

THE CONSTITUTION AND THE LAW

February, 2005

Larken Rose

Tom Clayton, MD

Larken Rose and I started the www.taxableincome.net website over six years ago following the discovery that *the law itself* proves that most of the public has been **deceived** by the Treasury Department into paying federal income taxes that they did not owe by law. It is, quite simply, the most massive financial fraud that has ever been perpetrated on a people by “their” government. The law does **not** lie and the evidence will **not** go away.

For over 80 years, the public has been led to believe that the **16th Amendment** “permitted” Congress to impose a direct tax on **ALL** incomes without having to apportion the tax (as the Constitution requires). As shown below, this is **completely false**. The truth that the income tax is imposed **only** on individuals engaged in **international** and **possessions** commerce has always been in the law, but the reader had to know what to look for and where to look.

Currently buried in convoluted but *correctly written* regulations under **Subchapter N, Section 861**, this very **limited** tax is completely consistent with the Constitutional limits on Congress’ power to tax:

1. The Constitution **does not permit** Congress to tax the incomes of individuals engaged only in domestic commerce (the incomes of most Americans).
2. The 16th Amendment **did not change** this limitation.
3. The law **correctly shows** that the only individuals that owe federal income taxes are those engaged in **international** and **possessions** commerce.

Our websites exist for the purpose of educating the public, so that they can see for themselves those parts of the law that exist for determining who has taxable income (and who does not). The reason for this discussion about the Constitution and the law is that the details in the law are somewhat difficult to understand. It is much easier to **start** with understanding the Constitutional limits on Congress’ power to tax and then seeing where and how the law shows the same thing.

Lacking the constitutional power to obtain money derived from **domestic** commerce with an income tax (the incomes of most Americans), government lawyers *deliberately* arranged and wrote the law to *imply a lie* while telling the truth deep in a remote part of the law where nobody knew to look. The first parts (Subchapters A and B) were *deliberately* written to **deceive** the public into “thinking” that the income tax is a direct tax on incomes and that **all** incomes are taxed. As a result, most people would **incorrectly** “assume” that the receipt of income automatically meant that it was taxable and they would send in the money.

What they did not realize was that *after Subchapter B* it was *absolutely necessary* to go *thousands of pages* away to **Subchapter N** to continue the process of finding out **WHEN** income is taxable.

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Once arriving at this nearly universally *misunderstood* part of the law, the specific legal language proving that the income tax is an indirect (excise) tax **only** on those engaged in **international and possessions commerce** is buried in convoluted but *correctly written* regulations under Subchapter N, **Section 861**.

These parts of the law prove that in order for income to be taxable, there are **TWO independent conditions** that must be satisfied:

1. There must be an "item" (type) of income taxable by Congress (**Subchapter B**), and
2. That income must be derived from a taxable type of commerce (**Subchapter N**).

What made it practically impossible to understand was not only the deliberate arrangement of the law so that the reader would not make the connection, but the fact that the reader has to "see" what is **MISSING** from the law. The law applies *only* to that which is specifically pointed out. The law **does not** show that incomes derived from purely domestic commerce are taxed (the incomes of most Americans). The law **does** show that incomes derived from international and possessions commerce are taxed.

The comprehensive but somewhat "academic" proof is contained in the free 65 page written report entitled, "***Taxable Income***". Realizing that reading through this report was difficult for many people, we made a video version entitled, "***Theft By Deception***" that can be found at www.theft-by-deception.com (VHS or DVD). This uses the power of graphics to explain and is **much easier** to understand. Because the **Constitution** is what has *always limited* Congress, the next step was to display the historical parts of the law that have said the same thing for over 80 years at www.861evidence.com.

We continue to work on the "excessive detail" problem to simplify the basic concepts; the Constitutional limits on Congress' power to tax are **MUCH** easier to understand than the *deliberately convoluted pathway* in the law that has effectively kept most readers from **realizing** that the law shows the same constitutional limits. It is now up to the public to stop this fraud. Why?

As of January 2005, after *over five years* of putting the irrefutable evidence in the law *that they wrote* in front of top government officials (including President Bush) we have documented proof that they are **not** going to stop the fraud; so much for honesty in government and the "rule of written law". There are **many** lawyers and accountants who agree that the evidence is *irrefutable*; the "evidence war" is **over**. The focus is now the "propaganda war" that the **Executive Branch** is waging to keep the deception from being "found out" by the public.

In this regard, our most recent production is the online "***861 Evidence***" presentation at www.861.info (that requires cable or DSL), also physically available on [MiniCD](#) for distribution. This 70 minute presentation gives a broader perspective, including accountants, lawyers, and others who agree the evidence in the law is irrefutable, the **outright refusal** of the government to

The law is consistent with constitutional limits on Congress' power to tax respond to specific questions about the **861** regulations, and the *lawlessness* of the DOJ and Treasury Department as they *knowingly violate* criminal statutes and constitutional rights to **keep the public from seeing the evidence** in the law.

Understanding the Constitutional limits on Congress' power to tax makes it *much easier* for the reader to understand **WHAT** to look for and **WHERE** to look in the law to find the limited scope of the income tax (which is otherwise difficult to find, this was by design). The careful reader has to realize two things:

1. What the law specifically says about who has "taxable income," and
2. What the law does not specifically say (what is **missing**).

In other words:

- In Subchapter N, **Section 861**, the law **DOES** have specific legal language that specifically points out the taxation of the incomes of Americans derived from international and possessions commerce (commerce *external* to the 50 states) **because** the Constitution **specifically permits** Congress to do so.
- In Subchapter N, **Section 861**, the law **DOES NOT** have specific legal language that specifically points out the taxation of the *domestically* earned incomes of Americans (incomes derived from commerce *within and among* the 50 states) **because** the Constitution **does not permit** Congress to do so.

The fraud has gone on for so long that at first it seems "odd" that the founders of this country **did not** permit Congress to tax the incomes of the majority of its own citizens (living and working in the United States). In The Federalist papers 45, James Madison (the main author of the Constitution) pointed out that *commerce with foreign nations* would be the primary source of Congress' tax revenues.

The founders were very smart; they knew that throughout history *all governments* grabbed more power until they were overthrown. The funding limits were imposed to **PREVENT** exactly what the federal government has done to the public **by deception**. Since 1916, it has systematically **robbed** millions of people by hiding the truth that it **could not tax** the incomes of most Americans deeper and deeper in the law. It has become much larger than the Constitution permits, routinely exceeded its very limited jurisdiction, **preys** on the ignorance of the public, is more corrupt and lawless than anything in the private sector, and it answers to no one.

The income tax deception shows that it **mocks** the rule of written law that it **demand**s that the public obey, with *absolutely no ethics*, robbing most of the public when those in charge are fully aware what is happening. It is *all about power and money*. Besides writing and arranging the law to deceive, other propaganda methods used to rob the public have included:

1. *Misrepresentation* of the meaning of the **16th Amendment**.

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2. Forced reliance on the huge cottage industry of “experts” who **tell** the average American that they owe federal income taxes (most of whom [but not all of whom] were deceived as well).
3. Limited access to the law and the lack of a way to **search** through the law (now solved by the Internet and computer search engines).

Exactly **HOW** does the Constitution limit Congress' power to tax? That is, **WHAT** can Congress tax? Once Congress imposes a tax, what else does the Constitution require it to do? **All** federal law flows from and *must be* consistent with the Constitution and for taxes this is the sequence:

1. The Constitution is the fundamental basis for all federal law.
2. The Constitution limits **WHAT** Congress can tax.
3. There are two **TYPES** of taxes Congress can impose: direct and indirect.
4. There are “rules” about how such taxes must be imposed.
5. To be constitutional, the law **MUST** reflect these limits.

This sequence is exactly what one finds, proving the rule of written law. But federal bureaucrats (Treasury Department, DOJ) have been operating *outside* the boundaries of the law by ignoring the law or (for most employees) “assuming” that the law says that which it does not say.

The main culprit in this nearly universal misunderstanding is the 16th Amendment. To keep the public from looking **deeper** in the law, the meaning of the 16th Amendment was deliberately misrepresented to the public **to lead them to believe** that it *changed* the Constitutional limits on Congress' power to tax, “permitting” Congress to directly tax all incomes without apportionment, when the Supreme Court ruled and the Secretary of the Treasury stated it ***DID NOT*** do so.

This means that the fundamentals of the **rule of law** did not change:

1. The Constitution is the fundamental basis for all federal law.
2. The Constitution limits **WHAT** Congress can tax.
3. There are two **TYPES** of taxes Congress can impose: direct and indirect.
4. There are “rules” about how such taxes must be imposed.
5. To be constitutional, the law **MUST** reflect these limits.
6. **The 16th Amendment DID NOT change these limits.**

CONSTITUTIONAL LIMITS ON CONGRESS' POWER TO TAX

The United States Constitution is the written document that created the federal government; it does not mince words or try to obscure the meaning of the words (like the law often does). Each branch of the government (legislative, executive, and judicial) is given powers by specific statements; it is from these **specific** “words” that the **specific** powers arise.

That the federal government is of “*few and enumerated powers*” means that it **only** has the powers that are specifically given to it by the Constitution. If it is **NOT given** a power, it does **NOT** have that power. The 9th Amendment says that

The law is consistent with constitutional limits on Congress' power to tax the government *cannot assume* it has a power not specifically pointed out and the 10th Amendment says *all other powers* are reserved for the states or to the people.

Congress exerts the powers given to it by the Constitution by making laws. If the Constitution does **NOT** give Congress a power then Congress **cannot make laws** that exert that power. Congress can **only** do what the Constitution permits; this is what is meant by the requirement that the law *must be* constitutional.

What are the specific *taxing powers* given to Congress? The sections that give Congress its taxing powers specifically describe what those powers are. The **power to tax** along with statements that specifically point out **WHAT** Congress can tax are located in **Articles I and IV**. [The format that follows is a statement followed by the constitutional proof that the statement is correct; all emphasis added.]

I. Under the Constitution, Congress has the ability to impose an income tax on incomes derived from *international* and *possessions* commerce.

PROOF: The Constitution makes specific statements that give Congress the power to tax **AND** the power to *regulate international* and *possessions* commerce. These are found in **Article I, Section 8, Clauses 1 and 3** and **Article IV, Section 3, Clause 2** (all emphasis added):

*"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, Clause 1]

*"To **regulate commerce with foreign nations**, and among the several states, and with the Indian tribes;"* [Article I, Section 8, Clause 3]

*"The Congress shall have power to dispose of and make all needful rules and regulations respecting the **territory or other property belonging to the United States**;"* [Article IV, Section 3, Clause 2]

That is,

- Article I, Section 8, Clause 1 gives Congress the power to tax.
- Article I, Section 8, Clause 3 specifically puts **international** (foreign) commerce under federal jurisdiction (control).
- Article IV, Section 3, Clause 2 specifically puts **possessions** commerce under federal jurisdiction (control).

Therefore, the clause that specifically gives Congress the *power to tax* **together with** the clauses that specifically give Congress *jurisdiction over international commerce* (commerce with foreign nations) and *commerce within federal possessions* (territories) are what gives Congress the **power to impose a broad income tax** on incomes derived from **international and possessions** commerce.

The law is consistent with constitutional limits on Congress' power to tax

The income tax law is *completely consistent* with this conclusion. **Subchapter N, Section 861 (26 USC § 861(b) and 26 CFR § 1.861-8** and following) **proves** that Congress **DID** impose an indirect income tax on such incomes.

II. Under the Constitution, Congress **DOES NOT** have the ability to impose an income tax on incomes derived from purely **domestic** commerce.

PROOF: The Constitution makes specific statements that gives Congress the power to tax **AND** the power to *regulate interstate* commerce (commerce *between* the states). These are found in **Article I, Section 8, Clauses 1 and 3:**

*"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, Clause 1]

*"To **regulate commerce** with foreign nations, and **among the several states***, and with the Indian tribes;"* [Article I, Section 8, Clause 3]
(*interstate commerce)

The clause that specifically gives Congress the *power to tax together with* the clause that specifically gives Congress jurisdiction over *interstate commerce* would give Congress the power to tax incomes that are derived from *interstate* commerce (*see end of document for more) if **not** for another specific statement.

The **exception** where Congress is specifically prohibited from taxing that which it was given the *power to regulate* is found in **Article I, Section 9, Clause 5**. Congress is specifically prohibited from taxing **exports** from *any* state:

"No Tax or Duty shall be laid on Articles exported from any State."
[Article I, Section 9, Clause 5]

These are the **ONLY** sections that address Congress' powers to tax. What is important to recognize is what is **missing**. Congress is **NOT** given the power to *regulate intrastate* commerce (commerce that occurs *within* the 50 states, from which *most incomes* are derived). Therefore, the absence of the power to regulate *intrastate* commerce **AND** the restriction on taxing exports from the states makes it **impossible** for Congress to impose a tax on incomes derived from purely **domestic** commerce (commerce that occurs *inside or between* the states).

The income tax law is *completely consistent* with this conclusion. **Subchapter N, Section 861** of the federal income tax law (**26 USC § 861(b)** and **26 CFR § 1.861-8** and following) **DOES NOT** show that Congress imposed an income tax on incomes derived from *purely domestic commerce*.

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Therefore, by *careful examination* of the Constitution **alone**, the reader discovers that the **power** to impose a broad income tax on the *domestically earned incomes* of residents of the United States that the public has been "led to believe" Congress possessed **does not exist in the Constitution** (therefore *cannot exist* in the law). There are two different **TYPES** of taxes that the Constitution permits Congress to levy.

DIRECT VERSUS INDIRECT TAXES

III. The Constitution makes specific statements that give/tell Congress:

- *The power to tax.*
- *The **TYPES** of taxes it can impose.*
- ***HOW** the types of taxes must be imposed.*

PROOF:

The Constitution makes specific statements that gives Congress the *power to tax* as well as the types of taxes it can levy and how those taxes must be imposed. These statements are found in **Article I, Sections 2 and 8, Clauses 1 and 3:**

*"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, Clause 1]

*"Representatives and **direct Taxes shall be apportioned among the several States** which may be included within this Union, according to their respective Numbers,....."*[Article I, Section 2, Clause 3]

The types of taxes and how they must be imposed are:

1. "**Direct**" taxes are *per capita taxes or taxes on property*.
 - They must be apportioned.
2. "**Indirect**" taxes are taxes imposed upon the "*importation, consumption, manufacture, and sale of **certain** commodities, privileges, **particular** business transactions, vocations, occupations, and the like*" (Flint v. Stone Tracy, 220 U.S. 107 (1911)).
 - They must be geographically uniform.

Apportionment means that the tax is divided up among the states according to population (which means that each person pays the same amount of tax).

Geographically uniform means that the tax applies the same regardless of geographical location in the United States (the same in Texas as in Ohio, etc.).

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THE 16TH AMENDMENT DID NOT CHANGE THESE CONSTITUTIONAL LIMITS

Note that excise taxes, by nature, are **LIMITED** (cannot be broad). Recognizing that the current income tax is geographically uniform means that it **must be** an indirect (excise) tax. **Limiting** it to *international* commerce is a legal stretch but consistent with an excise tax; if you don't want to pay the tax, then you simply **avoid** being involved in international commerce.

Correcting the *misrepresentation* of the meaning of the 16th Amendment makes it clear that the Constitutional limits on Congress' power to tax have been preserved in the law, as the **rule of law** demands. What has been *misrepresented* about the 16th Amendment? The public has been "led to believe" that the 16th Amendment imposed the tax and **expanded** Congress' power to tax **ALL** incomes by "overriding" the Constitutional limits on **what** Congress can tax and **how** those taxes must be imposed. That is:

- That it *imposed* the current income tax (it did not).
- That it permitted Congress to directly tax all incomes (it did not).
- That it removed the constitutional requirement that direct taxes must be apportioned (it did not).

At first *glance*, the words of the 16th Amendment **do** give the *impression* that Congress "really did" acquire the power to tax all income no matter where it comes from (that is, no matter what **commerce** generates the income):

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." [16th Amendment to the Constitution]

But if it did **not** affect the Constitutional limits on Congress' power to tax, **WHY** was the Amendment passed in the first place? **WHY** was it worded in such a way to give the *impression* that it changed Congress' limited taxing power when it **did not** do so?

All the 16th Amendment did was to tell the courts that the income tax is and has always been an **indirect** tax, making it *impossible* for the courts to conclude otherwise (as the Supreme Court did in error in 1895 in a case known as Pollock). But by the time the 16th Amendment was passed, the Supreme Court had *corrected itself*. It was *deliberately worded* to **deceive the public**.

The Supreme Court **and** the Secretary of the Treasury have specifically stated that the 16th Amendment **did not** change the constitutional limits on Congress' power to tax. According to the Supreme Court in *Stanton v. Baltic Mining* (240 U.S. 103) and *Brushaber v. Union Pacific* (240 U.S. 1) the purpose of this Amendment was to make it clear that the **income tax is and has always been** an *indirect "excise" tax*, which never required "apportionment" (but that must be geographically

The law is consistent with constitutional limits on Congress' power to tax uniform). The Secretary of the Treasury **formally agreed** with the Supreme Court in **Treasury Decision 2303**:

"The provisions of the sixteenth amendment conferred no new power of taxation, but simply prohibited [Congress' original power to tax incomes] from being taken out of the category of indirect taxation, to which it inherently belonged, and being placed in the category of direct taxation subject to apportionment." [Treasury Decision 2303]

THE INCOME TAX IS AN INDIRECT (EXCISE) TAX

Finding out that the 16th Amendment **did not** change Congress' limited power to tax and that the income tax is an **excise** (indirect) tax clarified what the reader had to look for in the law. As the Supreme Court showed in Flint v. Stone Tracy (above), excise taxes, generally speaking, are taxes imposed on **certain activities or privileges**. A clarification of *what to look for* was made in the Congressional Record from March 27, 1943 (page 2580) by a statement from a former legislative draftsman of the Treasury Department:

"The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of the tax."

So the income is the **measure** of the tax and the activities and privileges are the **subjects** of the tax. It is difficult to understand the "details" about how the law shows this; despite the truth being *deliberately buried* in tens of thousands of words, the law **does** eventually tell the truth.

WHAT THE INCOME TAX LAW SHOWS

The federal income tax is imposed on the "taxable income" of individuals. How does the reader find out whether **their** income is taxable or not? Instead of "assuming" that the income tax is a direct tax (which the 16th Amendment proves *cannot* be the case), the reader knows that the income tax is **not** a direct tax on incomes but an indirect (excise) tax on certain activities and privileges.

What are those activities and privileges? That is, what **commerce** is taxable? An excise income tax means that there **must be two independent steps** in the law *because* there are two parts to this tax. One part is the taxable type of commerce (the activity or privilege) that is the **SUBJECT** of the tax. The second part is the income derived from this commerce (the "taxable income") that is the **MEASURE** of this tax. In other words, there *must be* parts of the law that:

1. Determine the types of commerce that can be taxed by Congress (the "source" or **subject** of this excise tax).
2. Determine the types of incomes that are derived from the taxable types of commerce that [after allowable deductions] is the ("taxable income" or **measure** of this excise tax).

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But from the Constitution, we **know** that:

3. The commerce that is taxable by Congress with a *broad income tax* is restricted to **international and possessions** commerce.
4. The commerce that is not taxable by Congress with a *broad income tax* is purely **domestic** commerce.

Sure enough, there **ARE** two distinct parts of the law that contain the **TWO independent conditions** that *must be met* for income to become "taxable income":

1. The reader must receive an "item" (type) of income that is taxable by Congress (**Subchapter B**).
2. The "item" (type) of income must be derived from commerce that is taxable by Congress in order to become "taxable income" (**Subchapter N**).

Notice how the elements are **reversed** (the measure of the tax is put before the subject of the tax); this was done to *deceive* the public. The key observation is that **Subchapter N** ("Tax Based on Income from Sources *Within or Without* the United States") is **ONLY** about **international** and **possessions** commerce. The **only** time income from domestic commerce is specifically mentioned as taxable is if it is received by foreigners (putting it under international commerce). Although this is **NOT** what the public has been "led to believe," this is **exactly** what the law is **expected** to show, given the Constitutional limits on Congress' power to tax.

If you are a government law writing lawyer and your goal is to **steal** what the Constitution does **not** allow the government to take legally, making the truth in the law *harder to find* is absolutely paramount to keeping the fraud going. Besides using *deliberately convoluted* language (unnecessary and unethical), the truth is deliberately buried in *tens of thousands of words* that have **nothing to do** with whether income is taxable or not. The result is that it is *almost certain* that the reader (including tax professionals) will get "lost" or give up.

Besides reversing the logical order of these critical sections, government lawyers *deliberately* put the critical sections containing the **measure** and **subject** of the tax (**Subchapters B** and **N**) *thousands of pages* away from one another with virtually no "directions" about how to get from one place to the other. It is illogical to put the *measure* of the tax **before** the *subject* of the tax; this was done so the public would not know to look for the taxable types of commerce.

In summary, the pathway in the law that takes the reader from where the tax is imposed on "taxable income" to where the law shows that **only** incomes from international or possessions commerce are taxable in **Section 861** was *deliberately made to be so complicated* that most readers would incorrectly conclude that they owed the tax (when most **did not** owe this tax).

But despite everything these corrupt lawyers did, the law does **NOT** lie and the evidence *in over 80 years of the law* says the same thing.

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Here is the pathway in the law:

TITLE 26, Subtitle A, Chapter 1 (Income tax):

Subchapter A. Determination Of Tax Liability

Subchapter B. Computation Of Taxable Income

Subchapter N. Tax Based On Income From **Sources** Within Or Without The United States

1. **26 USC § 1** imposes the income tax on "*taxable income*."
2. **26 USC § 63** defines "*taxable income*" as "*gross income*" minus allowable deductions.
3. **26 USC § 61** defines "*gross income*" as all income "*from whatever source derived*."
4. **26 USC § 61** *cross-reference* (under notes at the bottom, directs the reader to where the law treats income from "**sources**"):

*Income from **sources** -*

Within the United States, see section 861 of this title.

Without the United States, see section 862 of this title.

5. **26 USC § 861 and 26 CFR § 1.861** determine the taxable "*sources of income*."
6. **26 CFR § 1.861-8** shows that the taxable "*sources of income*" from **within** the United States apply **only** to those engaged in **international or possessions** commerce (the domestic income of foreigners is part of international commerce). [The word "source" is what the law uses to refer to the type of **commerce** that generates the income].

As you can see, the law itself shows that the **type of commerce** that generates income is just as important as what **kind of income** it is. With that in mind, the following explanation helps to explain the process of determining what is and what is not taxable.

CATEGORIES OF INCOME

The severely limited scope of the income tax law is easier to visualize by understanding the **THREE** different categories of income. Like a math equation, one starts with all incomes, subtracts incomes exempt by statute (Act of Congress), and then subtracts incomes excluded by the Constitution. What is "left over" are the incomes that are subject to the tax. That is:

1. Incomes that **are exempt from taxation** because Congress said so (the Constitution gives Congress the power to regulate/tax the commerce from which these incomes are derived but Congress *decided* not to tax them; life insurance proceeds is an example).

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2. Incomes that are **exempt from taxation** under the Constitution (the Constitution **DOES NOT** give Congress the power to tax the commerce from which these incomes are derived).
3. Incomes that **are subject to the tax** (the Constitution specifically gives Congress the power to tax these incomes by giving it the power to tax the commerce from which the incomes are derived; **these** are the incomes that the law specifically talks about as being taxable).

Like the Constitution, the written law must specifically point out what it applies to. As expected, the first and the third categories of income *appear in the law*. These incomes are specifically shown to be **not taxable** and **taxable**, respectively:

- **Subchapter B** shows the “items” (types) of income that Congress decided *not* to tax (and the items of incomes that it decided to tax).
- For the “items” (types) of income that Congress decided to tax, **Subchapter N** shows the types of commerce that are taxable by Congress **from which the “items” of income must be derived** in order for the income to **become** “taxable income”.

What about the incomes in **Category #2**? How do we know what incomes are **exempt** from tax under the Constitution? The law tells us what incomes are taxed. Why doesn't the law specifically point out these constitutionally exempt incomes?

Like the Constitution, the law **does not** have to state what it **does not** apply to. The Constitution **did not** state that Congress **did not** have the power to regulate intrastate commerce. The Constitution simply **did not** give Congress the power to do so, which means that Congress **cannot** pass a law that does so.

The incomes that are exempt from taxation under the Constitution are **missing** from the law. We know that these incomes must be the incomes that are derived from *purely domestic commerce* (the incomes of most Americans) because these incomes are those that are “left over”; they **are not specifically pointed out** as being taxable (once again, because Congress does not have power to tax them).

So in the same manner as the Constitution, the law tells the reader what is **not taxable** by **showing** the incomes that **ARE** taxed and by **not showing** the incomes that are **not taxed**. Incomes that are derived from *purely domestic commerce* (the incomes of most Americans) are **not taxable because they are not shown to be taxable**. **QED**

Note that these **THREE** categories of income used to be pointed out to the reader in the older law (1939 and before) but (as explained elsewhere) the law **became less honest** over the years as government lawyers deliberately made the truth harder and harder for the reader to find:

§ 39.22 (a)—1 What included in gross income

(a) Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income **derived from any source whatever, unless exempt from tax by law.** See sections 22(b) and 116. In general, income is 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. *Profits of citizens, residents, or domestic corporations derived from sales in foreign commerce must be included in their gross income; [Category #3]* but special provisions are made for nonresident aliens and foreign corporations by sections 211 to 238, inclusive, and, in certain cases, by section 251, for citizens and domestic corporations deriving income from sources within possessions of the United States.

§ 39.22 (b)—1 Exemptions; exclusions from gross income

Certain items of income specified in section 22(b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. No other items may be excluded from gross income except *(a) those items of income which are, under the Constitution, not taxable by the Federal Government; [Category #2] (b) those items of income which are exempt from tax on income under the provisions of any act of Congress* still in effect; **[Category #1]** and (c) the income excluded under the provisions of the Internal Revenue Code (see particularly section 116).

* *“If the Constitution prohibits Congress from taxing exports from the states, then **HOW** can it tax those exports when they go to a foreign country?”*

The last issue is to understand how Congress can tax **ANY** exports from the states if the Constitution states that it is forbidden to tax exports. Once again, it gets back to the **type of commerce** that Congress can tax.

In The Federalist papers 45, James Madison (the primary author of the Constitution) pointed out that *commerce with foreign nations* would be the **primary source** of Congress' tax revenues. What does taxing exports mean?

Peck v. Lowe [William E. Peck & Co. v. Lowe, 247 U.S. 165 (1918)] is a critical Supreme Court case that concluded two things:

1. A tax on the income of American companies selling products in foreign countries is **NOT** a tax on *state exports* per se.
2. With that in mind, because of the taxing clause **AND** Congress' power to regulate commerce with foreign nations, Congress **CAN** apply an income tax to the income from that type of trade.

The law is consistent with constitutional limits on Congress' power to tax

EXPLANATION:

If a certain tax applies to a class of things or activities, **some** of which (but not all) are state exports, the tax could be viewed as a general tax and not a tax on state exports per se. For example, a tax on income from "*commerce with foreign nations*" (the terms used in the Constitution) would include some things that involve state exports (e.g. an American company shipping widgets to Canada).

But it would **also** involve things that are **NOT** state exports (e.g. an American getting interest or dividends from investments in France, or a U.S. citizen living and working in Germany). Therefore, such a tax (which is the one that actually exists) could be characterized as a "general" income tax, rather than a tax on state exports per se, even though the state export business is also hit by it.

Taxing exports is taxing the **moving** of something from inside a state to outside. A tax that applies entirely **after** exportation happens or one that happens entirely **before** exportation happens (as considered in *Peck v. Lowe*) could be said **not** to be a tax on exports, because the exporting already happened (or hasn't happened yet).

As an example, Company A makes widgets in Florida, ships them to Texas **and** Canada, and then sells them. The sales in Canada are obviously "*commerce with foreign nations*" (where the commerce **crosses country borders**) whereas the sales in Texas are actually **intrastate** commerce (the commerce does not cross country borders).

For the sales from Florida to Texas, if you are **not** taxing the crossing of state lines (the "exporting") and the commerce that is happening at the other end is commerce within one of the states (Texas) then that commerce is **intrastate** again, thus **NOT** taxable by the federal government.

The taxation of interstate commerce is, by definition, taxing the crossing of state lines. Anything taxed **before or after** the movement of the stuff is **intrastate commerce**. On the other hand, selling widgets in Canada **after** they have been *exported* is part of "*commerce with foreign nations*" or **international commerce**.
