Rebutting the Fair Tax

"It's not what they say that worries me. It's what they keep quiet."

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"…by the previous ruling it was settled that the provisions of ***the 16th Amendment conferred no new power of taxation****…"*
Stanton v. Baltic Mining Co, 240 U.S. 103, 112 (1916)

"We must reject...the broad contention submitted in behalf of the government that all receipts...everything that comes in...are income".
Southern Pacific v. Lowe, 247 U.S. 330 (1918)

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Disclaimer

Lest my intentions be misconstrued, and to cover both my cheeks, the information I give in this research paper is purely educational in nature. I give no advice to anyone, legal or otherwise. I am only sharing information I have discovered, conclusions I have drawn from it, and putting it in the form of persuasive political speech, which I have the right to express. It's up to you to verify the information. You are on your own! This document is revised from time to time to reflect newly-acquired information.

Introduction

Undoubtedly, the Fair Tax has gained a lot of ground since one of its co-authors, Neal Boortz, an attorney by trade, is a talk-show host who rubs elbows with Congress members. He is making lots of money with his book on the subject and… more power to him! I listen to him most every day on WSKY 97.3 FM (The SKY) broadcasting from the beautiful city of Gainesville, Florida. However, I do not enjoy his notoriety, his resources, the caliber of his acquaintances, and the advantages of having millions of people choosing to listen to "the high priest of the church of the painful truth." I'm not an attorney, although I am a paralegal and have studied the law for over fifteen years, out of necessity, I might add. In 1962, I was a "legal" immigrant from Cuba and naturalized in 1976. I fell in love with this country when I learned at Miami Edison Jr. High School the Christian foundations of this country and the protections of unalienable rights its constitution guarantees. My credentials lag way behind Mr. Boortz's, but my zeal for research and my passion for the rights the Creator endowed upon me will match his any day. I may have one advantage in lagging behind Mr. Boortz: the law has to be written in such a way that a common man or woman of average intelligence should not be forced to "guess at its meaning and differ as to its application."[1] Uncertain statutes do not provide us "notice" of what conduct is forbidden and are violative of due process protected by the 5th and 14th Amendments to the Constitution. The Court has also found as void for vagueness those statutes that permit arbitrary or discriminatory enforcement. Since common people of average intelligence includes most Americans, they could have the excuse that they don't understand what the law is trying to make them do or what it is trying to keep them from doing.

This short research paper presents information not so easy to find for the common American of average intelligence but will impact their lives—our lives—dramatically. It will show that the Fair Tax, as well as the Flat Tax, is not within the initial intent of the Framers of the Constitution, it is unauthorized by the Constitution itself, it is dangerous to the people of this nation and, honestly, it is unnecessary. It is easy to drool with lust at the thought of getting rid of the IRS, which is one of the promises of the Fair Tax. However, most Americans are unaware that right under our noses there has always been a legal way to rid ourselves of the IRS' hounding our lives even if it remains part of our government. Since the IRS is constantly on the prowl for money, it only offers enough information ensuring its end game. What it *doesn't* say is the "truth hidden in the law." We, on the other hand,

[1] *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

because of our ignorance, willful or otherwise, have provided more than our apportioned "fair share" (which really should be "legal share") of money and information with it. I hope that this essay helps you to rethink the Fair Tax and the perceived need for it, the role of the IRS and Title 26 (the IRS Code), and Framers' initial intent for taxation based on the well-established principal that our labor is an unalienable right of the highest order, our greatest possession, and the source of all property and gain.

If there is one thing that thrills me more than the Tea Party Movement itself it is its cry to "Obey the Constitution", to "Return to the Constitution". To me, a conservative, it is music to my ears. It means that we have strayed from the initial intent of its Framers. I remember shouting the same phrase in front of the Supreme Court building in Washington back in 1999 with Bob Schulz and We The People Congress. But what does the cry mean when it comes to taxation? How is it that we have strayed from the Constitution with our current system?

Paradigm Shift

On Tuesday, June 15, 2010, T.J. Hart, program director of The SKY (WSKY fm 97.3 talk radio) graciously gave me 40 minutes out of his busy schedule to present to him what is the presumption upon which our income tax system relies every April 15th. I had several documents in logical order; one building upon the previous. The first document was a letter I received from the IRS on April 21, 2010. Marilyn Lorenz signed for Ivy S. McChesney, Field Director, Accounts Management, Philadelphia (Exhibit 1). Ms. Lorenz's letter answered a simple request I made of the President and eighty members of our government in January of 2009. Via certified mail, return receipt requested, I made the request twice to President Obama (Exhibit 2), Florida Senator Bill Nelson, Florida Representative Cliff Stearns, Florida Senator Mel Martinez, Florida Representative Corrine Brown, Secretary of the Treasury Timothy Geithner, IRS Commissioner Douglas Shulman, Chairman of the Ways and Means Oversight John Lewis, Chairman of the Senate Committee On Finance Max Baucus, and Representative Ron Paul. Senator Nelson was the only one that responded, but his response did not answer my request and was threatening for merely asking (Exhibit 3). Now, a year-and-a-half and two April 15s later, I get an answer from President Obama through the IRS. The request was this: Please fill in the blank: the definition of the word "income" is found in Title 26 Section _____." (I had also posted this request on President Obama's public access web site.) Ms. Lorenz's response was this: "The Code does not define the term 'income'. Gross income, not income, is the starting point for determining an individual's federal income tax liability. The term "gross income" is defined in section 61 of the Code." So, according to the IRS itself, the Code, a.k.a., Title 26 or the IRC (Internal Revenue Code) fosters doubt as to what income really is. In *White v. Aronson*, 58 S. Ct. 95, 302 U.S. 16 (1937), the United States Supreme Court said this about the law being intelligible to its readers: "Where there is a reasonable doubt as to the meaning of a taxing Act, it should be construed most favorably to the taxpayer. *Gould v. Gould*, 245 U.S. 161. "Tax laws, like all other laws, are made to be obeyed. They [302 U.S. Page 21] should therefore be intelligible to those who are expected to obey them." *Philadelphia Storage Battery Co. v. Lederer*, 21 F.2d 320, 321, 322."

The Code does not define "income"?! At this point in time, T. J. was clueless as to what income meant. So how is a common man or woman of average intelligence supposed to know what gross income, net income, ordinary income, and taxable income are? If I were to substitute the word

income with bleepblop everywhere it appears in the Code, would it make its meaning clearer? How can an adjective clarify the meaning of a noun that is not defined within its context? Ms. Lorenz and Title 26 section 61 depend on my connecting the dots with what I THINK it means; thus, the illusion that "income is everything that comes in." They count on my ignorance, willful or otherwise, to create a perception, a belief, of duty enforced by fear, guns, jail, false guilt and hostile ridicule for not paying my "fair share".

Back in March of 2009, I went to the Palatka Walmart and approached the Jackson Hewitt kiosk to ask tax preparer Donna Davenport where in the Code was the word "income" defined so I would know what type of documentation to bring to her. The first thing she does is pull out is Publication 17, the "bible" for tax preparers like Jackson Hewitt and H. & R. Block. She goes to the index, looks under income, turns to the page corresponding to the word, and starts reading what the publication says. I thanked her but I told her that the publication was not the Code; it talks *about* the Code. I wanted the actual law. Ms. Davenport told me that it would take some time to research it, so I told her I would do some shopping and come back in about 30 minutes. When I got back, a friend of hers began to argue with me about my inquiry as if I were some kind of terrorist. The conversation ended up in Ms. Davenport threatening to call security on me. I was amazed how these common women of average intelligence defended a tax system that did not define its fundamental word. To Ms. Davenport's credit, she did do the research on Cornell University Legal Information Institute, http://www.law.cornell.edu, and found Section 64, Ordinary Income Defined. It includes any **gain** from the sale or exchange of property that is neither a capital asset nor property. That little word is the cornerstone of the presumption of what most Americans believe 100% of their wages, salaries, and compensation for services are.

At this point is when I showed T. J. court cases. The very fact that I have to go to court cases to find out what "income" means tells me that most common Americans of average intelligence are out of the loop automatically when it comes to their knowing what their duty is concerning "income" taxes. Any man or woman should be able to pick a statute, any statute, read it, and know what the law expects of them. Not here! Not with the IRS and Title 26! Court decisions (judicial law) do not give the general population "notice" about anything. It does not tell the general population what their duty is. They are the "law" of the particular case applicable only to its particular parties, no one else. Only legislative law (Laws of Florida codified in the statues for our State and the Statutes at Large codified in the federal Codes) give us notice of our duty.

Before I showed T. J. the court cases, I showed him the Internal Revenue Manual (IRM), section 4.10.7.2.9.8 (05-14-1999) Importance of Court Decision (Exhibits 4-1 and 4-2). Paragraph 2 of that section says that "Certain court cases lend more weight to a position than others. A case decided by the **U.S. Supreme Court** becomes the law of the land and takes precedence over decisions of lower courts. **The Internal Revenue Service must follow Supreme Court decision.** For examiners, [Jackson Hewitt, H. & R. Block, and IRS agents] **Supreme court decisions have the same weight as the Code.**" As of September 22, 2010, this section of the IRM has not changed (Exhibit 5). In this paper, those cases with "U.S." in their citations are Supreme Court decisions, bolded and underlined below. Although the Manual is from 1999, I can't imagine that in 2010 Supreme Court decisions are no longer the "law of the land" or don't have the same weight as the Code. Keeping in the forefront of our minds the little word "gain", here are some decisions, from both Supreme Court and Federal Appellate courts:

1. ***Eisner v. Macomber***, 40 S. Ct. 189, 252 **U.S.** 189 (U.S. 1920). After examining dictionaries in common use (*Bouv. L.D.*; *Standard Dict.*; *Webster's Internat. Dict.*; *Century Dict.*), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 (*Stratton's Independence v. Howbert*, 231 U.S. 399, 415; *Doyle v. Mitchell Bros. Co.*, 247

U.S. 179, 185) -- "Income may be defined as the **gain** derived **from** capital, **from** labor, or **from** both combined," provided it be understood to include **profit** gained through a sale conversion of capital assets, to which it was applied in the *Doyle* Case (pp. 183, 185). [This case is the landmark case defining "income". That is why it is repeatedly cited in the cases below.]

2. ***Goodrich v. Edwards***, 41 S. Ct. 390, 255 **U.S.** 527 (U.S. 1921). The increase in value of property held for investment, when realized by sale, is not "income" within the meaning of the Sixteenth Amendment. Income here is to be taken as having the meaning commonly understood and judicially defined. *Eisner v. Macomber*, 252 U.S. 189; *McCulloch v. Maryland*, 4 Wheat. 316, 407. **Prior** to the Amendment, income had been **judicially defined** by this court in *Gray v. Darlington*, 15 Wall. 63, by the highest courts of many of the States in the law of estates and trusts, and by the courts of Great Britain and of the British Dominions and **Colonies** in construing their income tax laws, as **excluding** increment of value realized upon the sale of property held for investment. To the same effect as *Gray v. Darlington*, was the opinion of Mr. Justice Grier in *Bennet v. Baker* (footnote to 15 Wall. 67), and the judgment of the Circuit Court in Chicago, *Burlington & Quincy R.R. Co. v. Page*, 1 Biss. 461, 466. This court followed and approved *Gray v. Darlington* in *Lynch v. Turrish*, 247 **U.S.** 221. It must reasonably be presumed that Congress, when it proposed the **Sixteenth Amendment**, and the state legislatures, when they ratified it, intended to adopt this **judicial interpretation and definition** of the word income.

3. ***Merchants' Loan & Trust Company v. Smietanka***, 41 S. Ct. 386, 255 **U.S.** 509 (U.S. 1921). "The Corporation Excise Tax Act of August 5, 1909, c. 6, 36 Stat. 11, 112, was not an income tax law, but a definition of the word "income" was so necessary in its administration that in an early case it was formulated as 'the **gain** derived **from** capital, **from** labor, or **from** both combined.' *Stratton's Independence v. Howbert*, 231 **U.S.** 399, 415. This definition, frequently approved by this court, received an addition, in its latest income tax decision, which is especially significant in its application to such a case as we have here, so that it now reads: 'Income may be defined as the **gain** derived **from** capital, **from** labor, or **from** both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets." *Eisner v. Macomber*, 252 **U.S.** 189, 207.

4. ***Conner v. U.S.***, 303 F.Supp. 1187 (1969), the Court stated that ". . . whatever may constitute income, therefore, must have the essential feature of **gain** to the recipient. This was true when the 16th Amendment became effective, it was true at the time of *Eisner v. Macomber*, 252 **U.S**. 189 (1920), supra, it was true under Section 22(a) of the Internal Revenue Code of 1938, and it is likewise true under Section 61(a) of the I.R.S. Code of 1954 [Ms. Lorenz mentions Section 61 in her letter to me]. If there is not **gain**, there is not income. . . .Congress has taxed income not compensation."

5. ***Lauderdale Cemetery Assoc. v. Matthews***, 345 Pa. 239, 47 A.2d 277, 280 (1946), "Reasonable compensation for labor or services rendered is not profit [**gain**]."

6. ***Oliver v. Halstead***, 86 S.E. 2d 859 (1955), the Court stated that: "There is a clear distinction between 'profit' [**gain**] and 'wages', or a compensation for labor. Compensation for labor (wages) cannot be regarded as profit within the meaning of the law. The word 'profit', as ordinarily used, means the **gain** made upon any business or investment - a different thing altogether from the mere compensation for labor."

Now we have to look at a totally different branch of jurisprudence to see what type of money is NOT considered "income": tort litigation and the restoration of "capital".

7. ***Murphy v. Internal Revenue Service***, 460 F.3d 79 (D.C.Cir. 08/22/2006), a.k.a., *Murphy I.*

"* * * [T[he Supreme Court, as Murphy points out, has long recognized 'the principle that a restoration of capital [i]s not income; hence it [falls] outside the definition of 'income' upon which the law impose[s] a tax.' *O'Gilvie*, 519 U.S. at 84; see, e.g., *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179, 187-88 (1918); *S. Pac. Co. v. Lowe*, 247 U.S. 330, 335 (1918) (return of capital not income under IRC or Sixteenth Amendment). * * * **The Sixteenth Amendment simply does not authorize the Congress to tax as "incomes" every sort of revenue a taxpayer may receive**. As the Supreme Court noted long ago, the "Congress cannot make a thing income which is not so in fact." *Burk-Waggoner Oil Ass'n v. Hopkins*, 269 U.S. 110, 114 (1925). Indeed, because the "the power to tax involves the power to destroy," *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819), **it would not be consistent with our constitutional government, and the sanctity of property in our system, merely to *rely upon the legislature* to decide what constitutes income**. Fortunately, we need not rely solely upon the wisdom and beneficence of the Congress for, when the Sixteenth Amendment was drafted, the word "incomes" had well understood limits. To be sure, the Supreme Court has broadly construed the phrase "gross income" in the IRC and, by implication, the word "incomes" in the Sixteenth Amendment, but it also has made plain that the power to tax income extends only to "**gain[s]**" or "accessions to wealth." *Glenshaw Glass*, 348 U.S. at 430-31. That is why, as noted above, the Supreme Court has held a "**return of capital**" **is not income**. *Doyle*, 247 U.S. at 187; *S. Pac. Co.*, 247 U.S. at 335. * * * [T]he Supreme Court has also instructed that, in defining "incomes," we should **rely upon** "the **commonly understood meaning of the term** which must have been **in the minds of the people when they adopted the Sixteenth Amendment**." *Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509, 519 (1921). And, to discern the original understanding of a provision of the Constitution, we must examine any contemporaneous implementing legislation. See *Myers v. United States*, 272 U.S. 52, 175 (1926)("This court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution ..., acquiesced in for a long term of years, fixes the construction to be given its provisions"); see *Macomber*, 252 U.S. at 202 (district judge correctly treated "construction of the [Revenue Act of 1913] as inseparable from the interpretation of the Sixteenth Amendment") Therefore, we must inquire whether "the people when they adopted the Sixteenth Amendment," or the Congress when it implemented the Amendment, would have understood compensatory damages for a nonphysical injury to be "income." * * * **If an individual is possessed of a personal right that is not assignable and not susceptible of any appraisal in relation to market values, and thereafter receives either damages or payment in compromise for an invasion of that right, it can not be held that he thereby derives any gain or profit**. * * * **it is not hard to understand that not all receipts of money are income**.

Murphy I states that "[i]n *Commissioner v. Schleier*, 515 **U.S.** 323 (1995), the Supreme Court held that before a taxpayer may exclude compensatory damages from gross income pursuant to § 104(a)(2), he must first demonstrate that "the underlying cause of action giving rise to the recovery [was] 'based upon tort or tort type rights.' " Therefore, "**return of capital**" awarded as compensatory damages "in lieu of" capital that would have been acquire (earned) by working and subsequently lost by an accident or other tort event, is the money or other valuable

considerations received as even exchange for life expended in the free exercise of the inherent right to labor, and, thus, is not income (gain or accession to wealth). Here are some more cases addressing “human capital”:

8. ***Murphy v. Internal Revenue Service***, No. 05-5139 (D.C. Cir. 2007), a.k.a., *Murphy II*. In *Commissioner v. Schleier*, 515 U.S. 323 (1995), the Supreme Court held that before a taxpayer may exclude compensatory damages from gross income pursuant to § 104(a)(2), he must first demonstrate that "the underlying cause of action giving rise to the recovery [was] 'based upon tort or tort type rights.' " * * * Noting the Supreme Court has long recognized "the principle that a **restoration of capital** [i]s **not** income; hence it [falls] outside the definition of 'income’ upon which the law impose[s] a tax," *O'Gilvie*, 519 U.S. at 84; see, e.g., *Doyle v. Mitchell Bros. Co.*, 247 **U.S.** 179, 187-88 (1918); *S. Pac. Co. v. Lowe*, 247 **U.S.** 330, 335 (1918), Murphy contends a damage award for personal injuries - including nonphysical injuries - should be viewed as a return of a particular form of capital - "**human capital**," as it were. See Gary S. Becker, HUMAN CAPITAL (1st ed. 1964); Gary S. Becker, The Economic Way of Looking at Life, Nobel Lecture (Dec. 9, 1992), in NOBEL LECTURES IN ECONOMIC SCIENCES 1991-1995, at 43-45 (Torsten Persson ed., 1997). In her view, the Supreme Court in *Glenshaw Glass* acknowledged the relevance of the **human capital** concept for tax purposes. There, in holding that punitive damages for personal injury were "gross income" under the predecessor to § 61, the Court stated:

> “The long history of...holding personal injury recoveries nontaxable on the theory that they roughly correspond to a return of capital cannot support exemption of punitive damages following injury to property.... Damages for personal injury are by definition compensatory only. Punitive damages, on the other hand, cannot be considered a restoration of capital for taxation purposes. 348 U.S. at 432 n.8. By implication, Murphy argues, damages for personal injury are a "restoration of capital." * * * 1918 Opinion of the Attorney General:
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> “Without affirming that the human body is in a technical sense the "capital" invested in an accident policy, in a broad, natural sense the proceeds of the policy do but substitute, so far as they go, capital which is the ***source*** of ***future*** **periodical income** [gain]. They merely take the place of capital in human ability which was destroyed by the accident. They are therefore "capital" as distinguished from "income" [gain] receipts.” 31 Op. Att'y Gen. 304, 308; see T.D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918); Sol. Op. 132, I-1 C.B. 92, 93-94 (1922) ("[M]oney received ... on account of ... defamation of personal character ... does not constitute income within the meaning of the sixteenth amendment and the statutes enacted thereunder"). She also cites a House Report on the bill that became the Revenue Act of 1918. H.R. Rep. No. 65-767, at 9-10 (1918) ("Under the present law it is doubtful whether amounts received ... as compensation for personal injury ... are required to be included in gross income"); see also *Dotson v. United States*, 87 F.3d 682, 685 (5th Cir. 1996) (concluding on basis of House Report that the "Congress first enacted the personal injury compensation exclusion ... when such payments were considered the return of **human capital**, and thus not constitutionally taxable 'income' under the 16th amendment").

Within a year, the *Murphy II* Court reversed its own holding in *Murphy I* that “the compensatory damages [she received] for emotional distress and loss of reputation” were “human capital”, which by the way, is highly suspicious. However, the Court affirms the Supreme Court’s long-recognized "principle that a **restoration of capital** [i]s **not** income; hence it [falls] outside the definition of 'income’ upon which the law impose[s] a tax." If compensation for personal (bodily,

physical) injury is considered as a restoration of human capital because the human body is the "base" from which income (gain) may derive, and injury to that body destroys that "base", then that body's exertion of effort in labor is capital which is returned if injured, and not income (gain). The human body does not exert effort in labor for, does not work for, emotional distress, loss of reputation, and for punitive damages.

9. ***Chamberlain v. United States***, 401 F.3d 335 (5th Cir. 02/18/2005) "*Francisco v. United States*, 267 F.3d 303 (2001). *fn47 The court began its analysis by observing that "[t]he principle underlying § 104(a)(2) [the exclusion of compensatory damages as gross income] is known as the '**human capital**' rationale." *fn48 The court found that this rationale limited the application of section 104(a)(2) to "those damages that, making up for a loss, seek to make a victim whole, or, speaking very loosely, 'return the victim's **personal or financial capital**.'" *fn61 See I.R.C. § 61(a)(4) (West 2002) (specifically providing that "interest" is taxable as gross income); *Comm'r v. Glenshaw Glass Co*., 348 **U.S.** 426, 430 (1955) (characterizing taxable income as, inter alia, "**gain** derived **from** *capital*, **from** *labor*, or **from** both combined." (quoting *Eisner v. Macomber* , 252 U.S. 189, 207 (1920) (emphasis added)); *United States v. Smith* , 890 F.2d 711, 715 (5th Cir. 1989) (stating that monies received as a return of invested capital are non-taxable); *Cagle v. Comm'r* , 539 F.2d 409, 413 (5th Cir. 1976) ("To the extent a partner's compensation was considered a return of his own capital, that partner received no taxable income."); *Durkee v. Comm'r* , 162 F.2d 184, 186 (6th Cir. 1947) ("It is settled that since profits from business are taxable, a sum received in settlement of litigation based upon a loss of profits is likewise taxable; but where the settlement represents damages for lost capital rather than for lost profits the money received is a return of capital and not taxable."); see also *Lukhard v. Reed* , 481 **U.S.** 368, 387 (1987) (Powell, J., dissenting) ("In *Glenshaw Glass*, the Court observed that '[d]amages for personal injury are by definition compensatory only,' and cited "[t]he long history of departmental rulings holding personal injury recoveries nontaxable on the theory that they roughly correspond to a return of capital . . . ." (citations omitted)).

10. ***Roemer v. Commissioner of Internal Revenue***, 716 F.2d 693 (9th Cir. 1983). "*fn2 It was thought that there was no **gain** and therefore no income as income was then defined by the Supreme Court. *Eisner v. Macomber*, 252 **U.S.** 189, 207, 64 L. Ed. 521, 40 S. Ct. 189 (1920) (income is **gain** derived **from** capital or labor). Revenue Act of 1918, § 213(b)(6), 40 Stat. 1066, discussed in H. Rep. No. 767, 65th Cong., 2d Sess. (1918), reprinted in 1939-1 (Part 2) C.B. 86, 92. The Supreme Court later made it clear that the *Eisner* definition of income was not exclusive and that other realized accessions to wealth may be taxable income. *Commissioner v. Glenshaw Glass Co.*, 348 **U.S.** 426, 431, 99 L. Ed. 483, 75 S. Ct. 473 (1955) (punitive damages for fraud and antitrust violations are taxable income). Since there is no tax basis in a person's health and other personal interest, money received as compensation for an injury to those interests might be considered a realized accession to wealth. Nevertheless, Congress in its compassion has retained the exclusion (now codified at I.R.C. § 104(a)(2))."

Here is the text of I.R.C. § 104(a)(2):

> **§ 104. Compensation for injuries or sickness**
> (a) **In general**
> Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, **gross income does not include—**
> (2) the amount of any **damages** (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of **personal physical injuries or physical sickness**…

Now that we have the judicial definition, let's rewrite the Sixteenth Amendment substituting income with "gain":

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

How do cases #7-10 above shed light on the rewriting of the 16th Amendment? It is clear, then, that the 16th Amendment did not change anything because taxes on income or gains, not capital, were always constitutional. However, the Fair Tax proponents, the Tax Court, and Congress, rely on our uneducated belief that income is "**all receipts of money**", i.e., "everything that comes in", *Murphy I*, supra.

I included cases #7-10 because they introduce the concept of "human capital". I looked in my *Black's Law Dictionary*, both the 4th and 6th editions, and neither one defines "human capital" as far as I can tell. These cases deal with the difference between compensatory (compensation) and punitive (punishment) damages ("damages" usually refers to money) when it comes to gross income. Basically, and curiously, Congress and the courts have exempted compensatory damages (compensation money for lost wages) from being included in gross income (**gain**) because they are considered a "**return** of **capital**", a return of loss of money that would have been acquired through labor prior to, say, an accident. The courts did not use the words "return of **gain**". Gain comes from capital; it is the fruit of capital. If you cut the capital "tree" down, you will not get the gain "fruit". Could that be the reason why Congress showed the "compassion" in I.R.C. § 104(a)(2)? I think it was more than "compassion" that Congress excluded compensatory damages (personal injury, for instance) from gross income. Without being obvious, without saying it, Congress knew that our labor is a fundamental right. The "pursuit of happiness" is the phrase the Framers used to replace the word "property" in the Declaration of Independence. For me, happiness comes when I work hard, save money, and buy the "property" I have had my eye on. Here's what the Supreme Court said about what property is in *Butchers' Union Co. v. Crescent City Co*., 111 **U.S.** 746, 4 S.Ct. 652 (1884), Jutice Field's Concurrence, starting at page 756:

> "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people: '**We hold these truths to be self-evident**' **—** that is so plain that their truth is recognized upon their mere statement — 'that all men are endowed' — not by edicts of Emperors, or decrees of Parliament, or acts of Congress, but 'by their **Creator** with certain inalienable rights' — that is, rights which cannot be bartered away, or given away, or taken away except in punishment of crime — 'and **that among these are life, liberty, and the pursuit of happiness, and to secure these' — not grant them but secure them — 'governments are instituted** among men, deriving their just powers from the consent of the governed.'
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> "**Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation,** . . .

> "It has been well said that, **'The property which every man has is his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable.** . . .' *Adam Smith's Wealth of Nations,* Bk. I. Chap. 10."

In other words, when somebody is injured or dies in an accident, he or a family member, respectively, can sue for "damages" of loss of the ability to work or for the loss of the life-worth (human capital) of the person who was injured or died, i.e., loss of the ability to pursue happiness by obtaining property. The "return of human capital" is the return of the money someone would have earned, would initially have had, if the injury never occurred. Ask Stephen Mercadante of Gainesville, my professor at Santa Fe who taught me tort law. Punitive damages, on the other hand, are outside the ability to work. They are a punishment for the injury done. That is why they **are** included in gross income if a jury awards it. I know this is a lot of "legalese", but without it, the common man of average intelligence will remain in the dark. When it comes to taxes, no one can afford that luxury!

So, if my life is worth X-amount of money measured per hour or per job, that money is my human capital **from which** I may actualize "gain" if and when I want to. Many Americans are not so fortunate; they spend the money they make from salaries, wages, and compensation just to make ends meet, just to keep themselves alive for another day of earning the equivalent of their "human capital". They don't have "left over money" from which they might actualize some **gain**.

Here is an example: You want to trade in your car at the dealership for another car of a different make. The trade-in value of your car is the same as cost of the new car you want to buy. How much sales tax do you pay on the transaction? Zero, Zilch, Nada! Why? Because there has been an even exchange of value in the trade. There has been no gain or "income" on which to calculate a sales tax. Your life is the "car" you want to trade and the human capital is the "new car" you want to buy. If they are both of equal monetary value, i.e., $26.00 (capital) per hour (life), the gain is zero; thus, no income (gain) tax.

If, in cases #7-10, there is a return of capital after an accident, why is there no return of capital before the accident when I want my employer to pay me the full amount of the labor I performed for him under contract without him taking out any withholding tax? If something is returned to me, don't I have to own it first before it qualifies to be returned? Why is it that my accountant or tax attorney does not consider my even exchange of time (my life, which I can never recoup) for money (capital) as a wash, as not a gain? Why is it that they consider wages, salaries, tips, etc., as stated in 2010 Publication 17 (Exhibit 6-1 of 3), page 7 (Exhibit 6-2 of 3), as 100% gain and not 100% capital as Congress sees it after an accident? Why is it that Publication 17 and the 1040 Instruction booklets keep this information quiet or obscured? Or do they really?

The next piece of the puzzle I handed to T. J. was page 9 from the 2009 Publication 17 (text is the same as the 2010 Pub., pg.7) addressing the use of the 1040A. Page 7 states "You can use Form 1040A if all of the following apply: 1. Your **income** is *only* **from** wages, salaries, tips…" How would this sentence read if I replace the word "income" with its judicial definition: gain? It would read like this: "You can use Form 1040A if all of the following apply: 1. Your **gain** is only **from** wages, salaries, tips…" Page 31 of the 2010 publication (Exhibit 6-3 of 3; pg 33 of the 2009 Pub.) defines "gross income": "Gross income is all income in the form of money, property and services that is **not exempt** from tax." I remember hearing my fourth grade elementary school teacher say in our grammar class that, to define a word, you don't use the word you are defining in its definition. I wonder the education level of the person writing Publication 17 (or Title 26 for that matter). Anyway, here is how the sentence would read replacing the word "income" with "gain": "Gross **gain** is all **gain** in the form of money, property and services that is not exempt from tax." If, according to United States Supreme Court and federal appellate courts decisions **salaries, wages, or**

compensation for personal services that are **excluded** from gains, profits, and income derived from salaries, wages, or compensation for personal services, and if, according to the Internal Revenue Manual, Supreme Court decisions supersede the Manual and are the "law of the land" to them, then why does the IRS (and federal judges, the President, and the eight Congress members I wrote, some of which are Republicans) continue to promulgate the illusion that salaries, wages, compensation, tips, etc., as if they were gain when they are not? Is this intentional?

Finally, I gave T. J. the last third of attorney Tom Cryer's Memorandum of Law which he filed in the IRS criminal case against him, of which the jury acquitted him. From page 88 to the end, he explains why "human capital" exists before an accident and why it exists in the form of your weekly, bi-monthly, or monthly pay, or the money you receive per job. If you choose to continue your education on the matter to destroy the "presumption" that wages are 100% gain, go to http://www.truthattack.org/jml/images/stories/PDF/cryer_MEMORANDUM.pdf and download the entire file. More like a treatise, his Memorandum is the most comprehensive writing I have read on the history of the income tax and how it applies, or does not apply, to most of us. Make sure you have a highlighter and a pencil to write your questions and comments on the margins.

So We the Common People of average intelligence are caught in a quandary: we can't pick up Title 26 and find out for ourselves what the word "income" means. We have to somehow become accountants, paralegals or lawyers to find its "judicially defined" meaning. If we don't have the time or money to educate ourselves, we have to spend the money on a tax lawyer and/or accountant, trusting they have done their homework. Their homework, however, most likely stops at Publication 17. If they see our W-2s as 100% "income" or gain, we pay on that money without being able to "deduct" our food, electric, mortgage or rent, medical bills, automobile expenses, entertainment, Gainesville Health and Fitness yearly dues, vitamins, etc., all which we need to be healthy and stay ALIVE! We can't labor if we are sick or DEAD! "It is not what they say that worries me; it is what they keep silent."

Congress Is the Culprit

There is one final bit of information that is relevant. It has to do with Tax Court. There are two types of courts at the federal level: those that are established under Article III of the Constitution for the united States of America and those established under Article I. Article III, obviously, is the Article establishing the judiciary. Article I establishes the Congress or the legislative branch of the federal government. Initially, the Tax Court was not a court at all. It was a Board under the executive branch (Article II). Since those on the Board were making judicial-like decision, they wanted life tenure as Article III judges. After the political dust settled, in 1969 House Resolution 13494 passed and the Tax Court was created under Congress.[2]

Why is this important? With the Tea Party great influence on elections resulting in the avalanche 2010 election of conservatives to the House, the ball is now in their court to do something about the misconceptions and vagueness about Title 26, the Code of Federal Regulations, and Tax

[2] Harold Dubroff, *The United States Tax Court, An Historical Analysis*, Commerce Clearing House, Inc. (Chicago 1979) pp. 213-215.

Court rules. Congress is the branch that writes Title 26. Its member-lawyers in the House, Ways and Means Committee[3] know or should know of the inherent vagueness of Title 26. The Oversight Subcommittee Chair John Lewis (D-GA) knows that "[w]ith respect to matters involving the Internal Revenue Code [Title 26] and other revenue issues, said concurrent jurisdiction shall be shared with the full Committee." If we should not "merely rely on the legislature [Congress] what constitutes income", the least they can do is have the IRS cite the dicta in the *Murphy* and other cases in Publication 17 and Title 26. On March 24, 2009, I sent Mr. Lewis a certified letter asking him the same question I asked Fla. Senator Bill Nelson and President Obama. He never replied.

If anything, Tea Party members should hold the newly-elected Congress members accountable for what Title 26 DOES NOT say. They should hold the conservative House accountable for Tax Court abuses for turning a blind eye to IRS violations of what *is* clear in Title 26.

For at least eleven years, Mr. Bob Schulz and the We the People Foundation (http://www.wethepeoplefoundation.org)[4] has been asking members of Congress to the Press Club in Washington to answer a myriad of legal questions concerning Title 26. To date, ALL of them have never filled their assigned chairs at the panel table. The Tea Party has been going on for a long time.

Why Not the Fair Tax?

What does all this have to do with the Fair Tax? I'm sure by now you were wondering if I would ever connect the dots. Well, first of all, I have not seen anywhere on the Fair Tax website from which I got my information, any definition of the word "income". Without it, the whole proposition is misleading, relying on what we *think* the word means. Without it, every time we read the word on the web site or in the book *Fair Tax: The Truth* we think of our hard-earned money instead of the gain that it may or may not produce. The application of the current tax system and the Fair Tax rely on our ignorance. That ignorance is a fundamental necessity for both.

Second, it is my understanding that the Constitution we all want the government to return to does not allow Congress to impose a sales tax on goods and services directly on the people of the several States. Remember, the Constitution empowers and limits ONLY the federal government. ("Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution." *United States v. Morrison*, 529 **U.S.** 598, 607 (2000).) The Supreme Court would have to rule that the Fair Tax falls within the authority of Article 1 Section 8. The text of Article I, Section 8 is "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and **Excises**, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and **Excises** shall be uniform throughout the United States."

Article I, section 8 empowers the federal government to impose excise taxes. As defined in *Black's Law Dictionary*, Sixth Edition, excise means "a tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege. A tax on the manufacture, sale, or use of goods or on the carrying on of an occupation or activity…". An excise tax is an indirect tax. As

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[3] http://waysandmeans.house.gov/subcommittees/Default.aspx/oversight, accessed Nov. 8, 2010. House Committee on Ways & Means, 1102 Longworth House Office Building, Washington, DC 20515. Phone: (202) 225-3625 Fax: (202) 225-2610.

[4] Visit also http://freedomabovefortune.com, website of Joe Banister, ex-IRS criminal investigation division special agent.

defined in *Black's*, an indirect tax is "a tax upon some right or privilege or corporate franchise; e.g., privilege tax; franchise tax." From these definitions, it appears that an excise indirect tax has generally been imposed on corporations, not people. The Fair Tax seeks to have Congress impose an excise indirect tax on the people's consumption activity. [5] However, our activity of buying goods and services is not a corporate privileged activity. So, where in the Constitution is there authority to impose a sales tax?

Third, repealing the Sixteenth Amendment might, in theory, get rid of the IRS (although ObamaCare has commissioned the IRS to administrate it), it will not affect Article I, Section 2, Clause 3, and Article I, Section 9, Clause 4 of the Constitution because the Amendment never repealed them. Respectively, their text is as follows: "Representatives and **direct** taxes shall be apportioned among the several States *** according to the respective Number, *** actual Enumeration" and "No Capitation, or other **direct** Tax shall be laid, unless in Proportions to the Census or Enumeration hereinbefore directed to be taken." The apportionment of Representatives and **direct** taxes are fused at the hip by enumeration of the people. The way we apportion Representatives through districting must be also the way **direct** taxes (taxes on property; our labor is our most inviolable property) must be apportioned. Graduated taxes are not apportioned taxes. Why would repealing the Sixteen Amendment have no legal affect on these two sections of the Constitution we want so much to return to? The Supreme Court gave us the answer in *Stanton v. Baltic Mining Co*, 240 U.S. 103, 112 (1916): "…by the previous ruling it was **settled** that the provisions of the 16th Amendment conferred **NO NEW** power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of **indirect** taxation [excise; remember Article I, Section 8?] to which it inherently belonged, and being placed in the category of **direct** taxation [compensation, property] **subject to apportionment**…" (Emphasis added). Congress' power to impose **indirect** or **excises taxes** under Article I, Section 8 was never subject to apportionment; **direct** taxes are. The Sixteen Amendment NEVER changed that.

What the Sixteenth Amendment did do is keep "income" (**gain**) taxation in the category of indirect taxes by taking out the apportionment provision[6]. However, because the definition of "income" is not in the Code but in Supreme Court decisions, the people have adopted the custom of defining it as "everything that comes in." Congress and the IRS have allowed that erroneous customary use of the word to continue; they will never "cut off their nose to spite their face" in admitting that. The Sixteenth Amendment ADDED NOTHING to Congress' power to tax. Therefore, repealing it affects NOTHING except perhaps getting rid of the IRS. I am 100% for that! But, thanks to ObamaCare, that won't happen any time soon. If the Fair Tax were to succeed, since the repealing of the Sixteenth Amendment would not affect the tax clauses of the Constitution, then Congress will have a double-barreled shot gun pointed at our wallets: the Fair Tax AND Article I, sections 2 and 9.

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[5] Initially, nothing related to the federal Constitution applied to the States unless specifically stated, giving the federal government jurisdiction only over specific people and activities within a specific, federally-owned, geographic areas. Only after the Fourteenth Amendment did any part of the federal Constitution, i.e., the Bill of Rights, becomes applicable to the States, starting with the freedom of speech and press in 1923 and ending with the incorporation of the Second Amendment in 2010 (*McDonald v. Chicago*). The only way "income" taxes can apply to the people is via apportionment.

[6] By the way, the federal courts are in conflict and split, not only within the federal judiciary but also with their respective state courts, on whether "income" tax is a direct or indirect tax. That presents a huge due process problem. See attorney Larry Becraft's brief on the subject at http://home.hiwaay.net/~becraft/UNCERTAIN.html.

That is financial and economic homicide. The two tax sections of the Constitution would have to be repealed first and a different one allowing for a national sales tax ratified.

One danger of the Fair Tax is that it lives and breaths on our ignorance, anger, fear, profound misconception and the purposeful misapplication of the current income (gain) tax laws. I spoke with Barb Rudelic, Marion County Community Coordinator for the Fair Tax early in 2010 and tried to explain to her how the Sixteenth Amendment gave Congress no new power to tax. She called me back leaving a voice mail message. The most telling thing she said to me was "The purpose of the Fair Tax is to replace the entire income tax system…You and I know that the income tax is unconstitutional." Income (gain) tax IS NOT unconstitutional per se; the vagueness of its laws, their misapplication, and the conflicts in court decisions concerning it are the problem. That is why the cover up is so perfect against those who don't know that the answer is in *Eisner*, not the Code or Publication 17. Replacing the current income tax system would not necessarily do away with a tax on income (gain) and could be the worst mistake we could ever make. What must be done is to burst the bubble of presumption and dismantle the propaganda the three branches of government are knowingly, willingly, and voluntarily perpetrating. The Fair Tax is a perfect political way to bury the abuse while "buying" votes.

Another danger is that the Fair Tax (or any federally-controlled tax on goods and services) will confer to Congress a tremendous **new** power of taxation it has never had. It would increase the control of government on our lives. The Fair Tax calculations of 23% (a percentage still on the Fair Tax web site) were made pre-Obama, pre bail-outs. With the current 15.5+ trillion-dollar debt (according to http://www.treasurydirect.gov/NP/BPDLogin?application=np, the official site linked from http://www.publicdebt.treas.gov), I would not doubt it if the percentage to pay that debt will hit the ground running at European levels of perhaps 60% prior to the first annual adjustment. These percentages do not include State sales taxes and property taxes. As recently as March 22, 2011, on his radio show aired on WSKY in Gainesville, Florida, Neil Boortz said that, considering all the taxes Americans pay as of that date, it is about 23% "anyway". If that 23% includes an "income" tax percentage "anyway", would it not make sense that Americans would pay a SMALLER percentage of taxes today if Congress were to require that the true judicial meaning of "income" to be published in Publication 17, thus subtracting the "income" tax percentage from the 23%? Would Americans, then, not pay LESS than 23% in taxes today than if the 23% Fair Tax were to be implemented tomorrow? The answer of YES would "fall off the tree" as my Cuban mother would say (in Spanish, of course).

I personally don't trust Congress, even if it were 100% Conservative, because they still have not been forthright in exposing and rebutting the presumption that "income is everything that comes in." At the Americans for Fair Taxation web site, if you were to go to the Fair Tax Calculator at http://www.fairtax.org/site/PageServer?pagename=calculator (accessed 2010) on the second page of questions, the first question you will encounter is "What is your household's gross annual bleepblop, I mean, income? The second question is: What was the total amount that you paid in federal bleepblop, I mean income, taxes? These questions PRESUME and RELY ON Americans' perception that "income is everything that comes in." If an average working American were to apply the real, judicial definition of "income", i.e., gain, to those questions, the Fair Tax calculator would generate a zero result for him, because the number inserted for "income" would be zero. Since wages and compensation are "human CAPITAL" and not gain, there would be no "income" in that equation. Zero times anything is zero. Congress, Linder, and attorney Boortz have deceived even their most name-recognized personality Michael Reagan, Honorary Chair of the Fair Tax National Victory Campaign, of this illusion. Most Americans can keep all of our pay check right now, today. This IS our bailout, right now, today. And, by the way, this whole 2012 Presidential debate about raising taxes on the rich, taxing the poor, taxing the middle class, not taxing corporations…all that has no

meaning if the 16th Amendment did not confer Congress with new power of taxation. The apportionment clause in the Constitution is still intact and valid. So why are they talking about percentages of taxation and a graduated tax system? Just food for thought…

What's keeping the income tax "fishing hook" in our mouths other than ignorance? Withholding. Those of us who are employed are at a great disadvantage: employers are required by law to take to withhold from their employees' pay checks. How do the employees get that withholding back? By filing a 1040 and signing under penalty of perjury that their salaries, wages, tips, etc., are 100% income (gain). Had Republican Congressman John Linder and Senator Saxby Chambliss, who introduced House Resolution 25 and Senate Bill 296, respectively, shown some integrity and taken seriously the judicial definition of the word income (especially if they are attorneys as Mr. Boortz is), why did they not *first* lift their legislative "pinkies" and introduce a bill repealing the withholding requirement and remove that fishing hook from our mouths? Why did Linder not, at the very least, co-sponsor Rep. Ron Paul's bill H.R. 3601 or introduce something similar? Surely, that would have been much simpler than waiting for their Fair Tax bills to pass, waiting for the process of repealing the 16th Amendment to be completed, and waiting for the Fair Tax to overcome constitutional challenges in the Supreme Court, which probably would take years. All the while, Congress, through the IRS, would keep on raking in the bucks. Surely, that would have also been more cost-effective. According to Boortz, the research behind his book cost millions. What would have been the cost of repealing withholding laws? If anything, that money would have been better spent educating the American people about what the Supreme Court has said about "income". If anything, Boortz, Linder, and Chambliss should have burst the "income-is-everything-that-comes-in" illusion by starting with eliminating withholding. They should have told Americans—who are not paralegals, accountants, or lawyers—that their paychecks are not (or should not be construed to be) 100% gain as upheld by the courts. They should have gone FIRST for the quicker, simpler, least-expensive attempt to repair the problem. Shade-tree mechanics are familiar with this troubleshooting concept. The difference between Boortz, Linder, and Chambliss and the founding fathers is that the latter group was willing to give their lives, their fortunes, and their sacred honor. But that is much too costly, more than the cost of researching *Fair Tax: The Truth*.

So why don't Fair Taxers tell their employers, tax lawyers, accountant about this? Why don't they make the President and Congress admit to this? Because, like Boortz, Linder, and Chambliss, they are afraid. It is easier, less painful, and less costly to succumb to the "give-me-anything-but-THAT" syndrome, "THAT" being the currently misapplied income tax laws. They are afraid to suffer the same fate as Irwin Schiff, Lindsey Springer, ex-IRS agent Sherry Peel Jackson, and many others who are in (or like Richard Simkanin, died in) federal prison for their efforts in educating Americans. Fair Taxers rather give Congress brand new power to tax (the power to tax is the power to destroy), marginalize the Constitution, and ignore the fundamental right to labor than to be wrongfully railroaded into some federal prison. But if enough of them—all the Tea Partiers, all honest Republicans, Libertarians, Conservatives, Democrats, and supporters of the Fair Tax and Flat Tax who probably got on board because of their disdain for the IRS—had the courage to demand the proper application of the word bleepblop, I mean, income, then perhaps Americans would not be in the economic doo-doo pile we are in. While celebrating courage every 4th of July, let's not forget that our founding fathers were no cowards. Ex-IRS CID Special Agent Joe Banister and attorney Tom Cryer are some of the brave who have followed in their footsteps and won.

Conclusion

Americans are suffering from the "give-me-anything-but-THAT" syndrome. Most have never read any part of Title 26 (most don't even know that Title 26 is the IRS Code), have never read case law on the subject, and have never read the IRS manual. Therefore, they could not take the time to interrogate their congressional reps about the misapplication of the Code to their labor. Most likely, they are afraid to suffer loss of life, liberty and/or property for just thinking about questioning the present system and its enforcement lest they be labeled a "tax protestor". All they know is that they don't like the current system. All they want is for somebody else to give them "anything but THAT". The head-in-the-sand, uninformed mentality is very dangerous. However, they also don't know that the Fair Tax is unnecessary and economically dangerous, will give Congress even more power than they have now, and a huge waste of congressional resources with time-consuming committee debates on a new system that most likely won't pass. To the contrary, Americans need to exert the same or higher level of energy the Tea Party is now exerting supporting the Fair Tax to make Congress confess what they have kept quiet for so long. After all, Congress writes the IRS Code and the Tax Court is directly accountable to it. It is high time the federal court judges set precedent following and affirming the Supreme Court cases cited in this paper.

The "Fair" Tax is not fair because it *assumes* that there is absolutely nothing that can be done right now, today, to fix the misapplication of the income tax laws. What *is* fair (and our duty) is for proponents and supporters of the Fair Tax, as well as those who are not, to demand that Congress, for starters, repeal the statutory provision for withholding. This is doable now, today. What *is* fair (and our duty) is to demand that the Treasury Department through the Internal Revenue Service explicitly state in Publication 17 that income is "gain **from** wages and compensation" as judicially defined in the *Eisner* (1920), *Goodrich* (1921) cases above, not wages and compensation themselves. After all, wouldn't Supreme Court Justices in close proximity to the year the 16th Amendment was ratified (1916) have a better grasp about what income is and a fresher, more accurate understanding of legislative intent? Because income is judicially defined as gain, what *is* fair (and our duty) is to demand that Congress and/or the IRS abolish the statutory requirement for employers to issue and report W-2s, allowing for employees to take home their full, even-exchange money for their labor. It is not fair that Chambliss, Linder, and Boortz (and the candidates wooing Tea Partiers) have not come clean with the American people by informing them that income is not "all that comes in" and that what is taxed is gain **from** salaries, wages, and compensation. The "Fair" Tax is not fair because it intentionally obscures the fact that the people can keep all the money they earn through salaries, wages, and compensation right now, today, but employers are afraid not to withhold for fear of imprisonment. The "Fair" Tax is not fair because people who have already paid "income" tax on the sale of their property and on their labor will have to pay again when they buy goods and services with that money. What *is* fair (and our duty) is to demand that Congress and the Executive Branch dissolve agencies and cut the fat of unnecessary appropriations that are sucking us dry. Congress can do all this right now, today.

The "Fair" Tax tells Congress that we rather depend on *them* to introduce a fix to an alleged problem through unnecessary legislation—nothing new here—instead of us taking the reins and demanding that they, the justices, judges, tax attorneys, and accountant enforce what has been in the books all along. Are we so gullible to believe that Congress will be more trustworthy with the Fair Tax than they have been with the current "income" tax system? Bob Schulz and We the People

Congress have been asking for honest disclosure for more than ten years. All they have gotten is silence. There is nothing more unfair than their willful failure to disclose. We can demand that disclosure right now, today.

The Framers of the Constitution already had, and the people had already agreed to, taxing clauses in it that were fair. The "Fair" Tax is not fair because it is fomenting people's indignation by disseminating misinformation that "income taxes" are unconstitutional. It is unfair that those who have the power, the authority, the guns, the prisons, the money, the education, the human resources, the notoriety, the exposure and the influence to make clear the meaning of the words "income", "gain", and "human capital" to common Americans of average intelligence are not tripping over themselves with a zealous sense of urgency and duty to warn us of the unfounded presumptions about those words. I guess they don't do it because they just don't have to. We are in our own "legal-lala-land"…and that's just how they want it. We cannot afford to be willfully ignorant anymore.

I remember being in Edinburgh, Scotland back in 1995 on the third floor of a narrow building on High Street. This building housed a museum of Scottish history. The ceiling was very high and a banner hung from the very top to the floor. It said "No taxes on labor!" We already have that here in America, right now, TODAY.

"Someone has taken justice and hidden it in the law." – The Star Chamber

"There is no greater fool than the willfully ignorant." – Tayra Ondina Caridad Soler-Antolick

Table of Exhibits

Exhibit 1

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

WAGE AND INVESTMENT DIVISION

APR 21 2010

Ms. Tayra C. Antolick
113 Baker Road
Hawthorne, FL 32640

Dear Ms. Antolick:

I apologize for the delay in responding to your letter dated January 20, 2009, to the President of the United States, Barack Obama. You asked for the Internal Revenue code which defines the word "income".

As much as he would like to, President Obama cannot reply personally to all the correspondence he receives. Therefore, he asked the departments and agencies of the federal government to reply on his behalf in those instances where they have special authority under the law. For this reason, the White House forwarded your inquiry to me.

The federal tax law is in Title 26 of the United States Code and is reproduced separately as the Internal Revenue Code (the Code). The Code does not define the term "income." Gross income, not "income," is the starting point for determining an individual's federal income tax liability. The term "gross income" is defined in section 61 of the Code.

You can access the Code by visiting our website at www.irs.gov.

I hope this information is helpful. If I can assist you further, please call me at (215) 516-2300 or Ms. Worner, Identification Number 0530024760, at (215) 516-2510.

Sincerely,

for Ivy S. McChesney
Field Director, Accounts Management,
Philadelphia

Exhibit 2

January 20, 2009

President Barack Obama
1600 Pennsylvania Avenue
Washington, D. C. 20500

Dear Mr. President:

Congratulations on your inauguration! I pray that our God and Lord Jesus Christ will lead your steps as you seek Him to guide you on your presidential road.

I have contacted previous administrations and tax experts with the following question and none have answered me. Counting on the change you promised, I hope you will answer it:

Please tell me where in Title 26 does the law define the word "income". Since April 15th is just around the corner, I would like to read the law so I can know without a doubt what the government requires of me so I can give a tax preparer the correct documentation. A simple citation will suffice. Your prompt attention to this matter is of great importance.

Congratulations again and my God bless you and your family.

7006 3450 0002 8403 7155

Sincerely awaiting your reply,

Tayra de la Caridad Antolick

Tayra de la Caridad Antolick

PLEASE REPLY BEFORE APRIL 15

February 27, 2009

Dear President Obama,

I am painfully aware that you are busy with the economy's status but my needs are just as important as Wall Streets and the rest of the corporate giants I'm bailing out. It is important to me that you answer the above letter. There's nothing more degrading, dishonoring and maiming as silence. Please respond.

Tayra Antolick

Exhibit 3

United States Senate
WASHINGTON, DC 20510-0905

March 18, 2009

BILL NELSON
FLORIDA

Mr. and Mrs. Charles and Tayra De La Caridad Antolick
113 Baker Road
Hawthorne, Florida 32640-5709

Dear Mr. and Mrs. De la Caridad Antolick:

Thank you for contacting me with your concerns about the Internal Revenue Service and our federal income tax system.

The IRS stresses the need to maintain public confidence in the fairness of our tax laws, and is committed to ensuring that everyone pays their fair share of taxes. For as long as the income tax has existed, various groups and individuals have advocated and promoted willful noncompliance. The courts have repeatedly rejected their arguments as frivolous, and routinely impose financial penalties for raising such groundless defenses.

I appreciate you voicing your concerns, and encourage you to contact the IRS directly or visit their Web site at www.irs.gov for clarification on any questions you have regarding specific tax laws. Please don't hesitate to contact me with any future concerns.

Sincerely,

Bill Nelson

P.S. From time to time, I compile electronic news briefs highlighting key issues and hot topics of particular importance to Floridians. If you'd like to receive these e-briefs, visit my Web site and sign up for them at http://billnelson.senate.gov/news/ebriefs.cfm

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Lewis, TC, Dec. 20,733, 23 TC 538
West, TC, Dec. 19,435, 19 TC 808
Tomlinson, TC, Dec. 18,513(M), 10 TCM 828

E. **TC**—Dec. 17,553(M); 9 TCM 210

3. Explanations of the above citations are as follows:

A. Case name (Batman, Ray L.) and paragraph references to CCH Federal Standard Tax Reporter.

B. Batman was appealed to the Supreme Court; however, certiorari was denied.

C. Fifth Circuit Court of Appeals heard Batman and affirmed the Tax Court Decision.

D. These cases deal with the same legal principle or fact pattern and cite Batman.

E. Tax Court heard Batman and case was appealed to Fifth Circuit Court of Appeals.

4. Example 2: Rulings Finding List

A. **Rev. Proc. 75–25, 1975–1 CB 720** ANNOTATED AT ...96 FED 8471.90; 29,663.90 1975 CCH 6595

B. **Amplified by:** Rev. Proc. 78–25

C. **Cited in:** Jones, Dec. 49,862(M), 67 TCM 2997, TC Memo. 1994–230 Notice 91–4 T.D. 8408 Haynsworth, TC, Dec. 34,581, 68 TC 703 Rev. Rul. 76–247

D. **Obsoleted by:** Rev. Proc. 92–29

E. **Superseding:** Mim. 4027

F. Example 2 is self-explanatory.

0.7.2.9.8 (05-14-1999)
portance of Court Decisions

1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.

2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and takes precedence over decisions

of lower courts. The Internal Revenue Service must follow Supreme Court decisions. For examiners, Supreme Court decisions have the same weight as the Code.

3. Decisions made by lower courts, such as Tax Court, District Courts, or Claims Court, are binding on the Service only for the particular taxpayer and the years litigated. Adverse decisions of lower courts do not require the Service to alter its position for other taxpayers.

4.10.7.2.9.8.1 (05-14-1999)
Action on Decision

1. It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision (A.O.D.) is the document making such an announcement. An Action on Decision is issued at the discretion of the Service only on unappealed issues, decided adverse to the government. Generally, an Action on Decision is issued where guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

2. An Action on Decision may be relied upon within the Service only as the conclusion, applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

3. Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service may acquiesce or nonacquiese in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

4. The recommendation in every Action on Decision is summarized as acquiescence, in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. The following differences are noted:

   A. "Acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions.

   B. "Acquiescence in result only" indicates disagreement or concern with some or all of those reasons.

   C. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

4.10.7.2.9.8.2 (05-14-1999)
Publication of Action On Decisions

1. Action on Decisions are published in the weekly Internal Revenue Bulletin and consolidated semiannually. The consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year. The annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

4.10.7.2.9.8 (01-01-2006)
Importance of Court Decisions

1. Decisions made at various levels of the court system are considered to be interpretations of tax laws and may be used by either examiners or taxpayers to support a position.

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http://www.irs.gov/irm/part4/irm_04-010-007.html
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Table 1-3. **Other Situations When You Must File a 2010 Return**

If any of the four conditions listed below applies, you must file a return, even if your income is less than the amount shown in Table 1-1 or Table 1-2.

1. You owe any special taxes, including any of the following.
   - Social security or Medicare tax on tips you did not report to your employer. (See chapter 6.)
   - Social security or Medicare tax on wages you received from an employer who did not withhold these taxes.
   - Uncollected social security, Medicare, or railroad retirement tax on tips you reported to your employer. (See chapter 6.)
   - Uncollected social security, Medicare, or railroad retirement tax on your group-term life insurance. This amount should be shown in box 12 of your Form W-2.
   - Alternative minimum tax. (See chapter 30.)
   - Additional tax on a qualified retirement plan, including an individual retirement arrangement (IRA). (See chapter 17.)
   - Additional tax on an Archer MSA or health savings account. (See Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans.)
   - Additional tax on a Coverdell ESA or qualified tuition program. (See Publication 970, Tax Benefits for Education.)
   - Recapture of an investment credit or a low-income housing credit. (See the Instructions for Form 4255, Recapture of Investment Credit, or Form 8611, Recapture of Low-Income Housing Credit.)
   - Recapture tax on the disposition of a home purchased with a federally subsidized mortgage. (See chapter 15.)
   - Recapture of the qualified electric vehicle credit. (See chapter 37.)
   - Recapture of an education credit. (See chapter 35.)
   - Recapture of the Indian employment credit. (See the Instructions for Form 8845, Indian Employment Credit.)
   - Recapture of the new markets credit. (See Form 8874, New Markets Credit.)
   - Recapture of alternative motor vehicle credit. (See Form 8910, Alternative Motor Vehicle Credit.)
   - Recapture of first-time homebuyer credit.
   - Household employment taxes. (See Schedule H (Form 1040), Household Employment Taxes.)
2. You received any advance earned income credit (EIC) payments from your employer. This amount should be shown in box 9 of your Form W-2. (See chapter 36.)
3. You had net earnings from self-employment of at least $400. (See *Self-Employed Persons* earlier in this chapter.)
4. You had wages of $108.28 or more from a church or qualified church-controlled organization that is exempt from employer social security and Medicare taxes. (See Publication 334.)

1. You had federal income tax withheld or made estimated tax payments.
2. You qualify for the earned income credit. See chapter 36 for more information.
3. You qualify for the additional child tax credit. See chapter 34 for more information.
4. You qualify for the health coverage tax credit. See chapter 37 for more information.
5. You qualify for the refundable credit for prior year minimum tax.
6. You qualify for the making work pay credit. See chapter 37 for more information.
7. You qualify for the first-time homebuyer credit. See chapter 37 for more information.
8. You qualify for the American opportunity credit. See chapter 35 for more information.
9. You qualify for the credit for federal tax on fuels. See chapter 37 for more information.
10. You qualify for the adoption credit. See chapter 37 for more information.

Which Form Should I Use?

You must use one of three forms to file your return: Form 1040EZ, Form 1040A, or Form 1040. (But also see *Does My Return Have To Be on Paper*, later.)

TIP *See the discussion under Form 1040 for when you must use that form.*

Form 1040EZ

Form 1040EZ is the simplest form to use.

You can use Form 1040EZ if all of the following apply.

1. Your filing status is single or married filing jointly. If you were a nonresident alien at any time in 2010, your filing status must be married filing jointly.
2. You (and your spouse if married filing a joint return) were under age 65 and not blind at the end of 2010. If you were born on January 1, 1946, you are considered to be age 65 at the end of 2010.
3. You do not claim any dependents.
4. Your taxable income is less than $100,000.
5. Your income is only from wages, salaries, tips, unemployment compensation, Alaska Permanent Fund dividends, taxable scholarship and fellowship grants, and taxable interest of $1,500 or less.
6. You did not receive any advance earned income credit (EIC) payments.
7. You do not claim any adjustments to income, such as a deduction for IRA contributions or student loan interest.
8. You do not claim any credits other than the earned income credit or the making work pay credit.
9. You do not owe any household employment taxes on wages you paid to a household employee.
10. You are not claiming the additional standard deduction.

You must meet all of these requirements to use Form 1040EZ. If you do not, you must use Form 1040A or Form 1040.

Figuring tax. On Form 1040EZ, you can use only the tax table to figure your tax. You cannot use Form 1040EZ to report any other tax.

Form 1040A

If you do not qualify to use Form 1040EZ, you may be able to use Form 1040A.

You can use Form 1040A if all of the following apply.

1. Your income is only from wages, salaries, tips, IRA distributions, pensions and annuities, taxable social security and railroad retirement benefits, taxable scholarship and fellowship grants, interest, ordinary dividends (including Alaska Permanent Fund dividends), capital gain distributions, and unemployment compensation.
2. Your taxable income is less than $100,000.
3. Your adjustments to income are for only the following items.
   a. IRA deduction.
   b. Student loan interest deduction.
4. You do not itemize your deductions.

- Your father, mother, grandparent, or other direct ancestor, but not foster parent.
- Your stepfather or stepmother.
- A son or daughter of your brother or sister.
- A brother or sister of your father or mother.
- Your son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

Any of these relationships that were established by marriage are not ended by death or divorce.

Example. You and your wife began supporting your wife's father, a widower, in 2004. Your wife died in 2009. In spite of your wife's death, your father-in-law continues to meet this test, even if he does not live with you. You can claim him as a dependent if all other tests are met, including the gross income test and support test.

Foster child. A foster child is an individual who is placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Joint return. If you file a joint return, the person can be related to either you or your spouse. Also, the person does not need to be related to the spouse who provides support.

For example, your spouse's uncle who receives more than half of his support from you may be your qualifying relative, even though he does not live with you. However, if you and your spouse file separate returns, your spouse's uncle can be your qualifying relative only if he lives with you all year as a member of your household.

Temporary absences. A person is considered to live with you as a member of your household during periods of time when one of you, or both, are temporarily absent due to special circumstances such as:

- Illness,
- Education,
- Business,
- Vacation, or
- Military service.

If the person is placed in a nursing home for an indefinite period of time to receive constant medical care, the absence may be considered temporary.

Death or birth. A person who died during the year, but lived with you as a member of your household until death, will meet this test. The same is true for a child who was born during the year and lived with you as a member of your household for the rest of the year. The test is also met if a child lived with you as a member of your household except for any required hospital stay following birth.

If your dependent died during the year and you otherwise qualified to claim an exemption for the dependent, you can still claim the exemption.

Example. Your dependent mother died on January 15. She met the tests to be your qualifying relative. The other tests to claim an exemption for a dependent were also met. You can claim an exemption for her on your return.

Local law violated. A person does not meet this test if at any time during the year the relationship between you and that person violates local law.

Example. Your girlfriend lived with you as a member of your household all year. However, your relationship with her violated the laws of the state where you live, because she was married to someone else. Therefore, she does not meet this test and you cannot claim her as a dependent.

Adopted child. An adopted child is always treated as your own child. The term "adopted child" includes a child who was lawfully placed with you for legal adoption.

Cousin. Your cousin meets this test only if he or she lives with you all year as a member of your household. A cousin is a descendant of a brother or sister of your father or mother.

Gross Income Test

To meet this test, a person's gross income for the year must be less than $3,650.

Gross income defined. Gross income is all income in the form of money, property, and services that is not exempt from tax.

In a manufacturing, merchandising, or mining business, gross income is the total net sales minus the cost of goods sold, plus any miscellaneous income from the business.

Gross receipts from rental property are gross income. Do not deduct taxes, repairs, etc., to determine the gross income from rental property.

Gross income includes a partner's share of the gross (not a share of the net) partnership income.

Gross income also includes all taxable unemployment compensation and certain scholarship and fellowship grants. Scholarships received by degree candidates that are used for tuition, fees, supplies, books, and equipment required for particular courses may not be included in gross income. For more information about scholarships, see chapter 12.

Tax-exempt income, such as certain social security benefits, is not included in gross income.

Disabled dependent working at sheltered workshop. For purposes of this test (the gross income test), the gross income of an individual who is permanently and totally disabled at any time during the year does not include income for services the individual performs at a sheltered workshop. The availability of medical care at the workshop must be the main reason for the individual's presence there. Also, the income must come solely from activities at the workshop that are incident to this medical care.

A "sheltered workshop" is a school that:

- Provides special instruction or training designed to alleviate the disability of the individual, and
- Is operated by certain tax-exempt organizations, or by a state, a U.S. possession, a political subdivision of a state or possession, the United States, or the District of Columbia.

"Permanently and totally disabled" has the same meaning here as under *Qualifying Child*, earlier.

Support Test (To Be a Qualifying Relative)

To meet this test, you generally must provide more than half of a person's total support during the calendar year.

However, if two or more persons provide support, but no one person provides more than half of a person's total support, see *Multiple Support Agreement*, later.

How to determine if support test is met. You figure whether you have provided more than half of a person's total support by comparing the amount you contributed to that person's support with the entire amount of support that person received from all sources. This includes support the person provided from his or her own funds.

You may find Worksheet 3-1 helpful in figuring whether you provided more than half of a person's support.

Person's own funds not used for support. A person's own funds are not support unless they are actually spent for support.

Example. Your mother received $2,400 in social security benefits and $300 in interest. She paid $2,000 for lodging and $400 for recreation. She put $300 in a savings account.

Even though your mother received a total of $2,700 ($2,400 + $300), she spent only $2,400 ($2,000 + $400) for her own support. If you spent more than $2,400 for her support and no other support was received, you have provided more than half of her support.

Child's wages used for own support. You cannot include in your contribution to your child's support any support that is paid for by the child with the child's own wages, even if you paid the wages.

Year support is provided. The year you provide the support is the year you pay for it, even if you do so with borrowed money that you repay in a later year.

If you use a fiscal year to report your income, you must provide more than half of the dependent's support for the calendar year in which your fiscal year begins.

Armed Forces dependency allotments. The part of the allotment contributed by the government and the part taken out of your military pay are both considered provided by you in figuring whether you provide more than half of the support. If your allotment is used to support persons other than those you name, you can take the exemptions for them if they otherwise qualify.

Example. You are in the Armed Forces. You authorize an allotment for your widowed mother that she uses to support herself and her sister. If the allotment provides more than half of