowe. 247 U.S. 330, 335, 62 L.ed. 114, 1147, 38 S. Ct. 540." Burnet vs. Harmel
705 287 US 103.

706 "... the Corporation Tax, as imposed by Congress in the Tariff Act of 1909, is not a direct
707 tax but an excise; it does not fall within the apportionment clause of the Constitution; but
708 is within, and complies with, the provision for uniformity throughout the United States; it

709 is an excise on the privilege of doing business in the corporate capacity..."

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

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

721 "The obligation to pay an excise is based upon the voluntary action of the person taxed
722 in performing the act, enjoying the privilege, or engaging in the occupation which is the
723 subject of the excise, and the element of absolute and unavoidable demand is lacking."
724 People ex rel. Atty Gen. v Naglee, 1 Cal 232; Bank of Commerce & T. Co. v. Seater,
725 149 Tenn. 441, 381 Sw 144.

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

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

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

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

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

759 Black's 3rd Law Dictionary: Income: "Income is the gain which proceeds from [the
760 investment of capital received from] labor, business or property;..." Trefry v. Putnam,
761 116 N.E. "Income is the *gain* derived from capital, from labor or from both combined;
762 something of exchangeable value, proceeding from the property, severed from the
763 capital...and drawn by the recipient for his separate use..." Eisner v. Macomber, 40 S.
764 Ct 189, 252 U.S. 189, L. Ed. 521, 9 A.L.R. 1570. Goodrich v. Edwards, 41 5. Ct. 390,
765 255 U.S. 527, 65 L. Ed 758. "*Income* is something that *has grown out of capital, leaving*
766 the capital unimpaired and intact." Gavit v. Irwin. (D.C.) 275 F. 643, 645. "Income is
767 used...in law in contradistinction [contrast, opposition] to *capital*." 21 C.J. 397. "Income,
768 [gains and profits] ...is something produced by capital without impairing such capital, the
769 property being left intact. and nothing can be called income which takes away from the
770 property itself" - Sargent Land Co. v. Von Baumbach, (D.C.), 207 F. 423, 430.

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

773 "Income, as defined by the supreme Court means, 'gains and profits as a result of
774 corporate activity and profit gained through the sale or conversion of capital assets.'" Stanton v. Baltic Mining Co. 240 U.S. 103, Stratton's Independence v. Howbert 231 U.S.
775 399. Doyle v. Mitchell Bros. Co. 247 U.S. 179, Eisner v. Macomber 252 U.S. 189, Evans
776 v. Gore 253 U.S. 245, Merchants Loan & Trust Co. v. Smietanka 225 U.S. 509. (1921).
777

778 U.S. Supreme Court GOODRICH v. EDWARDS, 255 U.S. 527 (1921) 255 U.S. 527
779 GOODRICH v. EDWARDS, Collector of Internal Revenue.No. 663. Argued March 10

780 and 11, 1921. Decided March 28, 1921. Mr. Justice CLARKE delivered the opinion of
781 the Court."And the definition of 'income' approved by this Court is: "The gain
782 derived from capital, from labor, or from both combined, provided it be understood to
783 include profits gained through sale or conversion of capital assets.'" Eisner v.
784 Macomber, 252 U.S. 189, 207, 40 S. Sup. Ct. 189, 193 (64 L. Ed. 521, 9 A. L. R.
785 1570)."...

786 U.S. Supreme Court MILES v. SAFE DEPOSIT & TRUST CO. OF BALTIMORE, 259
787 U.S. 247 (1922) 259 U.S. 247 MILES, Collector of Internal Revenue, v. SAFE DEPOSIT
788 & TRUST CO. OF BALTIMORE. No. 416. Argued Dec. 16, 1921. Decided May 29,
789 1922. Mr. Justice PITNEY delivered the opinion of the Court."In that as in other
790 recent cases this court has interpreted 'income' as including gains and profits derived
791 through sale or conversion of capital assets, whether done by a dealer or trader, or
792 casually by a non-trader, as by a trustee in the course of changing investments.
793 Merchants' Loan & Trust Co. v. Smietanka, 255 U.S. 509, 517-520, 41 Sup. Ct. 386, 15
794 A. L. R. 1305"....

795 "[1]... The meaning of income in its everyday sense is a gain... the amount of such gain
796 recovered by an individual in a given period of time." Webster's Seventh New Collegiate
797 Dictionary, p. 425 "Income is more or less than realized gain." Shuster v. Helvering, 121
798 F. 2d 643 (2nd Cir. 1941). "it [income] is not synonymous with receipts." 47 C.J.S.
799 Internal Revenue 98, p. 226."

800 "[2] Whatever may constitute income, therefore, must have the essential feature of gain
801 to the recipient. This was true when the 16th amendment became effective, it was true
802 at the time of the decision in Eisner v. Macomber (supra), it was true under section
803 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the
804 Internal Revenue Code of 1954. If there is no gain, there is no income." Conner v.
805 United States. 303 F. Supp. 1187 (1969) pg. 1191

806 **INCOME TAX:** Blacks Law Dictionary - 2nd Edition: "A tax on the yearly profits arising
807 from property, professions, trades and offices." -See also 2 Steph. Comm 573. Levi v.
808 Louisvill, 97 Ky. 394, 30 S.W. 973. 28 L.R.A. 480; Parker Insurance Co., 42 La. Ann
809 428, 7 South. 599.

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

814 While a "cash dividend" represents profit to the shareholder, and is thus "income" under

815 the 16th Amendment, a "stock dividend" is not profit that has been "severed from
816 capital" as is required to meet the definition of income under the 16th Amendment (ibid,
817 Eisner).

818 The Eisner quote featured above clearly illustrates that the apportionment clause of the
819 Constitution is alive and well and has not been repealed or substantially altered by the
820 16th Amendment.

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

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

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

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

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

850 Decided cases have made the distinction between wages and income and have refused
851 to equate the two in withholding or similar controversies. See Peoples Life Ins. Co. v.
852 United States, 179 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); Humble Pipe Line Co. v.
853 United States, 194 Ct. Cl. 944, 950, 442 F.2d 1353, 1356 (1971); Humble Oil & Refining
854 Co. v. United States, 194 Ct. Cl. 920, 442 F.2d 1362 (1971); Stubbs, Overbeck &
855 Associates v. United States, 445 F.2d 1142 (CA5 1971); Royster Co. v. United States,
856 479 F.2d, at 390; Acacia Mutual Life Ins. Co. v. United States, 272 F. Supp. 188 (Md.
857 1967).

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

863 **To further show the IRS' confusing the income tax issue, we have the following:**

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

869 In that case, it was held that the state income tax law of 1932 (initiative measure 69,
870 chapter 5, Laws of 1933, p, 49, Rem. 1933 Sup., SS 11200-1 et seq.) was
871 unconstitutional and void. Although four members of the court dissented, it was held by
872 the majority that, under our constitution, income is property, and that an income tax is a
873 property tax, and not an excise tax. Nothing was said, or intended to be suggested, in
874 any of the opinions that the court, as then constituted, had receded from its former
875 emphatic declaration that, under our constitution, income is property, and that an
876 income tax is a property tax." Jensen v. Henneford, 185 Wash. 209, 53 P.2d 607
877 (1936).

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

881 However, since income has been ruled as "property," and such property is obviously
882 used in the production of income, under excise tax laws, such income can possibly
883 become subject to excise taxation, of course, under the rules of uniformity ONLY. In

884 addition to this, under 26 U.S.C 212, "all the ordinary and necessary expenses paid or
885 incurred during the taxable year" for the production of income and for "the management,
886 conservation, or maintenance of property held for the production of income..." would be
887 tax deductible from ANY income taxes we would otherwise be subject to.

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

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

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

898 **More testimony and Case law:**

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

904 "If money is wanted by rulers who have in any manner oppressed the People, they may
905 retain it until their grievances are redressed, and thus peaceably procure relief, without
906 trusting to despised petitions or disturbing the public tranquility." *Continental Congress
907 To The Inhabitants Of The Province Of Quebec. Journals of the Continental Congress.
908 1774 -1789. Journals 1: 105-13.*

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

913 "Under the facts and the law, the Court should satisfy itself, via sworn testimony of the
914 Defendant, that the IRS is not acting arbitrarily and capriciously, and that there was a
915 plausible reason for believing fraud is being practiced on the revenue. The Court is free

916 to act in a judicial capacity, free to disagree with the administrative enforcement actions
917 if a substantial question is raised or the minimum standard is not met. The District Court
918 reserves the right to prevent the "arbitrary" exercise of administrative power, by nipping
919 it in the bud." *United States v. Morton Salt Co.*, 338 U.S. 632, 654.

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

922 "A statute must be set out in terms that the ordinary person exercising ordinary common
923 sense can sufficiently understand and comply with, without sacrifice to the public
924 interest." See *Arnett v. Kennedy*, 416 U.S. 134, 159, 40 L. Ed. 2d 15, 94 S. Ct. 1633
925 (1974) (quoting *United States Civil Serv. Commission v. National Association of Letter*
926 *Carriers*, 413 U.S. 548, 579, 37 L. Ed. 2d 796, 93 S. Ct. 2880 (1973).

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

932 Petitioner Challenges the mandatory nature of filing a 1040 form:

933 "The tax system is based on **voluntary** compliance..." 26 CFR 601.602

934 " The income tax system is based upon **voluntary compliance, not distraint.**" United
935 States Supreme Court, *Flora v. United States*, 362 US 145. *Helvering v Mitchell*, 303
936 U.S. 391, 399, 82 L ed 917, 921

937 "The IRS's primary task is to collect taxes under a voluntary compliance system--
938 Jerome Kurtz, IRS Commissioner.

939 "Our tax system is based on individual self-assessment and voluntary compliance."
940 Mortimer Caplin, IRS Commissioner. Internal Revenue Audit Manual (1975) .

941 "Each year American taxpayers voluntarily file their tax returns..." Johnnie Walters, IRS
942 Commissioner.

943 "Let me point this out now. **Your income tax is 100 percent voluntary tax**, and your
944 liquor tax is 100 percent enforced tax. Now **the situation is as different as day and**

945 **night.** Consequently, your same rules just will not apply," Testimony of Dwight E. Avis,
946 Head of the Alcohol and Tobacco Tax Division of the Bureau of Internal Revenue,
947 before the House Ways and Means committee on Restructuring the IRS (83rd
948 Congress, 1953).

949 "The United States has a system of taxation by confession." - Hugo Black, Supreme
950 Court Justice, in U.S.A. Kahriger.

951 "Only the rare taxpayer would be likely to know that he could refuse to produce his
952 records to IRS agents... Who would believe the ironic truth that the cooperative taxpayer
953 fares much worse than the individual who relies upon his constitutional rights." - Judge
954 Cummings, U.S. Federal Judge, in US. v. Dickerson (7th Circuit 1969).

955 **Voluntary:** 1) 1 : proceeding from the will or from one's own choice or consent
956 2 : unconstrained by interference : self-determining
957 3 : done by design or intention : intentional
958 4 : of, relating to, subject to, or regulated by the will
959 5 : having power of free choice
960 6 : provided or supported by voluntary action
961 7 : acting or done of one's own free will without valuable consideration **or legal**
962 **obligation.** Webster's Dictionary.

963 **Distrain::** 1) to force compulsion, 2) to seize and hold goods of another in order to
964 obtain satisfaction of a claim for damages, 3) to levy a distress. - Webster's Dictionary.

965 Voluntary compliance can only respond to a request or as a choice. It cannot and does
966 not respond to a requirement. The word "voluntary," which connotes an agreement,
967 implies willingness, volition, and intent. It suggests a freedom of choice and refers to the
968 doing of something which a person is free to do or not to do, as he so decides.

969 "In its legal aspect, and as commonly used in law, the word 'voluntary' is defined as
970 meaning gratuitous; without valuable consideration; acting, or done, of one's own free
971 will without valuable consideration, acting, or done, **without any present legal**
972 **obligation to do the thing done.**" Corpus Juris Secundum (C..J.S. 92: 1029, 1030,
973 1031).

974 In the IR Code and other government records, Petitioner also can find NO definition for
975 "dollar." On the 1040 form, Petitioner is expected to sign, under the penalty of perjury,

976 that everything is true and correct regarding "income," however, if I have no way of
977 legally defining what a "dollar" is, and there is no way for Petitioner to measure it in legal
978 terms, how can Petitioner attest to any supposed "income" being measured by "dollars"
979 as being accurate? In the days of tangible money, or sound money, or even just plain
980 money, as opposed to "credit," the dollar was easy to define: 412.5 grains of standard (
981 90% pure) silver in coin form. The 412.5 grain figure was an average; the coin weighed
982 416 when minted. When, through wear and tear, its weight fell below 409 grains, it was
983 no longer a dollar, but could be used in trade for a value in proportion to its weight. If a
984 "dollar" has no legal identity, does it actually exist as a real commodity and can it be any
985 measure of debt payment? The Constitution says NO!

986 I could voluntarily and willingly file a 1040 and pay taxes according to IRS schedules to
987 contribute to government expenses disregarding constitutional authority. I could ALSO
988 voluntarily enter into a taxable activity, such as a corporation, where excise taxes are
989 required. Petitioner "voluntarily" can enter into this taxable activity and make himself
990 potentially liable for income taxes. Petitioner chooses to do neither.

991 Since the "income" tax is "voluntary," how can the IRS or other government agencies
992 force payment, especially without due process of law? How can it be made a "law"
993 which all Americans are forced to comply with? The "voluntary" nature of income tax
994 payment seems to be a facade that allows the Respondent to receive funds under the
995 color of law, causing Petitioner to self-assess, freely, outside the constitution regarding
996 "income" taxes.

997 If the Constitutional law, and IR Code "law" support Respondent's position on "income"
998 taxes, then why doesn't the Respondent simply take the figures they have for most
999 Americans, reported by employers routinely, and legally assess them and make this
1000 whole thing much easier, and less costly for the Respondent in trying to track down
1001 those who supposedly do NOT comply? This would also save the public many billions
1002 of dollars each year alone in dealing with this activity.

1003 The Constitution and case law are clear; Petitioner is NOT made liable to pay taxes on
1004 wages, salary and compensation for work performed, and since the Respondent cannot
1005 "Constitutionally" collect taxes themselves, depends on ignorance and "willful"
1006 compliance with what is believed to be "law." In any case, **fraud is still involved with
1007 this scheme, violating Petitioner's Constitutional Rights.**

1008 "WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY,
1009 THEY MUST BE KNOWINGLY INTELLIGENT ACTS DONE WITH SUFFICIENT
1010 AWARENESS OF THE RELEVANT CIRCUMSTANCES AND CONSEQUENCES."
1011 Brady v. U.S. 397 U.S. 742 at 748.

1012 **Based upon the above evidence, I, Jeffrey T. Maehr, believe beyond any doubt that**
1013 **“income” is NOT “wages, salary or compensation,” and therefore does not apply to my**
1014 **wages, salary or compensation, and excludes me from being a “taxpayer,” and any liability**
1015 **for filing a 1040 form, or reporting wages, salary or compensation, or maintaining records**
1016 **of same, until proven otherwise in law. If this can be refuted, please do so to comply with**
1017 **IR Code requirements - “Provide America's taxpayers top quality service by helping them**
1018 **understand and meet their tax responsibilities and by applying the tax law with integrity**
1019 **and fairness to all.”**

1020 _____
1021 **Jeffrey T. Maehr**