

That Awful Smell — Sharing The Tent With The Camel

Written by Darrell Anderson.

How often have I said to you that when you have eliminated the impossible, whatever remains, however improbable must be the truth?

Sherlock Holmes, from *The Sign of Four*, by Arthur Conan Doyle

Realize that despite the legislative intent of the 16th Amendment, during the tumultuous years of World War II some legislators accepted the income tax as an excise tax:[1]

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 tax.

What exactly is income? This question is difficult to answer and reading court cases reveals that even judges do not know the easy answer until a dispute is brought before them. Then and only then do they decide if something is income. With respect to organized business activities, income has long been established as the net income or profits derived from that activity. With respect to certain investments, the dividends or interest paid is income. Income has been defined as unearned reimbursements and compensation, such as meal stipends. Early in the 20th century “excess” wages and salaries were defined as income, but today all wages and salaries are defined as income.

That multiple meaning of the term income, along with the façade and illusion of a fiat statutory exemption ceiling, continues to haunt everybody. The income tax is being used to tax the conversion of labor rather than the conversion of capital and passive assets. Today, because of propaganda, misinformation, and outright lies, every employer issues a W-2 information return. Similarly, clients subcontracting to independent workers and artisans issue 1099-MISC information returns. Numerous other financial transactions are also reported with these information returns. The income tax has evolved from an honor system to a spy system.[2] Richard E. Byrd, speaker of the House of Delegates from Virginia, predicted this effect:[3]

A hand from Washington will be stretched out and placed upon every man’s business; the eye of the Federal inspector will be in every man’s counting house . . . The law will of necessity have inquisitorial features, it will provide penalties, it will create complicated machinery. Under it men will be hailed into courts distant from their homes. Heavy fine[s] imposed by distant and unfamiliar tribunals will constantly menace the tax payer. An army of Federal inspectors, spies and detectives will descend upon the state . . . Who of us who have had knowledge of the doings of the Federal officials in the Internal Revenue Service can be blind to what will follow? I do not hesitate to say that the adoption of this amendment will be such a surrender to imperialism that

has not been [seen] since the Northern states in their blindness forced the fourteenth and fifteenth amendments upon the entire sisterhood of the Commonwealth.

Everybody is expected to act as a snitch. This tax system, in which the goal is to record the exchange of every penny, is demoralizing by its very nature.

Worse, these information returns are intended to be used as prima facie evidence of having received income subject to taxation. The tax system often is touted as a voluntary assessment system, but these information returns and coercive withholding are the only reason people “volunteer” into the system.[4] With these documents the process is a system of confession.[5] In tax disputes, people are presumed guilty and must prove their innocence. Understand that the common person is unaware of the voluminous history about the modern income tax and has no idea that within the context of American tax law, the term income possesses a limited meaning and application. Most people use the word income in a general bookkeeping sense to mean gross receipts or “all that comes in.” Few people stop to consider the legal twistifications involved with this tax.

This dual definition of income succeeds well for income tax proponents. Because most people use the term in a generic sense, most presume that any sort of payment, wage, or salary is income. Because the statutes require the reporting of income, just about every dollar transaction is reported as though the exchange was income in the nature of profits and gains.

However, recall that judges have decided that the mere existence of exchange does not necessarily constitute evidence of having had received “income” in the nature of profits and gains.[6]

IRS employees and attorneys are aware that most people do not know the limited meaning of the term income within the context of the tax laws. To neutralize the arguments of those people who do know the limited meaning, income tax proponents counter with their zero basis nonsense. These informed but deceitful people allow and encourage this misinformation to continue. Employers and clients continue to issue these information returns alleging the receipt of wages or gross income subject to taxation. Much like quicksand, these actions pull people into the income tax madness and any rebuttal effort is treated with fines, penalties, sanctions, property seizures, and prison time.

Unlike litigation, however, administrative agents abide by no standards or rules of evidence. They treat the mere existence of these information returns as credible and trustworthy evidence of having had received income in the nature of profits and gains, and they further treat the amounts reported as 100 percent gain because of their zero basis theory. Because they abide by no standards of evidence, they easily ignore any rebuttal effort from people who argue that the amounts are not wages or gross income subject to taxation. These administrative agents accept the prima facie evidence of these information returns, but refuse to listen to rebuttals. Unlike typical civil procedures, where the enjoined parties struggle to create a preponderance of the

evidence, administrative agents simply ignore any such effort. By conveniently ignoring the historical meaning of the term income, everything reported is considered gross income subject to taxation. Administrative agents also refuse to investigate whether the amounts reported were actually required by statute to be reported. The dual definition of income prevails. In the end, administrative agents play the paperwork game and issue a notice of deficiency. With that one piece of paper agents significantly shift the burden of proof from themselves to the alleged taxpayer. This is noticeable in that for the alleged taxpayer to find remedy and relief in court, that person carries the burden of submitting the petition. In any court action, the initial burden of proof always rests with the petitioner. No wonder agents choose to ignore any rebuttal efforts.

Suppose that everything makes sense as explained; that the 16th Amendment provides for taxing of the property of income without any rule of apportionment. Assume that income is not the property being taxed but measures the tax owed. Assume that income is gain. Assume income and wages are not the same. Assume that the typical worker is not participating in any declared taxable activity, which explains why none are listed in the statutes. Suppose wages are property received in exchange for delivering the products of their labor. What then could remain as the possible reason for the withholding of wages and the paying of a tax?

One possible reason is that the exemptions and deductions listed by statute are considered benefits.[7] By accepting the benefit of using these exemptions and deductions, even if otherwise not being subject to any tax, a person quietly moves into the arena of accepting a political privilege. Accepting that privilege creates the taxable activity.

Another possible reason is that people have simply volunteered to pay the tax. Because the entire process is a voluntary self-assessment, IRS agents never question or dispute the filer. IRS personnel conveniently presume that if the filer has performed a self-assessment and has subsequently filed, that the filer must in fact be subject to the tax and must be participating in a taxable activity. Under the ancient doctrines of common law, a presumption stands unless challenged. Thus, technically there are no conflicts in law. There is nothing to stop voluntary payments, and hence, no conflict with the 13th Amendment. Therefore, when an individual voluntarily submits a withholding certificate, that person voluntarily submits to the tax system.

Could this latter explanation be so bizarre yet so simple? Perhaps, perhaps not. Section 3402 of the Internal Revenue Code states that “In general, except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary.” [emphasis added.] Thus, perhaps what enjoins an individual into the tax scheme is volunteering to participate as an employee in a regulated activity. The key still seems to be an emphasis on volunteering.

However, the explanation that best satisfies Occam’s Razor is that any wage or salary received in excess of the exemption amounts is, for the purposes of taxation, considered income in the nature of profits and gains. Legislators consider any wages or salaries received in excess of the statutory

exemption ceiling to be a privilege and a gain. They believe they possess standing to stipulate through arbitrary fiat declarations how much of a stipend you may receive to cover your cost of living. By “volunteering” to receive those excess wages and salaries, legislators believe that a person is receiving a benefit. As simple-minded as this reasoning might sound, this explanation best fits the entire story. Within the boundaries of embracing an income tax, the problem and always has been the fiat statutory exemption ceiling, especially one that fails to cover the “ordinary and necessary” expenses of life.

Yet a simpler explanation exists and that is the mindset of legal plunder. Many people today believe they have a “legal” right to take and confiscate the property of other people. This is nothing but an argument of envy and jealousy. Income is and has long been considered personal property. Collecting the income tax is performed, ultimately, through distraint and violent seizure. This aspect of the tax system is a denial and revocation of the concept of private property.

To rub salt into the wound, payroll taxes, more commonly known as Social Security and Medicare taxes, are nothing but excise taxes. Although these taxes and respective statutory code titles are labeled with names that appear to “ earmark” the taxes for a specific purpose, these collections are excise taxes and are in fact, not earmarked. Statutory code headings and titles provide only an appearance of earmarking — such headings are not law. Indeed, that the taxes make a stop into the general treasury is how the Supreme Court justices blesses and bypasses any “takings”[8] and apportionment discussions, and justifies the confiscation and redistribution. Despite the twistifications of the Court justices, these taxes are blatant wealth redistribution taxes and if the collections were not momentarily funneled through the general treasury, the revenues would be going directly from one class of people to another. The system is patently a “pay-as-you-go” system with current workers being forced to support non-workers. But why heckle such minor points?

There are many questions regarding the current income tax are straightforward:

Is income considered property?

Are wages and income the same specie of property?

Is a tax on incomes a direct tax or an indirect tax?

Are taxes on incomes subject to the rule of apportionment?

Are taxes on incomes subject to the rule of uniformity?

Is the cost basis of labor zero?

Are the revenues received in exchange for labor considered income, or only an exchange of one form of property for another?

Did the 16th Amendment create a third class of taxation or only create a third method of collection?

Based upon the Supreme Court justices’ past decisions, for what specific activity is the everyday American being taxed? If the income tax is an indirect tax in the nature of an excise, what is the

subject of that excise? What statute specifically declares that subject of taxation?

Until such vital questions are answered, there will continue to be confusion and discontent regarding this tax. Yet, do not expect any court ruling to answer such questions in favor of the general populace — legal plunder will prevail.

If, as the Court justices would have everyone believe, that indeed the income tax is an indirect tax, and nobody can or will explain or provide a statute stating what taxable activity most Americans are participating, then why do people get fined or imprisoned for not complying? If people are expected to voluntarily investigate legitimate tax debts, and they cannot determine the specific excise for which they are liable, doesn't such an effort automatically negate willfulness? If no such statute exists stating the specific excise, does not such a discovery automatically terminate any possible liability?

Regardless of where an individual turns, there seems to be too many unanswerable questions surrounding the income tax. Or at least, too many questions that remain avoided. Largely because of those two vague words direct and indirect, the inability to readily determine income, and the infamous “from whatever source derived” clause.

Despite the legal and constitutional questions, there can be no doubt about the effects of this tax. The current income tax invades and violates America's privacy like no other law. Any individual with access can learn anything and everything about you. The entire income tax system is nothing but a large roll of toilet paper stuck to the bottom of your shoe. The ultimate paper trail.

How much money did you earn? How many children do you have? What do you do for a living? For whom do you work? How much did you earn in interest and dividends? How many bank accounts do have? What stocks do you own? Were you employed for the entire year? Were you injured for part of the year? Who provides your health insurance? Are you married? Single? Divorced? Widowed? Are you blind? A veteran? Do both parents work? Is any of this truly anybody's business? Legislators seem to think so.

Parents cannot obtain deductions for newborns without receiving a tracking number, much like a farmer or rancher brands cattle. For tax purposes that child is marked as chattel property and tracked for the remainder of his or her life.

Current laws require almost every penny that can possibly be traced be recorded for the purposes of monitoring an individual's revenue stream. Americans cannot die in peace because IRS agents wait at the door like the grim reaper to collect an alleged due. The façade of withholding at the source does much to mask the cost of taxation and the cost of legal plunder.

Do not think that IRS agents are not aware of what can be done with the information you provide. Contained in every tax return instruction booklet is a Privacy Act Notice that conspicuously looks like a Miranda warning[9] that any information you provide might be used

against you. Reason therefore dictates that if an individual cannot be compelled to witness against him or herself,[10] that completing such a return is impossible without violating fundamental rights.

[Comment: Add commentary about violation of personal rights, 4th Amendment, intrusiveness into personal affairs, ridiculous paperwork requirements, presumption of guilt rather than innocence, etc.] People possess the right to prevent arbitrary searches and seizures.[11]

The entire income tax system permeates the lives of Americans like a virus from a horror film. Such destruction of privacy is the destruction of liberty.[12] Such madness in taxation is the destruction of liberty. Former IRS Commissioners have agreed. In 1871 Commissioner Alfred Pleasonton reported the obnoxious and inquisitorial nature of the tax, which he found repugnant to the “genius of our people” and recommended ending the tax. After resigning the Commissioner post in 1956, Thomas Coleman Andrews wrote that the income tax was “discriminatory, confiscatory, and politically unsound.”[13] In 1992 former Commissioner Shirley Peterson said, “I would repeal the Internal Revenue Code and start over.”[14] In 1993 she said:[15]

Eight decades of amendments and accretions to the Code have produced a virtually impenetrable maze. The rules are unintelligible to most citizens — including those holding advanced degrees and including many who specialize in tax law. The rules are equally mysterious to many government employees who are charged with administering and enforcing the law. The need for simplification is apparent from sheer weight of the Internal Revenue Code and its regulations, which now comprise eight volumes of fine print.

Most recently, former Treasury Secretary John Snow, in a statement before a U.S. Senate subcommittee, said:[16]

The problem you’re talking about is the bewildering complexity of the code itself . . . Yes, Senator Murray, how do you expect people to comply with your handiwork? Rather than scape-goating the firms that prepare our taxes, shouldn’t you be working to fix the mess you and your congressional colleagues created?

How about some icing on that cake? Consider the jurat included in a tax return:

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and accurately list all amounts and sources of income I received during the tax year.

Does any sane person truly believe he or she fully understands the tax code? The discussion in this book should suffice to prove otherwise and considering the tremendous tax litigation backlog in the court system, no person should attempt such a claim. Judges, attorneys, and taxpayers all argue endlessly about the meaning of the tax code and its interpretation. The jurat claims the

information is true and correct, but the only way to tender such a claim is to know and understand the tax code perfectly and without error. Nobody can make that claim. Therefore, to sign such a jurat is in itself an act of perjury.

When is enough enough?

Finis.

Endnotes

[1] F. Morse Hubbard, legislative researcher and draftsman; House Congressional Record, March 27, 1943, March 27, 1943, pg. 2580,

[2] Adams, *Those Dirty Rotten Taxes*, pp. 152–159.

[3] Ekirch, “The Sixteenth Amendment,” pp. 177–178, citing Blakely and Blakely, *The Federal Income Tax*, (New York: Longmans, Green 1940), p. 70.

[4] Twight, “Evolution of Federal Income Tax Withholding,” p. 388.

[5] Adams, *Those Dirty Rotten Taxes*, p. 154, citing Robert Jackson, then Chief Counsel of the Bureau of Internal Revenue, who later became a Supreme Court justice.

[6] *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179 (1918); *Hays, Collector, v. Gauley Mountain Coal Company*, 247 U.S. 189 (1918); *Southern Pacific Co. v. Lowe*, 247 U.S. 330 (1918); and also *Goodrich v. Edwards*, 255 U.S. 527 (1921).

[7] Hart, *Constitutional Income*, pp. 305–306.

[8] U.S. Constitution, Amendment V.

[9] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[10] Recognized in U.S. Constitution, Amendment V; state constitutions.

[11] Recognized in U.S. Constitution, Amendment IV; state constitutions.

[12] Hamowy, “The IRS and Civil Liberties,” pp. 225, 253.

[13] Crane, “The Income Tax and the Burden of Perfection,” p. 174, citing “Ex-Tax Chief Opposes Tax (Now He Tells Us),” *N.Y. Times*, Feb. 19, 1956, p. 20, quoted in Adrian W. DeWind, “Law and the Future: Federal Taxation,” 51 *Northwestern University Law Review* 227, 231 n.5 (1956).

[14] Pilla, How to Fire the IRS, p. 203, citing Forbes Magazine, September 1992, p. 44.

[15] Barnard, Draining the Swamp, p. 67, citing excerpts from an address by Shirley Peterson, Former IRS Commissioner, published in The Freeman Letter by the Freeman Education Association, 8141 E. 31st St., Suite F, Tulsa, Oklahoma 74145.

[16] Secretary Snow Admits U.S. Tax Code is Incomprehensible; IPI Asks, Now What?, Institute for Policy Innovation, April 10, 2006, <http://releases.usnewswire.com/GetRelease.asp?id=63806>.