

# [Orthodoxy of THEIRS]

[The fusion of religion, revenue & returns into an Orthodoxy of THEIRS]

## Plaintiff's [conscience] dictates:

### AN ANALYSIS OF THE FEDERAL INCOME TAX LAWS

5-10-04

#### FOR EDUCATIONAL PURPOSES ONLY

As Justice Story said, "it is \* \* \* a general rule in the interpretation of all statutes, levying taxes or duties upon subjects or [citizens](#), not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters, not specifically pointed out, although standing upon a close analogy.

In every case, therefore, of doubt, such statutes are construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import." [FN 1]

For further authority regarding this rule of statutory construction, please see the following linked cases: [Gould v. Gould](#), 245 U.S. 151 (1917); [Crocker v. Malley](#), 249 U.S. 223 (1919); [United States v. Field](#), 255 U.S. 257 (1921); [Smietanka v. First Trust & Sav. Bank](#), 257 U.S. 602 (1922); [United States v. Merriam](#), 263 U.S. 179 (1923); [Bowers v. New York & Albany Lighterage Co.](#), 273 U.S. 346 (1927); [Reinecke v. Northern Trust Co.](#), 278 U.S. 339 (1929); [Miller v. Standard Nut Margarine Co. of Florida](#), 284 U.S. 498 (1932); [Old Colony R. Co. v. Commissioner](#), 284 U.S. 552 (1932); and [White v. Aronson](#), 302 U.S. 16 (1937). [FN 2] American citizens clearly have the benefit of this rule.

The requirement to file a federal income tax return is the subject of 26 U.S.C. § 6091, which provides in pertinent part as follows:

"a) General rule "When not otherwise provided for by this title, the Secretary shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

"(b) Tax returns" In the case of returns of tax required under authority of part II of this subchapter—

(1) Persons other than corporations (A) General rule Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary— (i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or (ii) at a service center serving the internal revenue district referred to in clause (i), "as the Secretary may by regulations designate."

Examination of this statute reveals that it depends for its implementation upon the promulgation of regulations, and the relevant cases have so held. See *United States v. Citron*, 221 F.Supp. 454, 456 (S.D.N.Y. 1963); *United States v. Gorman*, 393 F.2d 209, 213-214 (7th Cir. 1968); *United States v. Ramantanin*, 452 F.2d 670, 671 (4th Cir. 1971); *United States v. Gilkey*, 362 F.Supp. 1069, 1071 (E.D.Pa. 1973); *United States v. Lawhon*, 499 F.2d 352, 355 (5th Cir. 1974); *United States v. Calhoun*, 566 F.2d 969, 973 (5th Cir. 1978); *United States v. Clinton*, 574 F.2d 464, 465 (9th Cir. 1978); *United States v. Quimby*, 636 F.2d 86, 90 (5th Cir. 1981); *United States v. Rice*, 659 F.2d 524, 526 (5th Cir. 1981); *United States v. Grabinski*, 727 F.2d 681, 684 (8th Cir. 1984); *United States v. Garman*, 748 F.2d 218, 219 (4th Cir. 1984); *United States v. Griffin*, 814 F.2d 806, 810 (1st Cir. 1987); and *United States v. Dawes*, 874 F.2d 746, 750 (10th Cir. 1989).

The regulations implementing this section of the current 1986 Internal Revenue Code (sometimes "IRC") are linked [here](#).

In reviewing these regulations and considering the above principle of statutory construction, **it appears that "citizens" are mentioned only in 26 C.F.R. § 1.6091-3. In fact, it is only § 1.6091-3 which specifically identifies any parties required to file federal income tax returns** [FN 3] and they are as follows:

"(a) Income tax returns on which all, or a portion, of the tax is to be paid in foreign currency. See Secs. 301.6316-1 to 301.6316-6 inclusive, and Secs. 301.6316-8 and 301.6316-9 of this chapter (Regulations on Procedure and Administration).

"(b) Income tax returns of an individual citizen of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States. A taxpayer's principal place of abode will be considered to be outside the United States if his legal residence is outside the United States or if his return bears a foreign address.

"(c) Income tax returns of an individual citizen of a possession of the United States (whether or not a citizen of the United States) who has no legal residence or principal place of business in any internal revenue district in the United States.

"(d) Except in the case of any departing alien return under section 6851 and Sec. 1.6851-2, the income tax return of any nonresident alien (other than one treated as a resident under section 6013 (g) or (h)).

"(e) The income tax return of an estate or trust the fiduciary of which is outside the United States and has no legal residence or principal place of business in any internal revenue district in the United States.

"(f) Income tax returns of foreign corporations.

"(g) The return by a withholding agent of the income tax required to be withheld at source under chapter 3 of the Code on nonresident aliens and foreign corporations and tax-free covenant bonds, as provided in Sec. 1.1461-2.

"(h) Income tax returns of persons who claim the benefits of section 911 (relating to earned income from sources without the United States).

"(i) Income tax returns of corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations) except in the case of consolidated returns filed pursuant to the regulations under section 1502.

"(j) Income tax returns of persons who claim the benefits of section 931 (relating to income from sources within possessions of the United States).

"(k) Income tax returns of persons who claim the benefits of section 933 (relating to income from sources within Puerto Rico).

"(l) Income tax returns of corporations which claim the benefits of section 941 (relating to the special deduction for China Trade Act corporations)."

The regulations which implement § 6091 specifically mention American citizens abroad, **but do not mention in any way** an [American citizen](#) "at home." The only citizens required via 26 C.F.R. § 1.6091-3 to file federal income tax returns are citizens outside the United States.

Further, the absence of any mention of citizens "at home" in § 1.6091-3 also appears to be a feature of the Internal Revenue Code as well. The major provisions of the federal income tax are contained in subtitles A and C of the IRC. In this [file](#), please find references to every section of subtitles A and C appearing in the 1998 edition of the 1986 Internal Revenue Code that mentions "citizen" as well as short excerpts of each section. Remarkably, there are no sections of the Internal Revenue Code that even mention a "citizen at home." [FN 4]

Prior income tax acts have specifically mentioned and imposed taxes on "citizens at home." In 1894, the U.S. Congress adopted an income tax act. See "An Act To reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894, [28 Stat. 509, ch. 349](#). Section 27 of this act, 28 Stat. at 553, read as follows:

"That \* \* \* there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein \* \* \* a tax of two per centum \* \* \* and a like tax shall be levied, collected and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by [persons](#) residing without the United States."

But, this act was found **unconstitutional** in the case of *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, aff. reh., 158 U.S. 601 (1895).

After ratification of the 16th Amendment, Congress adopted a federal income tax act on October 3, 1913. See "An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes," [38 Stat. 114, ch. 16](#). The individual income tax was imposed in § II(A) (38 Stat. at 166):

"A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from [all sources](#) in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income \* \* \*."

Examination of both the 1894 and 1913 acts clearly reveals that Congress knew about the above principle of law regarding statutory construction and complied with it. Review of these two acts demonstrates that there can be no question that "citizens at home" were subject to the tax.

On September 8, 1916, Congress adopted another federal income tax act. See "An Act To increase the revenue, and for other purposes," [39 Stat. 756, ch. 463](#). The individual income tax in this act was imposed by § 1:

"Sec. 1. (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a [citizen or resident](#) of the United States, a tax of two per centum upon such income \* \* \*."

While the 1913 Act specifically imposed the tax on the income of "every citizen, whether at home or abroad", the 1916 Act imposed the tax on "every individual," a subtle difference in an act with profound differences. The 1916 Act, in § 24 (39 Stat. at 776), plainly repealed the 1913 Act. On October 3, 1917, Congress passed an act which amended the 1916 Act. See "An Act To provide revenue to defray war expenses, and for other purposes", [40 Stat. 300, ch. 63](#).

On February 24, 1919, the Revenue Act of 1918 was adopted by Congress. See "An Act To provide revenue, and for other purposes", [40 Stat. 1057, ch. 18](#). This Act was different from the 1916 Act in that it imposed a tax which

was merely in lieu of the tax imposed by the 1916 Act. This is shown by the plain language of § 210 (40 Stat. at 1062):

"Sec. 210. That, in lieu of the taxes imposed by subdivision (a) of Section 1 of the Revenue Act of 1916 and by Section 1 of the Revenue Act of 1917, there shall be levied, collected and paid for each taxable year upon the net income of every individual a normal tax at the following rates:"

The Revenue Act of 1921 was adopted by Congress on November 23, 1921. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," [42 Stat. 227, ch. 136](#). This act closely followed the pattern of the Revenue Act of 1918 in that it also imposed a tax in lieu of the 1918 tax. In § 210 of this act (42 Stat. at 233), the section imposing the tax read as follows:

"Sec. 210. That, in lieu of the tax imposed by section 210 of the Revenue Act of 1918, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* ."

The Revenue Act of 1924 was adopted by Congress on June 2, 1924. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," [43 Stat. 253, ch. 234](#). Like its predecessors, this act imposed a tax in lieu of the previous tax. Section 210 (43 Stat. at 264) read as follows:

"Sec. 210. (a) In lieu of the tax imposed by Section 210 of the Revenue Act of 1921, there shall be levied, collected, and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax \* \* \* ."

Two years later, Congress enacted the Revenue Act of 1926. See "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," [44 Stat. 9, ch. 27](#). Section 210 of this act read almost identically as the former acts imposing the tax:

"Sec. 210. (a) In lieu of the tax imposed by section 210 of the Revenue Act of 1924, there shall be levied, collected and paid for each taxable year upon the net income of every individual (except as provided in subdivision (b) of this section) a normal tax \* \* \* ."

Again, two years later, Congress enacted another act named the Revenue Act of 1928. See "An Act To reduce and equalize taxation, provide revenue, and for other purposes," [45 Stat. 791, ch. 852](#). By this time, Congress had been enacting similar legislation for 15 years, and it changed the format of the income tax acts. The format of this act was decidedly different from the previous acts, and this format was ultimately used for the 1939 Internal Revenue Code. In this new format, the tax became imposed in § 11:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \* ."

It must be noted that while the "in lieu of" feature of the tax appeared directly in the section imposing the tax in the prior acts, this § 11 made no reference to the same, although the act itself did. Congress moved the "in lieu of" feature from the section imposing the tax and placed it in § 63 (45 Stat. at 810) of the act:

"Sec. 63. Taxes in Lieu of Taxes Under 1926 Act. The taxes imposed by this title shall be in lieu of the corresponding taxes imposed by Title II of the Revenue Act of 1926, in accordance with the following table:

"Taxes under this Title	Taxes under 1926 Act
Secs. 11 and 211 ....	in lieu of ... sec. 210
Sec. 12 .....	in lieu of ... sec. 211"

Congress did not enact after 1928 another major tax law for four years; on June 6, 1932, it did enact, however, the Revenue Act of 1932. See "An Act To provide revenue, equalize taxation, and for other purposes," [47 Stat. 169, ch. 209](#). This act was patterned upon its predecessor, the 1928 Act, and it thus had a § 11 which imposed the tax, and a § 63 providing the "in lieu of" feature:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the entire net income of every individual a normal tax \* \* \*."

"Sec. 63. Taxes In Lieu of Taxes Under 1928 Act. The taxes imposed by this title shall be in lieu of the corresponding taxes imposed by the sections of the Revenue Act of 1928 bearing the same numbers."

Two years later, Congress enacted the Revenue Act of 1934. See "An Act To provide revenue, equalize taxation, and for other purposes," [48 Stat. 680, ch. 277](#). Like the 1928 and 1932 Acts, this act contained a § 11 as well as a § 63:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \*."

"Sec. 63. Taxes In Lieu of Taxes Under 1932 Act. The taxes imposed by this title shall be in lieu of the corresponding taxes imposed by the Revenue Act of 1932."

The next major income tax act of Congress was the Revenue Act of 1936. See "An Act To provide revenue, equalize taxation, and for other purposes," [49 Stat. 1648, ch. 690](#). Here, Congress continued the same scheme first established in 1928, with §§ 11 and 63:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \*."

"Sec. 63. Taxes In Lieu of Taxes Under 1934 Act. The taxes imposed by this title and Title IA shall be in lieu of the taxes imposed by Titles I and IA of the Revenue Act of 1934, as amended."

Finally, on May 28, 1938, Congress enacted the Revenue Act of 1938. See "An Act To provide revenue, equalize taxation, and for other purposes," [52 Stat. 447, ch. 289](#). This act followed the format of the similar income tax acts adopted in 1928, 1932, 1934, and 1936, and it established much of the format for the 1939 Internal Revenue Code. Here again, there was a § 11 and a § 63:

"Sec. 11. Normal Tax on Individuals. There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax \* \* \*."

"Sec. 63. Taxes In Lieu of Taxes Under 1936 Act. The taxes imposed by this title and Title IA shall be in lieu of the taxes imposed by Titles I and IA of the Revenue Act of 1936, as amended."

On December 31, 1938, there was in existence a federal income tax which was imposed by the Revenue Act of 1938. But, this act simply imposed a tax which was in lieu of the 1936 tax, which tax was in lieu of the 1934 tax, which was in lieu of the 1932 tax, which was in lieu of the 1928 tax, which was in lieu of the 1926 tax, which was in lieu of the 1924 tax, which was in lieu of the 1921 tax, which was in lieu of the 1918 tax, which was in lieu of the 1916 tax. At that time, many other taxes were scattered throughout various Congressional tax acts, and there appeared to Congress a need to consolidate these laws into one act. This was the purpose for enacting the 1939 Internal Revenue Code.

On February 10, 1939, the [1939 Internal Revenue Code](#) was approved and became law. The preface to this Code made it clear that it simply codified the existing tax acts into one law:

"The internal revenue title, which comprises all of the Code except the preliminary sections relating to its enactment, is intended to contain all the United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes the occasion of which may arise after the enactment of the Code. These statutes are codified without substantive change and with only such change of form as is required by arrangement and consolidation. The title contains no provision, except for effective date, not derived from a law approved prior to January 3, 1939."

In essence, those various internal revenue laws then in force and effect on January 2, 1939, were placed into this one act which created the 1939 IRC. Section 4 of the enacting clause of this Code provided that any prior law codified in this act was thereby repealed; but § 4 did not repeal any law not so codified. Most of the income tax provisions in the 1939 IRC were derived from the 1938 Revenue Act, and § 11 of the 1938 Revenue Act became § 11 in the 1939 Code. But while §§ 11 through 62 of the 1938 Act were incorporated into the 1939 Code, § 63, which provided the "in lieu of" feature, was not, and therefore was not repealed. Thus, the 1939 Code was nothing more than an incorporation of the 1938 Act into its provisions, and the unrepealed § 63 in the 1938 Act operated to make the 1939 Code's income tax laws an act which was in lieu of the 1936 tax.

The 1954 Internal Revenue Code, [68A Stat.](#), was a rearrangement of the provisions of the 1939 Internal Revenue Code combined with some other changes. See Detailed Discussions of the Technical Provisions of the Bill by the House and Senate, [1954 U.S.C.A.N.S., pp. 4145 and 4793](#), as well as [Table II, 68A Stat. at 952](#). The 1986 Internal Revenue Code is just simply the renamed 1954 Internal Revenue Code. See 100 Stat. 2085, at 2095. Today, the 1986 Code is merely a replacement or substitute for the 1954 Code, which was a replacement or substitute for the 1939 Code, which was the codification of the 1938 Revenue Act. The 1938 tax was one which was in lieu of the 1936 tax, which was in lieu of the 1934 tax, which was in lieu of the 1932 tax, which was in lieu of the 1928 tax, which was in lieu of the 1926 tax, which was in lieu of the 1924 tax, which was in lieu of the 1921 tax, which was in lieu of the 1918 tax, which was in lieu of the 1916 tax. Thus today, the tax scheme imposed by the Revenue Act of 1916, as amended, still exists. [FN 5]

While it was in effect, the [1913 Act](#) imposed a method of collection "at [the source](#)" of the [income known as "withholding."](#) Section II (E), 38 Stat. at 170, was broad and provided as follows:

"All persons, firms, copartnerships companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income **of another person**, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual **gains, profits, and income** such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax."

To implement this income tax withholding provision, [Treasury Decision 1887](#) was promulgated on October 25, 1913 and it subjected to withholding at the source and taxed the interest income of citizens, both at home and abroad. On October 31, 1913, [Treasury Decision 1890](#) was adopted and it subjected to withholding "all income derived from fixed annual periodical rent of realty or personalty, interest \* \* \*, salaries, royalties, taxable annuities, and other



fixed annual periodical income \* \* \*."

The "tax imposed" section of the 1913 Act was very broad and specifically imposed a tax on the income of citizens at home. The Supreme Court has acknowledged that the 1913 income tax act was intended to tax all. See [\*Smietanka v. First Trust & Sav. Bank\*](#), 257 U.S. 602, 606 (1922). But after the decision in [\*Brushaber v. Union Pacific Railroad Company\*](#), 240 U.S. 1 (1916), the scheme of taxation began to change dramatically, especially considering the fact that the 16th Amendment conferred no new powers of taxation. See [\*Stanton v. Baltic Mining Co.\*](#), 240 U.S. 103, 112 (1916). One important result of the decision in *Brushaber* was the promulgation of [Treasury Decision 2313](#).

While there were major differences between the 1913 Act and the 1916 and 1917 Acts, those differences did not relate to the statutory definition of "income." The definition of "income" in the [1913 Act](#), 38 Stat. at 167, was as follows:

"B. That, subject only to such exemptions and deductions as are hereinafter allowed, the **net** income of a taxable person shall include **gains, profits, and income derived from** salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever \* \* \*."

The [1916 Act](#), 39 Stat. at 757, defined this term as follows:

"SEC. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever \* \* \*."

The only difference regarding the definition of "income" between these two acts was that the word "lawful" before "business" appearing in the 1913 Act was omitted from the 1916 Act.

But the 1916 Act, as amended by the 1917 Act, was **far more limited in its scope than the 1913 Act**. For example, § 9 of the [1916 Act](#), 39 Stat. at 765, provided a feature not contained in the 1913 Act:

"(g) \* \* \* The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same."

Via §§ 1205 and 1208 of the [1917 Act](#), 40 Stat. at 335, **withholding was limited to non-resident aliens and foreign firms**:

"SEC. 1205. (1) That subdivisions (b), (c), (f), and (g) of section nine of such Act of September eighth, nineteen hundred and sixteen, are hereby amended to read as follows:

"(b) All persons, corporations, partnerships, associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation,

remuneration, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of **any nonresident alien individual**, other than income derived from dividends on capital stock, or from the net earnings of a corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title, are hereby authorized and required to deduct and withhold from such annual or periodical gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this title, and shall make return thereof on or before March first of each year and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax, and they are each hereby indemnified against every person, corporation, partnership, association, or insurance company, or demand whatsoever for all payments which they shall make in pursuance and by virtue of this title."

**But what dramatically changed the tax scheme was § 25 of the [1916 Act](#), 39 Stat. at 777, which provided:**

"Sec. 25. That income on which has been assessed the tax imposed by Section II of the Act entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' approved October third, nineteen hundred and thirteen, **shall not be considered as income within the meaning of this title**: Provided, That this section shall not conflict with that portion of section 10, of this title, under which a taxpayer has fixed its own fiscal year."

**This § 25 plainly stated that there were monumental differences between the tax scheme of the 1913 Act and that of the 1916 and 1917 Acts.**

**When the 1916 Act went into effect in October, 1916, its withholding provisions regarding citizens were rendered nugatory via § 1212 of the [1917 Act](#), 40 Stat. at 338:**

"SEC. 1212. That any amount **heretofore withheld** by any withholding agent as required by Title I of such Act of September eighth, nineteen hundred and sixteen, on account of the tax imposed upon the income of any individual, **a citizen or resident of the United States**, for the calendar year nineteen hundred and seventeen, except in the cases covered by subdivision (c) of section nine of such Act, as amended by this Act, **shall be released and paid over to such individual**, and the entire tax upon the income of such individual for such year shall be assessed and collected in the manner prescribed by such Act as amended by this Act."

To implement § 1212, [Treasury Decision 2635](#) was promulgated on January 24, 1918, **and it directed the refunding of all taxes for citizens and residents withheld during the year 1917.** [FN 6]

These statutory changes in this tax scheme also caused changes in the applicable tax regulations. When the 1913 Act became effective, Regulations 33 were adopted by the Commissioner of Internal Revenue to implement that act. There was no provision in that set of income tax regulations which mentioned in any way some type of income "fundamentally exempt" from tax by the Constitution. But after the dramatic change from the 1913 tax scheme to that of the 1916 and 1917 Acts, such a provision started appearing in these income tax regulations:

[Regulations 45 \(1918\), Art. 71](#)      [Regulations 45 \(1920\), Art. 71](#)

[Regulations 62, Art. 71](#)                      [Regulations 65, Art. 71](#)

[Regulations 69, Art. 71](#)                      [Regulations 74, Art. 81](#)

[Regulations 77, Art. 81](#)                      [Regulations 86, Art. 22\(b\)-1](#)



[Regulations 94, Art. 22\(b\)-1](#)      [Regulations 101, Art. 22\(b\)-1](#)

[Regulations 103, Art. 19.22\(b\)-1](#) [26 C.F.R. § 1.312-6](#)

See also [Jack Cole Co. v. MacFarland](#), 337 S.W.2d 453, 455-56 (Tenn. 1960)("Realizing and receiving income or earnings is not a privilege that can be taxed").

Some important conclusions arise as a direct result of analysis of these changes between the 1913 Act's tax scheme and that of the 1916 and 1917 Acts. **Clearly, the 1913 Act imposed an income tax on the domestic income of Americans at home. That act subjected to withholding at [the source](#) all periodic income which was taxed, including interest, dividends, wages and salaries.** The 1913 Act encompassed the income "from all sources" of citizens and resident aliens, and the income of non-resident aliens from domestic sources.

But, § 25 of the 1916 Act announced a dramatic change in this scheme. **It is clear that the differences between the 1913 Act and the 1916 Act, as amended, did not relate to the statutory definition of "income", leaving only one possibility: the difference between the 1913 and 1916 income tax acts related to the taxpayers whose income was taxed.**

The phrase, "non-residents, whether citizens or aliens," was used in the 1866 income tax act (14 Stat. 98, at 138), and obviously means citizens and aliens outside this country. It was decided long ago that the domestic income of non-resident aliens and foreign firms could be taxed; see [Michigan Central Railroad Co. v. Slack](#), 100 U.S. 595 (1880); [United States v. Erie Railway Company](#), 106 U.S. 327 (1882); and [DeGanay v. Lederer](#), 250 U.S. 376 (1919). Further, citizens residing abroad can also be subjected to tax; see [Cook v. Tait](#), 265 U.S. 47 (1924). However, it must be noted that there are "differences between things domestic and things foreign, and their use, [which] are apparent on the face of things, and are expressly manifested by the text of the Constitution". See [Billings v. United States](#), 232 U.S. 261, 283 (1914).

**Does the present federal income tax appear to be one imposed only on "non-residents, whether citizens or aliens"?**

The above mentioned tax acts are linked here:

[Revenue Act of 1913](#)      [\(1913 Act in PDF\)](#)

[Revenue Act of 1916](#)      [\(1916 Act in PDF\)](#)

[Revenue Act of 1917](#)      [\(1917 Act in PDF\)](#)

[Revenue Act of 1918](#)      [\(1918 Act in PDF\)](#)

[Revenue Act of 1921](#)      [\(1921 Act in PDF\)](#)

[Revenue Act of 1924](#)      [\(1924 Act in PDF\)](#)

[Revenue Act of 1926](#)      [\(1926 Act in PDF\)](#)

[Revenue Act of 1928](#)      [\(1928 Act in PDF\)](#)

[Revenue Act of 1932](#)      [\(1932 Act in PDF\)](#)

[Revenue Act of 1934](#)      [\(1934 Act in PDF\)](#)

[Revenue Act of 1936](#)      [\(1936 Act in PDF\)](#)

[Revenue Act of 1938](#)      [\(1938 Act in PDF\)](#)

[1939 I.R. Code](#)  
[1954 I.R. Code](#)

[1939 I.R.C. \(PDF\)](#)  
[1954 I.R.C. \(PDF\)](#)

The linked tax acts in the above left column are accurate text reproductions of the actual acts appearing in the U.S. Statutes at Large. Each text act is searchable. Further, PDF files of all these same acts are also linked above in the right column.

Review of these various income tax acts adopted after the 1913 act fails to reveal any statutory provision plainly and expressly stating that American citizens domiciled at home have their domestic income taxed (these acts clearly mention citizens in the insular possessions). Yet to comply with the rule of statutory construction mentioned above requires such a provision: "[T]he citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that where the [construction of a tax law is doubtful](#), the doubt is to be resolved in favor of those upon whom the tax is sought to be laid".[FN 7]

The absence of any express statutory provision imposing an income tax on the domestic income of American citizens domiciled "at home" also manifests itself in other ways. Commencing in 1919, the Bureau of Internal Revenue (sometimes "BIR") started publishing the Cumulative Bulletin, which contains a wide variety of information regarding federal income taxes. This publication is printed by professionals employed by the government, who certainly know the importance and value of indexes. Below are certain pages from the index of every volume of the Cumulative Bulletin from 1919 through 1953:

<a href="#">1 C.B. 313</a>	<a href="#">VI-2 C.B. 411</a>	<a href="#">XV-1 C.B. 528</a>	<a href="#">1944 C.B. 1100</a>
<a href="#">2 C.B. 324</a>	<a href="#">VII-1 C.B. 369</a>	<a href="#">XV-2 C.B. 586</a>	<a href="#">1945 C.B. 663</a>
<a href="#">3 C.B. 376</a>	<a href="#">VII-2 C.B. 427</a>	<a href="#">1937-1 C.B. 556</a>	<a href="#">1946-1 C.B. 351</a>
<a href="#">4 C.B. 420</a>	<a href="#">VIII-1 C.B. 338</a>	<a href="#">1937-2 C.B. 650</a>	<a href="#">1946-2 C.B. 303</a>
<a href="#">5 C.B. 317</a>	<a href="#">VIII-2 C.B. 450</a>	<a href="#">1938-1 C.B. 615</a>	<a href="#">1947-1 C.B. 224</a>
<a href="#">I-1 C.B. 482</a>	<a href="#">IX-1 C.B. 416</a>	<a href="#">1938-2 C.B. 521</a>	<a href="#">1947-2 C.B. 365</a>
<a href="#">I-2 C.B. 363</a>	<a href="#">IX-2 C.B. 466</a>	<a href="#">1939-1 C.B. 435</a>	<a href="#">1948-1 C.B. 358</a>
<a href="#">II-1 C.B. 350</a>	<a href="#">X-1 C.B. 536</a>	<a href="#">1939-2 C.B. 639</a>	<a href="#">1948-2 C.B. 328</a>
<a href="#">II-2 C.B. 388</a>	<a href="#">X-2 C.B. 472</a>	<a href="#">1940-1 C.B. 326</a>	<a href="#">1949-1 C.B. 303</a>
<a href="#">III-1 C.B. 543</a>	<a href="#">XI-1 C.B. 386</a>	<a href="#">1940-2 C.B. 604</a>	<a href="#">1949-2 C.B. 305</a>
<a href="#">III-1 C.B. 551</a>	<a href="#">XI-2 C.B. 581</a>	<a href="#">1941-1 C.B. 579</a>	<a href="#">1950-1 C.B. 297</a>

[III-2 C.B. 455](#) [XII-1 C.B. 492](#) [1941-2 C.B. 529](#) [1950-2 C.B. 597](#)  
[IV-1 C.B. 418](#) [XII-2 C.B. 509](#) [1942-1 C.B. 411](#) [1951-1 C.B. 280](#)  
[IV-2 C.B. 344](#) [XIII-1 C.B. 557](#) [1942-2 C.B. 737](#) [1951-2 C.B. 656](#)  
[V-1 C.B. 457](#) [XIII-2 C.B. 620](#) [1943 C.B. 1383](#) [1952-1 C.B. 267](#)  
[V-2 C.B. 299](#) [XIV-1 C.B. 568](#) [1943 C.B. 1387](#) [1952-2 C.B. 380](#)  
[VI-1 C.B. 363](#) [XIV-2 C.B. 608](#) [1944 C.B. 1095](#) [1953-1 C.B. 536](#)  
[1953-2 C.B. 538](#)

Examination of these pages from the Cumulative Bulletin demonstrates that often, citizens are not even mentioned in these indexes, but when they are, it is in the context of "citizens abroad." Did the professional, government employed compilers of these indexes miss something?

This same deficiency also appears in the volumes of the Cumulative Bulletin published after adoption of the 1954 IRC. The following links contain some pages from the indexes of the Cumulative Bulletin published after 1953:

[1954 - 1 C.B. 407](#) [1966 - 2 C.B. 1294](#) [1971 - 2 C.B. 589](#) [1975 - 2 C.B. 619](#)  
[1954 - 2 C.B. 746](#) [1967 - 2 C.B. 708](#) [1971 - 2 C.B. 595](#) [1975 - 2 C.B. 625](#)  
[1955 - 1 C.B. 735](#) [1967 - 2 C.B. 722](#) [1972 - 1 C.B. 789](#) [1976 - 1 C.B. 595](#)  
[1955 - 2 C.B. 1030](#) [1968 - 2 C.B. 979](#) [1972 - 1 C.B. 796](#) [1977 - 1 C.B. 602](#)  
[1956 - 1 C.B. 1063](#) [1968 - 2 C.B. 986](#) [1972 - 2 C.B. 910](#) [1977 - 1 C.B. 607](#)  
[1956 - 2 C.B. 1452](#) [1969 - 1 C.B. 474](#) [1972 - 2 C.B. 917](#) [1978 - 2 C.B. 579](#)  
[1957 - 2 C.B. 1153](#) [1969 - 1 C.B. 480](#) [1973 - 2 C.B. 519](#) [1979 - 1 C.B. 637](#)  
[1958 - 2 C.B. 1191](#) [1969 - 2 C.B. 326](#) [1973 - 2 C.B. 528](#) [1979 - 1 C.B. 642](#)  
[1959 - 2 C.B. 1012](#) [1970 - 1 C.B. 528](#) [1974 - 2 C.B. 528](#) [1979 - 2 C.B. 615](#)  
[1960 - 2 C.B. 1050](#) [1970 - 2 C.B. 660](#) [1975 - 1 C.B. 763](#) [1980 - 1 C.B. 728](#)  
[1962 - 2 C.B. 559](#) [1970 - 2 C.B. 661](#) [1975 - 1 C.B. 770](#) [1980 - 1 C.B. 733](#)

[1964 - 2 C.B. 1043](#) [1971 - 1 C.B. 777](#) [1975 - 1 C.B. 777](#) [1985 - 1 C.B. 679](#)

Review of the above pages from the indexes for the Cumulative Bulletin is very revealing. **The Bulletin is prepared and printed by expert publishers and they obviously intend to reference everything of importance in the indexes. If the tax acts specifically mentioned "citizens at home," certainly these professional index preparers would reference such. The absence of such references indicates an absence of such provisions in the tax laws.**

But further, this same pattern is also evident in the income tax publications of private publishers. It cannot be doubted that West Publishing Company is probably the premier publisher of American law books, including those related to the federal income tax. The following links contain pages from the indicated indexes:

<a href="#">1986 CFR Index</a>	<a href="#">1987 CFR Index</a>
<a href="#">1988 CFR Index</a>	<a href="#">1989 CFR Index</a>
<a href="#">1990 CFR Index</a>	<a href="#">1991 CFR Index</a>
<a href="#">1992 CFR Index</a>	<a href="#">1993 CFR Index</a>
<a href="#">1994 CFR Index</a>	<a href="#">1995 CFR Index</a>

Prentice-Hall, Inc., is another prominent law book publisher, **yet it also appears unable to find statutory references to citizens other than those abroad:**

[P-H 1985 Index for 1954 Code](#)  
[P-H 1988 Index for 1986 Code](#)

**Why can't these private publishers of federal income tax materials find statutory references to citizens other than those abroad?**

Another very important index appears in the Form 1040 instruction booklet. The indexes for these publications do make reference to citizens, but only for those living abroad; see indexes of the Form 1040 instruction booklets for [1992](#), [1993](#), [1994](#), [1995](#), [1996](#), [1997](#), [1998](#), [1999](#), [2000](#), [2001](#), [2002](#), and [2003](#).

In summary, examination of the various revenue acts adopted after the Revenue Acts of 1916 and 1917 reveals an absence of statutory provisions regarding the domestic income of American citizens domiciled at home. But in addition to this lack of such provision[s] in the statutes, the above also demonstrates that even professionals who publish this type of material constantly and have been doing so for decades do not find such provisions either. What is the reason for this deficiency? Is it § 25 of the 1916 Act?

It must also be noted that frequently the IRS itself as well as various public officials make statements descriptive of the federal income tax system: "our tax system is based upon **voluntary** compliance." **The term "voluntary" in reference to taxation means that if a party pays without objection a tax which he does not owe, he cannot recover it. See [Treasury Decision 3445](#).**

The above analysis of the prior income tax statutes and other materials reveals a complete absence of any provision

of such laws imposing an income tax on the domestic income of a citizen living "at home". These materials further demonstrate that this tax, in reference to citizens, is imposed on citizens living and working abroad, and most particularly those in the insular possessions. **The natural question to ask is whether the U.S. Department of the Treasury (at times herein "Treasury") and the Internal Revenue Service ("IRS") agree that such is the application of this tax. Close examination of the activities of these two federal agencies demonstrates that both do.**

## **AUTHORITY OF THE COMMISSIONER OF INTERNAL REVENUE**

### **I. Summary of the Administrative Procedure Act ("A.P.A.").**

During the late 19th century, the Treasury Department determined that, as a practical matter, publishing information such as its organizational structure was beneficial for the American public and necessary for the conduct of its business. As early as 1877, it adopted [Treasury Decision 3285](#) which described the various special agency districts; see also [Treasury Decision 12761](#) adopted in 1892, and [Treasury Decision 48659](#), adopted in 1936. Similarly, it found the publication of delegation orders helpful. In 1897, it adopted [Treasury Decision 18094](#), which described the various duties assigned by the Treasury Secretary to his assistants. See also [Treasury Decision 18787](#) adopted in 1898. Of course, there were many more such delegations of authority not mentioned here.

By 1896, Congress was concerned about the practice of making oral delegations of authority and assignments of duties by some federal agencies, and thus required, via a section from an appropriations act, 29 Stat. 140, 179, ch. 252, that such orders must be written. Pursuant to this statutory command, the Treasury Department adopted [Treasury Decisions 21723 and 21746](#), requiring Treasury officials to make assignments and delegations only by means of written orders.

By the early 20th century, delegations of authority from a department secretary not only were written, but were also frequently published in some official agency periodical. For example, Congress delegated enforcement powers for the 1917 Trading With the Enemy Act to the President, who delegated some of this authority to the Treasury Secretary. The Secretary in turn subdelegated some of these powers to others; see [Treasury Decision 37423](#). Other examples of written and duly published delegation orders concern the enforcement of the customs laws, which has always been delegated to the Commissioner of Customs; see [Treasury Decision 49047](#), [Treasury Decision 49818](#) (4 Fed. Reg. 1251), and [Treasury Decision 50192](#) (5 Fed. Reg. 2573).

Prior to 1935, obtaining agency regulations or information about an agency required review of agency publications or contact with the agency itself. To centralize publication of all the regulations and other information regarding federal agencies, in 1935 Congress adopted the Federal Register Act; see the Act of July 26, 1935, 49 Stat. 500, ch. 417 (presently codified at [44 U.S.C. §§ 1501](#), et seq.). This law created an official daily publication named the Federal Register where certain specified information would be published and consequently made available to the public. This act required "(1) all Presidential proclamations and Executive orders, except such as have no general applicability and legal effect or are effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof; [and] (2) such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect" to be published in the Federal Register. The act defined "document" as including agency regulations. The effect of this act was to establish the Federal Register as the official, central source for the publication of the various regulations adopted by federal agencies, rather than the scattered publications of those agencies. Pursuant to the authority conveyed to him, on [December 31, 1936](#), the President adopted the first set of regulations to implement that act. These regulations primarily required federal

agencies to publish their regulations in the Federal Register.

On June 19, 1937, Congress amended the Federal Register Act so as to require federal agencies to codify their rules of "general applicability and legal effect"; see 50 Stat. 304, ch. 369. This act thus created the Code of Federal Regulations ("C.F.R.") which codifies the various regulations adopted by federal agencies. On November 10, 1937, the Administrative Committee of the Federal Register issued [regulations](#) to implement this statutory command, and agencies were required to complete the codification of their rules by July 1, 1938. As shown by the [1938 C.F.R. Index](#), the regulations adopted by the Bureau of Internal Revenue were codified in Title 26 of the C.F.R., and those of the Treasury Department appeared in Title 31.

But the establishment of the Federal Register where all agency regulations would be published was only the beginning. At that time in the late 1930s, federal agencies did not adopt their regulations or procedural rules (which govern controversies with those agencies) in any meaningful fashion, and the process was, at best, bureaucratic and haphazard. Realizing a need to establish uniform administrative procedures, federal officials started in 1939 devising an administrative procedures law.

In 1940 after extensive investigation of the defacto rule making process of federal agencies, the U.S. Attorney General published a report entitled [Administrative Procedure in Government Agencies](#). This report was the result of a study of all federal agencies made by officials and employees of the Department of Justice and it contained several recommendations regarding administrative procedure for those agencies. The Report concluded that federal agencies should publish in the Federal Register "seven forms of vital administrative information": (1) the organizational structure of each agency, (2) each agency's statements of general policy, (3) statutory interpretations of the laws each agency administered, (4) substantive regulations of each agency, (5) the practice and procedural rules of each agency, and finally, (6) agency forms and (7) instructions.

It must be noted that by 1940, a manual entitled the United States Government Manual was already being published which described in summary fashion the structure of every federal agency; see the [1939 United States Government Manual](#). The Attorney General's Report argued for the need to require federal agencies to publish more detailed statements of their organizational structure in the Federal Register:

"1. Agency organization.—Few Federal agencies issue comprehensive or usable statements of their own internal organization—their principle offices, officers, and agents, their divisions and subdivisions; or their duties, functions, authority, and places of business. The United States Government Manual is not sufficiently detailed to fill this gap. Yet without such information, simply compiled and readily at hand, the individual is met at the threshold by the troublesome problem of discovering whom to see or where to go—a problem sometimes difficult to solve without irksome correspondence or unproductive personal consultations," Report, at 26.

By 1945, a bill proposing uniform administrative procedure was pending before Congress and several Congressional reports regarding that bill were published. As to the pending bill's requirement that federal agencies would be required to publish in the Federal Register their organizational structure and delegation orders, [Senate Report No. 752](#) stated regarding this feature of the bill:

*"(a) Rules.—Every agency is required to publish in the Federal Register its (1) organization, (2) places of doing business with the public, (3) methods of rule making and adjudication including the rules of practice relating thereto, and (4) such substantive rules as it may frame for the guidance of the public. No person is in any manner to be required to resort to organization or procedure not so published.*

"Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies **to state their organization and procedure in the form of rules** is essential for the information of the public. The



publication must be kept up to date. The enumerated classes of informational rules must be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. **The effect of any one of the first three classifications of required rule making is that agencies must also publish their internal delegations of authority.** The section **forbids secrecy** of rules binding or applicable to the public, or of delegations of authority."

[House Report No. 1980](#) was similar in nature regarding the precise information agencies must incorporate in their "informational" rules:

"Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies to state their organization and procedures in the form of rules is essential for the information of the public. The publication must be kept up to date. The enumerated classes of informational rules must also be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. Under (1) only final delegations of authority to dispose of cases or matters must be published; **the delegation of other functions would be shown in (2) in stating the general course and method by which each of an agency's functions are channeled and determined.** Also, under (2), an agency is required to state all the stages, steps, courses, and alternatives for each of the types of functions it is authorized to perform. The section **forbids secrecy** of rules binding upon or applicable to the public, or of delegations of authority."

In June, 1946, Congress adopted the A.P.A. See [Act of June 11, 1946](#), 60 Stat. 237, ch. 324. An important definition in this act was the following contained in § 2:

"(c) Rule and rule making.—'Rule' means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency \* \* \*."

Section 3 of the act commanded that the following types of agency "rules" be published in the Federal Register:

"(a) Rules. Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published."

Further, the act established a certain method whereby agencies were to publish in the Federal Register proposed and final agency rules and were to accord public comments and hearings in reference to the promulgation of regulations. Section 9 of the act provided as follows:

"No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law."

See this [brief](#) for a discussion of the decisional authority regarding the A.P.A.

Promptly after adoption of this law, the Administrative Committee of the Federal Register issued regulations to implement it; see the Federal Register for September 7, 1946, [11 Fed. Reg. 9833](#). These regulations defined the word "document" as including "rules", and of course "rules" were defined in the A.P.A. as including statements of an agency's organization and delegations of authority ("channeling" of functions). All such rules were required to be

published in the Federal Register and codified in the C.F.R. Section 2.5(a)(2) of these Federal Register regulations further described in a general fashion the various items to be published in the Federal Register as including "[e]very document \* \* \* conferring \* \* \* authority," clearly making delegation orders subject to publication therein. See also the revised Federal Register regulations published at [13 Fed. Reg. 5929](#), and [37 Fed. Reg. 23602](#).

Presently, the A.P.A. (codified at 5 U.S.C. § 552) provides as follows:

"(a) Each agency shall make available to the public information as follows:

"(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public

—  
"(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

"(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

"(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

"(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

"(E) each amendment, revision, or repeal of the foregoing.

**"Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published."**

Via 5 U.S.C. § 551, a "rule" is defined to mean "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency \* \* \*".

The current regulations implementing these Federal Register publication requirements are codified at [1 C.F.R. Part 1](#). In 1 C.F.R. § 1.1, a "document" is defined as "any Presidential proclamation or Executive order, and any rule, regulation, order, certificate, code of fair competition, license, notice, or similar instrument issued, prescribed, or promulgated by an agency." A "[d]ocument having general applicability and legal effect" is also defined by these same regulations as "any document issued under proper authority prescribing a penalty or course of conduct, conferring a right, privilege, authority, or immunity, or imposing an obligation, and relevant or applicable to the general public, members of a class, or persons in a locality, as distinguished from named individuals or organizations." Certainly, delegation orders confer authority from one public official to another, and thus classify as "documents of general applicability." Via 1 C.F.R. § 5.2, "[e]ach document having general applicability and legal effect" must be published in the Federal Register. Pursuant to § 5.9, these documents are categorized into 4 specific groups: (1) Presidential documents, (2) new agency regulations, (3) proposed rules, and finally (4) "notices," which consist of "miscellaneous documents applicable to the public." These various documents are published in this order in the daily edition of the Federal Register. Section 8.1 of these current Federal Register regulations concerns publication of the C.F.R., which is to "contain each Federal regulation of general applicability and legal effect."

Thus pursuant to the A.P.A. and its implementing regulations, all agency rules must be published in the Federal Register. These rules are not only the substantive kind which implement laws, but also the type which describe an agency's organization and those which at least summarize its delegation orders. These rules describing an agency's organization and delegations of authority must be codified in separate parts of an agency's regulations published in

the C.F.R., just as substantive and procedural rules are also separately codified in the C.F.R.

The practice of various federal agencies demonstrates that they are fully aware that statements of organization and delegation orders are rules requiring formal promulgation and publication in the Federal Register. For example, the Department of Agriculture on March 9, 2000, published at [65 Fed. Reg. 12427](#) amendments to its delegation of authority rules. On January 29, 1997 ([62 Fed. Reg. 4169](#)), and March 21, 2002 ([67 Fed. Reg. 13216](#)), the F.C.C. published similar rules. On March 20, 1995 ([60 Fed. Reg. 14622](#)), so did the S.E.C., as did the F.D.A. on June 8, 2001 ([66 Fed. Reg. 30992](#)). The Department of Transportation on January 4, 2000 ([65 Fed. Reg. 220](#)), July 3, 2000 ([65 Fed. Reg. 41014](#)), and December 28, 2001 ([66 Fed. Reg. 67117](#)), also adopted similar "final rules." It must be noted that each of the above was published in the "rules and regulations" section of the daily Federal Register rather than the "notices" section.

Today, a wide variety of federal agencies easily comply with these mandates of the A.P.A. regarding publication in the Federal Register and codification in the C.F.R. of their statements of organization and delegation orders. For example, the [Federal Communications Commission](#) publishes a very detailed "statement[ ] of the general course and method by which its functions are channeled and determined", as does the [Department of Transportation](#). The [U.S. Department of Agriculture](#) publishes 141 pages in the C.F.R. just for its delegation orders; see also [Inspector General, U.S.D.A.](#) The similar statements of the [Food and Drug Administration](#), [Securities and Exchange Commission](#), and [Immigration and Naturalization Service](#) demonstrate that these agencies are acutely aware of these statutory requirements. See also the similar publications of [Amtrack](#), the [Commodities Futures Trading Commission](#), the [Consumer Product Safety Commission](#), [Customs](#), the [Environmental Protection Agency](#), the [Federal Emergency Management Agency](#), the [Federal Energy Regulatory Commission](#), the [U.S. Forest Service](#), the [Food Safety Inspection Service](#), the [Federal Transit Administration](#), the [Federal Trade Commission](#), [NASA](#), the [National Highway Traffic Safety Administration](#), the [Nuclear Regulatory Commission](#), the [National Transportation Safety Board](#), the [Peace Corps](#), the [Grain Inspection \(Packers and Stockyards Administration\)](#), the [Small Business Administration](#), and the [Water Resources Council](#). How has the Social Security Administration ("S.S.A.") complied with the A.P.A.?

## **II. A.P.A. Compliance by the Social Security Administration**

Via the Social Security Independence and Program Improvements Act of 1994, [108 Stat. 1464](#), the S.S.A. was converted into an independent establishment. As a new federal organization created by Congress, the S.S.A. is subject to the A.P.A., and thus required to publish in the Federal Register statements of its organization and the "channeling" of its functions. Soon after its establishment as an independent agency, the S.S.A. commenced publication of statements of its organization in the Federal Register; see links to such statements posted [here](#).

Review of these statements published in the Federal Register reveals that none were published in the "rules and regulations" section of the daily Federal Register editions; instead, all were published in the "notices" section thereof. The Office of the Federal Register provides a [Document Drafting Handbook](#) to federal agencies for the purpose of informing them of the various items to be published in the Federal Register. This manual describes as follows the type of documents which are published in the "notices" section of the Federal Register:

"3.1 What types of documents go in the notices category?

"Use the notices category to provide information of public interest.

"This category contains documents that do not have regulatory text, do not impose requirements with general applicability and legal effect, and do not affect a rulemaking proceeding. Some notices are required to be published by law."

Apparently, documents which **do not have general applicability** are published in the daily Federal Register's "notices" section, which has included every one of the above mentioned statements of the organization of the S.S.A. These various statements of the organization of the S.S.A. have not been codified in the C.F.R. Instead, the S.S.A. includes only a small and non-specific description of its organization at [20 C.F.R. § 422.1](#). This description of the S.S.A. has been in the C.F.R. since 1967, revised only in an unimportant manner in 1997; see [62 Fed. Reg. 38456](#).

But further, the S.S.A. declares in the [United States Government Manual](#) that it has at least "1292 field offices." **While the A.P.A. requires organizational statements of an agency's field structure to be published in the Federal Register, NO description, location or other identification of these field offices has been published therein since the 1995 creation of the S.S.A. as an independent agency.** [FN 8]

But how have the Department of the Treasury and IRS complied with the A.P.A.?

### III. A.P.A. Compliance by Treasury and IRS.

The [1946 A.P.A.](#) clearly defined a "rule" subject to publication in the Federal Register as including statements of each agency's organization and procedures. Section 3 of that act further described rules as "descriptions of [each agency's] central and field organization" as well as each agency's "statement[ ] of the general course and method by which its functions are channeled and determined". Via § 1, ¶ b of the [1937 Federal Register regulations](#), a "document" was defined as including a "rule," and as required by § 2 of those same regulations, all such rules were subject to codification in the C.F.R. Further, § 5 of the 1937 regulations defined a document of "general applicability and legal effect" subject to codification as one "conferring rights, privileges, authority, or immunities, or imposing obligations." Even then, a document "conferring \* \* \* authority" was construed by some agencies as including delegation orders; see [Treasury Decision 49818](#) (4 Fed. Reg. 1251), and [Treasury Decision 50192](#) (5 Fed. Reg. 2573).

After adoption of the A.P.A. in 1946, [regulations](#) were promulgated for its implementation. Like the previous 1937 regulations, those 1946 regulations in § 2.1(i) defined a "document" as including a "rule". In § 2.1(j), a "document subject to codification" was defined as "any regulatory document which has general applicability and legal effect and which is in force and effect and relied upon by the issuing agency as authority for, or invoked or used in the discharge of, any of its functions or activities." Section 2.5(a)(2) of these regulations specifically compelled publication in the Federal Register of every "document prescribing a penalty or a course of conduct, conferring a right, privilege, authority or immunity, or imposing an obligation, and relevant or applicable to the general public." It cannot be doubted that via the 1946 Federal Register regulations, rules which were statements of an agency's organization, and rules specifying the "method[s] by which its functions are channeled", were not only subject to publication in the Federal Register, but were also subject to codification in the C.F.R.

Treasury was acutely aware of these publication requirements of the A.P.A. when it became law. On September 7, 1946, the regulations for the A.P.A. were published and became effective. [Internal Treasury documents](#) dated September 9, 1946, disclose its knowledge that these matters, and specifically delegation orders, were required to be published in the Federal Register. On September 11, 1946, the Treasury Department complied with these new mandates of the A.P.A. by publishing its statements of organization and delegations of authority; see [11 Fed. Reg. 177A](#).

The above rule published at 11 Fed. Reg. 177A was 96 pages long and it described the organizational structure of

the Treasury Department and its several bureaus and agencies. It was later codified in the C.F.R., with those parts relating to the Bureau of Internal Revenue being codified at 26 C.F.R. Part 600, and those relating to the Treasury Department being codified at 31 C.F.R. Part 1; see [1946 C.F.R. Index](#), [1947 C.F.R. Index for the Bureau](#), and the [1947 C.F.R. Index for the Treasury](#).

However, both the BIR and Treasury quickly decided to discontinue codifying their rules of organizational structure and of the "channeling" of their functions (assuming, of course, that the "channeling" of their functions was encompassed within their organizational statements—there were no separate statements of delegations as required by the A.P.A.). In October, 1948, the Bureau published a statement in the Federal Register, [13 Fed. Reg. 7710](#), which declared that "[c]odification of Part 600, except § 600.1 (b) is discontinued. Future amendments to the statement of organization of the Bureau of Internal Revenue will appear in the Notices section of the FEDERAL REGISTER." By the end of that year, the Treasury did the same. On December 30, 1948, it published in [13 Fed. Reg. 9328](#), the following:

"1. The statements respecting the organization of the Office of the Secretary, and Bureaus, Divisions, and Offices performing chiefly staff and service functions, appearing under Subpart A of Part 1, with the exception of § 1.26, are hereby withdrawn from the codified portion of the FEDERAL REGISTER. Any amendments to or new material with respect to these statements will appear hereafter in the Notices section of the FEDERAL REGISTER."

Excerpts from the [1949 supplement for 26 C.F.R.](#) demonstrate that the Bureau did in fact eliminate its organizational statement from 26 C.F.R. Part 600. Similar excerpts from the [1949 supplement for 31 C.F.R.](#) show that Treasury also dispensed with its organizational statement. However, [Customs](#) did not. The Treasury never again published a full and complete statement of its organization, although it did publish short statements such as [this one](#) on January 4, 1950.

The reason for the withdrawal of codification of these very important rules might be based upon a provision in the document published at [13 Fed. Reg. 7710](#). The BIR prefaced its decision to cease codification of Part 600 by making this editorial comment: "In order to conform Parts 600 and 601 of Title 26 to the scope and style of the Code of Federal Regulations, 1949 Edition, as prescribed by the Regulations of the Administrative Committee of the Federal Register approved by the President effective October 12, 1948 (13 F.R. 5929), the following editorial changes are made \* \* \*: Codification of Part 600 \* \* \* is discontinued". But nothing in [those regulations](#) authorized dispensing with the codification of that agency's statement of organization or the related statement of the "channeling" of the agency's functions.

Section 3(a) of the [1946 A.P.A.](#) identified three (3) separate types of rules, the first two of which were "(1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests", and "(2) statements of the general course and method by which its functions are channeled and determined". Encompassed within class (2) were rules describing agency delegation orders, or the "channeling" of functions. These types of rules were required to be published in the Federal Register and separately codified in the C.F.R.

Section 1.41 of the [1948 Federal Register regulations](#) established 4 different categories of documents which were to be published in the daily edition of the Federal Register: (1) Presidential documents; (2) final rules; (3) proposed rules; and (4) notices. Section 1.45 thereof specified that descriptions of agency organization required via § 3(a)(1) of the A.P.A. were to be published in the notices section of the Federal Register. These rules describing the organization of an agency would then become the basis, via § 3.6 of these 1948 regulations, for that which would be published in the "United States Government Organization Manual." However, nothing in these regulations dispensed with the requirement to codify these types of rules, and further, it certainly could not be contended that rules

specified in A.P.A. § 3(a)(2) were the same as those specified in § 3(a)(1), to which § 1.45 solely applied.

Thus the contention of both the Bureau and Treasury that these 1948 regulations mandated discontinuance of codification of these statutorily defined rules was simply a carefully designed ruse. But, it is also possible that the true meaning of the failure to codify these very important rules was that, while in appearance they might be rules, in reality they were not because they were not "documents subject to codification".

Even though the BIR (and later the IRS) ceased codification of its organizational statement, for a number of years thereafter IRS organizational statements were published in the Federal Register. Below are identified each of these subsequent organizational statements:

A. [21 Fed. Reg. 10418](#): This statement was effective December 1, 1956, and constituted the first I.R.M. 1100. This statement was also published in 1957-1 Cum. Bul. 679, and was a total of 38 pages in length. Two pages are provided here for the purpose of illustration.

B. [26 Fed. Reg. 6372](#): This I.R.M. 1100 was effective July 10, 1961; it was also published in 1961-2 Cum. Bul. 483, and was a total of 61 pages therein. One page is provided here.

C. [30 Fed. Reg. 9368](#): This I.R.M. 1100 was dated July 22, 1965; it was also published in 1965-2 Cum. Bul. 863 and was a total of 91 pages therein. One page is provided here.

D. [32 Fed. Reg. 727](#): This I.R.M. 1100 was published in the Federal Register in January, 1967; it was also published in 1967-1 Cum. Bul. 435 and was a total of 93 pages therein. One page is provided here.

E. [34 Fed. Reg. 1657](#): This I.R.M. 1100 was dated January 23, 1969; it was also published in 1969-1 Cum. Bul. 403 and was a total 43 pages therein. One page is provided here.

F. [35 Fed. Reg. 2417](#): This I.R.M. 1100 was dated January 20, 1970; it was also published in 1970-1 Cum. Bul. 442 and was a total of 60 pages therein. One page is provided here.

G. [36 Fed. Reg. 849](#): This I.R.M. 1100 was dated January 11, 1971; it was also published in 1971-1 Cum. Bul. 698 and was a total of 61 pages therein. Two pages are provided here.

H. [37 Fed. Reg. 20960](#): This I.R.M. 1100 was dated September 27, 1972; it was also published in 1972-2 Cum. Bul. 836 and was a total of 61 pages therein. One page is provided here.

I. [39 Fed. Reg. 11572](#): This I.R.M. 1100 was dated March 25, 1974; it was also published in 1974-1 Cum. Bul. 440 and was a total of 61 pages therein. One page is provided here.

**The last full and complete organizational statement of the IRS was the one published in March of 1974, and no further such statements were published.** The A.P.A. requires any amendments to these required statements to also be published in the Federal Register.

In the November 15, 1978 issue of the Federal Register, [43 Fed. Reg. 53029](#), amendments were made to the 26 C.F.R. Part 601 procedural rules, and therein it was noted that changes had in fact been made to the organizational structure of the IRS: "This document contains amendments to the statement of procedural rules (26 CFR Part 601). The amendments are necessary to conform the statement of procedural rules to the changes made by the reorganization of the Internal Revenue Service and the Office of Chief Counsel effective on July 2, 1978." Yet while there appears to have been a thorough reorganization of the IRS which would require some publication thereof in the



Federal Register, no amendment to the 1974 organizational statement was published.

While the full organizational structure of the IRS was not published in the Federal Register after 1974, short descriptions thereof later were. After an apparently substantial restructuring of the IRS in 1985, Treasury published [T.D.O. 150-01](#), which set forth the entire organizational structure of the IRS in a mere 3 pages. Even this very brief description was amended again in 1995 by a revised [T.D.O. 150-01](#).

**Today, however, it clearly appears that T.D.O. 150-01 has been repealed, yet nothing has been published in the Federal Register which describes the current organizational structure of the IRS or its delegations of authority. Consequently, nothing is codified in this respect in the C.F.R.**

#### **IV. The Authority Delegated to the Commissioner of Internal Revenue.**

The office of the Commissioner of Internal Revenue was created by an act of Congress in 1862. This act, [12 Stat. 432](#), charged the Commissioner with the duty of assessing and collecting internal revenue taxes. See also Act of Dec. 24, 1872, 17 Stat. 401. Subsequently via [§ 321 of the 1873 Revised Statutes](#), the Commissioner was again charged with the general superintendence of the internal revenue laws, the assessment of such taxes, and their collection. This pattern of providing the Commissioner with express statutory authority to assess and collect these taxes was continued into [§ 3901 of the 1939 IRC](#).

In 1949, Congress enacted a law authorizing the President to reorganize the executive departments; see 63 Stat. 203, ch. 226, codified at 5 U.S.C. § 901, et seq. Pursuant to this authority, the President promulgated [Reorganization Plan No. 26 of 1950](#) (64 Stat. 1280, 15 Fed. Reg. 4935), which restructured the entire Treasury Department in the following manner:

"[T]here are hereby transferred to the Secretary of the Treasury all functions of all other officers of the Department of the Treasury and all functions of all agencies and employees of such Department."

While the 1939 IRC and many prior tax acts had given express statutory authority to administer the federal tax laws to a variety of officials and agents, this Plan divested that statutory authority from all of them and vested it in the hands of the Secretary of the Treasury, including the authority of the Commissioner granted by § 3901 of the 1939 IRC.

In August, 1954, the [Internal Revenue Code of 1954](#) was adopted. In [§ 7802](#) of that Code, for the first time in 92 years, the Commissioner was not given any statutory duties regarding the assessment or collection of federal taxes: "The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary." Is it possible that determining the authority of the Commissioner may likewise indicate precisely how the federal income tax is applied?

The answer to this question is governed by the A.P.A. as discussed above. The A.P.A. requires federal agencies to publish in the Federal Register "(2) statements of the general course and method by which its functions are channeled and determined," which, according to the two Congressional reports mentioned above, include delegation orders. See also this [manual](#) published by the Office of the Federal Register; and [Pinkus v. Reilly](#), 157 F.Supp. 548 (D.N.J. 1957). Generally, the organizational structure of an agency as well as its delegations of authority which affect the American public are required to be published in the Federal Register. Both the U.S. Treasury and the IRS recognize that these types of rules must be published in the Federal Register; see 31 C.F.R. § 1.3(a), and [26 C.F.R. §](#)

[601.702\(a\)](#). These types of rules are also subject to codification in the C.F.R. if the same are "documents subject to codification" or are documents of "general applicability and legal effect."

Unlike its parent, the Treasury Department, the Customs Service has since [1949](#) published its organizational structure and delegation orders in the Federal Register and codified them in Title 19 of the C.F.R. Even today, it frequently updates its statements by means of duly published rules in the Federal Register; see [60 Fed. Reg. 50011](#), [60 Fed. Reg. 52627](#), [60 Fed. Reg. 67055](#), [61 Fed. Reg. 43428](#), [61 Fed. Reg. 49058](#), [61 Fed. Reg. 51363](#), [62 Fed. Reg. 6721](#), [62 Fed. Reg. 37131](#), [63 Fed. Reg. 12994](#), [63 Fed. Reg. 24746](#), [63 Fed. Reg. 40823](#), [64 Fed. Reg. 7501](#), [64 Fed. Reg. 13673](#), [65 Fed. Reg. 21138](#), [65 Fed. Reg. 31262](#), [67 Fed. Reg. 71510](#), [68 Fed. Reg. 1172](#), and [68 Fed. Reg. 3381](#). The Customs Service is now the Bureau of Customs and Border Protection; see [68 Fed. Reg. 42587](#). The [Bureau of Alcohol, Tobacco and Firearms](#) also publishes these rules.

**Since the Commissioner has no statutory authority to enforce the federal income tax laws under the 1954 and 1986 Internal Revenue Codes, examination of the various delegation orders which have been published in the Federal Register and issued by the Secretary of the Treasury will reveal the authority which has actually been delegated to the Commissioner.**

**This task of locating these delegation orders was made more difficult by [Treasury's unilateral decision in 1948 to cease codification of these important rules as the result of its meritless construction of the 1948 Federal Register regulations](#).**

To locate Treasury Department delegation orders ("T.D.O.s"), the annual indexes of the Federal Register must be utilized and these indexes appear below. The below tabular list contains PDF images of the complete Treasury Department section of each annual Federal Register index. But further and for another purpose, the below tabular list also includes PDF images of other pages from these annual indexes regarding other federal agencies. **A simple review of these pages demonstrates that all federal agencies have always been acutely aware of the requirement that delegation orders affecting the public must be published in the Federal Register.**

<a href="#">1946 FedReg Index</a>	<a href="#">1947 FedReg Index</a>	<a href="#">1948 FedReg Index</a>
<a href="#">1949 FedReg Index</a>	<a href="#">1950 FedReg Index</a>	<a href="#">1951 FedReg Index</a>
<a href="#">1952 FedReg Index</a>	<a href="#">1953 FedReg Index</a>	<a href="#">1954 FedReg Index</a>
<a href="#">1955 FedReg Index</a>	<a href="#">1956 FedReg Index</a>	<a href="#">1957 FedReg Index</a>
<a href="#">1958 FedReg Index</a>	<a href="#">1959 FedReg Index</a>	<a href="#">1960 FedReg Index</a>
<a href="#">1961 FedReg Index</a>	<a href="#">1962 FedReg Index</a>	<a href="#">1963 FedReg Index</a>
<a href="#">1964 FedReg Index</a>	<a href="#">1965 FedReg Index</a>	<a href="#">1966 FedReg Index</a>
<a href="#">1967 FedReg Index</a>	<a href="#">1968 FedReg Index</a>	<a href="#">1969 FedReg Index</a>
<a href="#">1970 FedReg Index</a>	<a href="#">1971 FedReg Index</a>	<a href="#">1972 FedReg Index</a>
<a href="#">1973 FedReg Index</a>	<a href="#">1974 FedReg Index</a>	<a href="#">1975 FedReg Index</a>

<a href="#">1976 FedReg Index</a>	<a href="#">1977 FedReg Index</a>	<a href="#">1978 FedReg Index</a>
<a href="#">1979 FedReg Index</a>	<a href="#">1980 FedReg Index</a>	<a href="#">1981 FedReg Index</a>
<a href="#">1982 FedReg Index</a>	<a href="#">1983 FedReg Index</a>	<a href="#">1984 FedReg Index</a>
<a href="#">1985 FedReg Index</a>	<a href="#">1986 FedReg Index</a>	<a href="#">1987 FedReg Index</a>
<a href="#">1988 FedReg Index</a>	<a href="#">1989 FedReg Index</a>	<a href="#">1990 FedReg Index</a>
<a href="#">1991 FedReg Index</a>	<a href="#">1992 FedReg Index</a>	<a href="#">1993 FedReg Index</a>
<a href="#">1994 FedReg Index</a>	<a href="#">1995 FedReg Index</a>	<a href="#">1996 FedReg Index</a>
<a href="#">1997 FedReg Index</a>	<a href="#">1998 FedReg Index</a>	<a href="#">1999 FedReg Index</a>
<a href="#">2000 FedReg Index</a>	<a href="#">2001 FedReg Index</a>	<a href="#">2002 FedReg Index</a>

There are many examples of authority granted by the Treasury Secretary to others which allow them to administer and enforce the federal tax laws. For instance, [T.D.O. 221](#) dated June 6, 1972 (37 Fed. Reg. 11696) created the Bureau of Alcohol, Tobacco and Firearms ("BATF"). Among other administration and enforcement functions transferred to the BATF via this order were the following:

"(a) Chapters 51, 52 and 53 of the Internal Revenue Code of 1954 and sections 7652 and 7653 of such Code insofar as they relate to the commodities subject to tax under such chapters;

"(b) Chapters 61 to 80, inclusive, of the Internal Revenue Code of 1954, insofar as they relate to the activities administered and enforced with respect to chapters 51, 52 and 53."

See also [T.D.O. 221-1](#) (37 Fed. Reg. 13485) and [T.D.O. 221-2](#) (37 Fed. Reg. 20730).

**About two and a half years later, the Secretary issued [T.D.O. 221-3](#) (40 Fed. Reg. 1084) which delegated to the BATF the authority to administer and enforce "chapter 35 and chapter 40 and 61 through 80, inclusive, of the Internal Revenue Code of 1954 insofar as they relate to activities administered and enforced with respect to chapter 35."**

**Chapter 35 deals with wagering taxes and chapter 40 concerns occupational taxes related to wagering. A year and a half later, [T.D.O. 221-3 \(Rev. 1\)](#) (41 Fed. Reg. 10079) was issued. The only real, detectable distinction between the former and latter orders was the inclusion of the following phrase in the latter:**

"The Commissioner may call upon the Director [of the BATF] for assistance when it is necessary to exercise any of the enforcement authority described in section 7608 of the Internal Revenue Code."

But, on January 14, 1977, the Secretary transferred back to the IRS the enforcement duties relating to the wagering tax by [T.D.O. 221-3 \(Rev. 2\)](#) (42 Fed. Reg. 3725).[FN 9]

Other examples of delegations of authority published in the Federal Register are Treasury Directive 15-42 and its various revisions, published in [1991](#), [1995](#) and [1999](#). That which is important regarding the above identified orders

and directives is that they constituted actual delegations of authority and they were also published in the Federal Register. For a number of other similar and relevant items, see this [list](#).

**To determine what actual authority has been delegated by the Secretary of the Treasury to the Commissioner of Internal Revenue requires review of all of the published delegation orders.**

[This list](#) identifies each of these T.D.O.s and a copy of each T.D.O. is linked from this list.

**Analysis of these T.D.O.s reveals a very interesting fact. It must be remembered that the 1954 IRC was adopted in August, 1954 and [§ 7802](#) withheld delegating any statutory authority to the Commissioner.**

**After this date, the first T.D.O. delegating any tax enforcement authority from the Secretary to the Commissioner was [T.D.O. 150-42](#), which authorized the Commissioner to "provide for the administration of the United States internal revenue laws in the Panama Canal Zone, Puerto Rico, and the Virgin Islands."**

The next substantive delegation of authority from the Secretary to the Commissioner was issued in 1986 via [T.D.O. 150-01](#). This particular order "collapsed" all of the older T.D.O.s relating to the boundaries of the various internal revenue districts.

For example, T.D.O.s 150-6 through 150-22 concerned several internal revenue districts. These and other T.D.O.s were incorporated into this single T.D.O. clearly intended to be the T.D.O. containing that which related to the "field structure" of the IRS. But, this T.D.O. also contained a delegation of authority from the Secretary to the Commissioner:

**"6. U.S. Territories and Insular Possessions. The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other authorized areas of the world." See also § 3 of [T.D.O. 150-01](#), revised in 1995.**

Review of the published authority delegated to the Commissioner regarding administration and enforcement of the federal income tax laws demonstrates that such authority, in a broad sense, **encompasses solely the external boundaries of this country.**

**Such being the case, those subject to the requirement to file federal income tax returns are those described in 26 C.F.R. § 1.6091-3, which, in reference to citizens, concerns citizens living abroad.**

## **THE SERVICE CENTERS**

Via § 3650 of the 1939 IRC, the President was given statutory authority to create internal revenue districts, an authority he delegated to the Treasury Secretary by [Executive Order 10289](#). There is no authority granted to the Commissioner, either via statute or executive order, that authorizes him to create such districts, or even other offices having larger geographical areas. Nonetheless, the Commissioner and his officials were the parties who created the regional service centers. The below are the various documents that created these places where "submittals" are made:

[IR Mimeograph #55-116](#), dated October 4, 1955

[Manual Supp. 11G-9](#), dated March 24, 1960

[Manual Supp. 11G-19](#), dated December 6, 1961  
[Manual Supp. 11G-26](#), dated January 14, 1963  
[Manual Supp. 11G-31](#), dated January 2, 1964  
[Manual Supp. 11G-32](#), dated February 20, 1964  
[Manual Supp. 11G-42](#), dated June 10, 1965  
[Manual Supp. 11G-66](#), dated July 23, 1971

Although 5 U.S.C. § 552 (A) requires a federal agency to publish in the Federal Register "descriptions of its central and field organization" as well as the places where the public is required to "make submittals," **these service centers and their geographical areas (which are apparently part of the IRS "field structure") have not been published in the Federal Register.** From the [attached list](#), it is known that in 1986 a complete reorganization of the IRS was undertaken. Review of [T.D.O. 150-01](#) reveals that it concerned most of the field organization of the IRS, and [T.D.O. 150-02](#) related to the organization of the national office of the IRS. However, neither of these T.D.O.s mentioned anything about the service centers and the geographical areas they covered. It appears, therefore, that these service centers may have been the subject of some other secret T.D.O. which was not published in the Federal Register.

But not only has there been a failure to publish in the Federal Register any T.D.O. regarding that very important part of the IRS field organization, its service centers, there has also been a more recent development similar in nature. **In the last several years, the IRS has been undergoing a substantial reorganization of its entire organizational structure.** Prior to March, 2001, T.D.O. 150-01 was obviously repealed and T.D.O. 150-02 was amended. The repeal of T.D.O. 150-01 and the amendment of T.D.O. 150-02 is shown by [this page](#) obtained from the web site of the Treasury Department, where the currently valid T.D.O.s are posted.  
**It must be noted that the new T.D.O. 150-02 has not been published in the Federal Register.**

#### **BUREAU OF INTERNAL REVENUE AND ITS CHANGE TO INTERNAL REVENUE SERVICE**

Before 1953, the agency which apparently collected the federal income tax was the Bureau of Internal Revenue. In June, 1953, Internal Revenue Commissioner T. Coleman Andrews suggested in a [memo](#) that the name of the Bureau be changed to the Internal Revenue Service. Surely changing the name of the tax collection agency would have some impact upon the domestic American public, if that agency legally affected the public. **However, any T.D.O. which actually changed the name of the BIR to Internal Revenue Service clearly was not published in the Federal Register. Matters which are not published in the Federal Register do not affect the public.**

#### **ANALYSIS OF IRS COMPLIANCE WITH THE PAPERWORK REDUCTION ACT**

In 1980, Congress adopted the Paperwork Reduction Act ("P.R.A."), which was substantially amended in 1995; see [this brief](#) which explains the origins of this act, its meaning and application. In summary, this law mandates that all collections of information by federal agencies (agency forms as well as regulations that require the submission of information to the various agencies) were subject to the P.R.A. clearance and approval process controlled by the Office of Management and Budget ("OMB"). Via this act, an agency cannot collect information unless the various forms and similar agency regulations used to collect information display an OMB control number. Because of the Public Protection Clause of the P.R.A., agencies have an incentive to make sure that all forms and related regulations bear and display OMB control numbers. (For regulations implementing the P.R.A., see [5 C.F.R. Part 1320](#)).

As noted at the start of this letter, the requirement to file federal tax returns is governed by 26 U.S.C. [§ 6091](#). But, that section of the Code completely depends upon regulations for its implementation. Consequently in reference to the federal income tax, that section of the Code is implemented via [26 C.F.R. §§ 1.6091-1, 1.6091-2, 1.6091-3 and 1.6091-4](#). For the estate tax, § 6091 is implemented by 26 C.F.R. §§ 20.6091-1 and 20.6091-2. For the gift tax, this section is implemented via 26 C.F.R. §§ 25.6091-1 and 25.6091-2. The filing of employment tax returns is governed by 26 C.F.R. § 31.6091-1. See also 26 C.F.R. §§ 40.6091-1, 41.6091-1, 44.6091-1, 53.6091-1, 53.6091-2, 55.6091-1, 55.6091-2, 156.6091-1, 156.6091-2, and 301.6091-1. Obviously, these various regulations which appear to require the filing of tax returns are clearly subject to the P.R.A.

When the P.R.A. went into effect, the IRS did secure OMB control numbers for most if not all of its tax forms. But on March 31, 1983, the OMB issued regulations for the P.R.A. which required federal agencies to also obtain OMB approval for agency regulations that collected information; see 48 Fed. Reg. 13666. By March, 1985, the IRS obtained approval for its regulations that collected information. Via [Treasury Decision 8011](#) (50 Fed. Reg. 10222, 1985-1 C.B. 397), 26 C.F.R. Part 602 was adopted and it presented via a tabular list the various control numbers which had been assigned to the federal income tax regulations that were collections of information.

Review of the assignment of OMB control numbers displayed in this Part 602 is very revealing. For example, 26 C.F.R. § 20.6091-1 (estate tax) was assigned control number "1545-0015," which is the number for estate tax [Form 706](#). Number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2 (gift tax); this is the number for gift tax [Form 709](#). Number 1545-0028 was assigned to 26 C.F.R. §§ 31.6091-1 (employment tax), which is the number for employment tax [Form 940](#), and number 1545-0029 was assigned to 26 C.F.R. §§ 31.6091-1(a), which is the number for employment tax [Form 941V](#). See also [Form 941PR](#), [Form 941PRB](#), [Form 941SB](#), and [Form 941SS](#). Number 1545-0143 was assigned to 26 C.F.R. §§ 41.6091-1, which is the number on [Form 2290](#), and number 1545-0235 was assigned to 26 C.F.R. §§ 44.6091-1, which is the number appearing on wagering tax [Form 730](#). Clearly, the IRS knows that any regulations implementing § 6091 require the assignment of control numbers.

What about the assignment of control numbers for the income tax regulations which implement § 6091? Again review of Treasury Decision 8011 shows that the IRS is aware that such regulations must have control numbers because at least one of these regulations does have a number. Only 26 C.F.R. § 1.6091-3 ("International") displays a control number, which is 1545-0089; this is the same number for [Form 1040 NR](#). Interestingly, for a number of years 26 C.F.R. § 1.1-1 (relating to the "tax imposed" section of the Code) was assigned control number 1545-0067, which is the number on [Form 2555](#), entitled "Foreign Earned Income."

It cannot be claimed that the assignment of a control number to only § 1.6091-3 was a mistake committed in the early days of compliance with the P.R.A. On March 4, 1991, amended Treasury Decision 8011 was published at 56 Fed. Reg. 8912, [1991-1 C.B. 266](#), and the same assignments of control numbers as appeared in the 1985 Treasury Decision 8011 were again published here. This Treasury Decision is published in the C.F.R. as 26 C.F.R. Part 602, and it has remained essentially the same since 1985, with minor revisions not important here; see [1987 Part 602](#), [1988 Part 602](#), [1989 Part 602](#), [1990 Part 602](#), [1991 Part 602](#), [1992 Part 602](#), [1993 Part 602](#), [1994 Part 602](#), [1995 Part 602](#), [1996 Part 602](#), [1997 Part 602](#), [1998 Part 602](#), [1999 Part 602](#), [2000 Part 602](#), [2001 Part 602](#), [2002 Part 602](#), and [2003 Part 602](#). Please also see this searchable [Part 602](#).

The process for obtaining OMB control numbers by federal agencies is fairly simple. An agency desiring to obtain a control number for a collection of information submits [Form 83-1](#) (also known in the past as Standard Form 83). **The instructions for this form require each agency to submit with the form a "supporting statement" which is to "identify any legal or administrative requirements that necessitate the collection.** Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information." The supporting statement must also include information regarding the "burden" imposed upon the public as a result of the



"collection of information."

The Forms 83-1 submitted to OMB by IRS to obtain a control number for Form 706 and its corresponding regulations provide an excellent example of how control numbers are assigned to both forms and applicable regulations for those forms. On August 9, 1995, IRS employee Lois Holland submitted a Form 83-1 regarding IRS [Form 706](#). In item 12 of the attached Supporting Statement, the continued assignment of OMB control number 1545-0015 to 26 C.F.R. § 20-6091-1 was sought. See also Forms 83-1 for Form 706 submitted in [1998](#) and [2001](#). On September 15, 1995, IRS employee Dale Morgan sought an OMB number for [Form 709](#). As a result, number 1545-0020 was assigned to 26 C.F.R. §§ 25.6091-1 and 25.6091-2. See also similar forms submitted in [1998](#) and [2001](#).

On November 26, 1996, IRS employee Martha Brinson submitted a Form 83-1 to the OMB to obtain control number 1545-0235 for wagering tax [Form 730](#). Item 12 of that application concerned the estimated burden of the collection of this information. It stated as follows: "The following regulations impose no additional burden. Please continue to assign OMB No. 1545-0235 to these regulations: \* \* \* 44.6091-1 \* \* \* We have reviewed the above regulations and have determined that the reporting requirements contained in them are entirely reflected on the form. The justification appearing in item 1 of the supporting statement applies both to the regulations and to the form." The similar Forms 83-1 for [1999](#) and [2002](#) contained identical language.

On November 21, 1994, IRS employee Lois Holland submitted a Form 83-1 regarding IRS [Form 940](#). In the attached Supporting Statement, item 13 ("Estimated Burden of Information Collection") set forth estimates of the burden resulting from collecting the information required by Form 940. This same part of the Supporting Statement stated: "The following regulations impose no additional burden. Please continue to assign OMB number 1545-0028 to these regulations: \* \* \* 31.6091-1 \* \* \*." Please also see Form 83-1 for Form 940 submitted in [1997](#) and [2003](#).

The Forms 83-1 submitted to obtain control numbers for IRS Form 1040 NR also provide excellent examples of the method of assigning control numbers for not only the form itself, but also any applicable and relevant regulations. On September 2, 1994, Ms. Holland submitted to OMB a Form 83-1 for this [Form 1040 NR](#). In the Supporting Statement for this form, the following request to continue to assign the same control number for Form 1040 NR to certain identified tax regulations was made: "Please continue to assign OMB number 1545-0089 to these previously approved regulations. \* \* \* 1.6091-3." See also Forms 83-1 for Form 1040 NR submitted in [1987](#), [1997](#), [2000](#) and [2003](#).

It is therefore clear that the IRS is obtaining control numbers for most tax regulations simply by asking for that assignment of control numbers via the Supporting Statement attached to Form 83-1. This appears clear from the Federal Register publication of all notices seeking OMB control numbers for the year [2002](#). Certainly vast numbers of tax regulations are not assigned control numbers by means of the submission of Forms 83-1 to acquire these numbers independently; most numbers for tax regulations are assigned solely because of their association with a specific tax form.

The Forms 83-1 regarding Form 2555 also demonstrate this consistent method of obtaining control numbers for regulations simply via the Supporting Statement. On August 6, 1992, Lois Holland submitted Form 83-1 to obtain a control number for [Form 2555](#). As above, the Supporting Statement in item 13 set forth several specific regulations and requested that OMB "continue to assign OMB number 1545-0067 to these previously approved regulations." See also similar forms submitted in [1993](#), [1996](#), and [1999](#). Please notice that this form is not a mandatory form, and hence it did not seek the assignment of a control number to any regulations under IRC § 6091.

What about the Forms 83-1 for Form 1040? What do these forms reveal? On September 16, 1998, a Form 83-1 seeking OMB control number 1545-0074 for [Form 1040](#) was submitted to OMB. As shown by the applicable pages

of the Supporting Statement, a list of relevant tax regulations appeared therein, and item 12 ("Burden Estimation") sought the continued assignment of control number 1545-0074 to these regulations: "We are asking for continued approval of these regulations that are associated with Form 1040. Please continue to assign OMB number 1545-0074 to these regulations:". Thereafter follows a 3 page list of applicable regulations, but **none** was a regulation based upon IRC § 6091. See also July 18, 1985, Form SF 83 seeking OMB control number 1545-0074 for [Form 1040](#); June 23, 1986, [Form SF 83](#) seeking the same number; and September 27, 1996 [Form SF 83](#). It is astounding that no IRC § 6091 regulations "are associated with Form 1040."

But based upon the statutory and regulatory history of the federal income tax, these otherwise odd features which manifest themselves in the operation of the P.R.A. **are entirely appropriate. While the 1913 income tax act appears to have subjected everyone to withholding, via §§ 1205 and 1208 of the 1917 Act, 40 Stat. at 335, withholding was limited to non-resident aliens and foreign firms.**

Also, [Treasury Decision 2313](#) announced that Form 1040 was to be filed by non-residents or their agents. Considering these facts (and others), it seems quite logical that Form 1040 NR would be the mandatory return to file.

### CRIMINAL INVESTIGATION RECORDS

The following are links to the published IRS Privacy Act Systems of Records for the years indicated:

[1995 PA Systems](#)

[1997 PA Systems](#)

[2001 PA Systems](#)

A curious student may search these official publications for the purpose of locating any system of records concerning the "failure to file required returns". The only such system of records is the following:

"Treasury/IRS 49.007

"System name: Overseas Compliance Projects System—Treasury/IRS.

"System location: The central files for this system are maintained at the Office of the **Assistant Commissioner (International)**, 950 L'Enfant Plaza, SW, Fourth Floor, Washington, DC 20024. A corresponding system of records is separately maintained by the foreign posts located in: (1) Bonn, Germany; (2) Sydney, Australia; (3) Caracas, Venezuela; (4) Riyadh, Saudi Arabia; (5) Nassau, Bahamas; (6) London, England; (7) Mexico City, Mexico; (8) Ottawa, Canada; (9) Paris, France; (10) Rome, Italy; (11) Sao Paulo, Brazil; (12) Singapore and (13) Tokyo, Japan.

"Inquiries concerning this system of records maintained by the foreign posts should be addressed to the **Assistant Commissioner (International)**.

"Categories of individuals covered by the system: **United States Citizens, Resident Aliens, Nonresident Aliens.**

"Categories of records in the system: Documents and factual data relating to: (1) Personal expenditures or investments not commensurate with known income and assets; (2) receipt of significant unreported income; (3) improper deduction of significant capital or personal living expenses; (4) failure to file required returns or pay tax due; (5) omission of assets or improper deduction or exclusion of items from state and gift tax returns.

"Authority for maintenance of the system: 5 U.S.C. 301; 26 U.S.C. 7602, 7801, and 7802."

**It appears, based upon the above information, that the only IRS office which can lawfully maintain records regarding a federal income tax criminal investigation is the office of the "Assistant Commissioner (International)", whose investigative jurisdiction extends only to "non-residents, whether citizens or aliens."**

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## SUMMARY

The Federal Income Tax Act of 1913 contained a sweeping, all-inclusive definition of "income", it being the clear intention of Congress at the time to apply the "income tax" to all American citizens living at home or abroad. However, the Supreme Court's decision in *Brushaber* substantially affected the government's interpretation of the definition of "income" within the meaning of the fundamental law, and "to whom" and "where" the income tax could apply.

The Brushaber Court specifically concluded that the 16th Amendment gave Congress **no new powers of taxation**. The Brushaber decision prompted Congress to revise the 1913 Act, and via Section 25 of the Federal Income Tax Act of 1916, amended 1917, declared that the "income" subject to the 1913 Act was not the same "income" to be taxed under the 1916 Act. But, what was the purpose of this change in the language, and by extension, the legal effect of the 1916 Act? UNFORTUNATELY, CONGRESS DID NOT EXPLAIN WHAT WAS MEANT BY SECTION 25.

One theory of the meaning of § 25 of the 1916 Act is based on location, that Section 25 removed the application of the un-apportioned direct "income" tax on salaries, wages and compensation of ordinary Americans living and working at home, leaving the application of the un-apportioned direct "income" tax on salaries, wages and compensation of non-resident aliens and American citizens living and working abroad. This, it is argued is the reason that not a single federal income tax act since 1916 has ever mentioned the imposition of an un-apportioned direct "income" tax on the salaries, wages and compensation of citizens "at home," although the same acts repeatedly mention citizens abroad and particularly those in the insular possessions.

Evidence of this solely external, "locational" application of the un-apportioned direct "income tax" on salaries, wages and compensation is demonstrated in several ways. First, the IRS Commissioner has been delegated via T.D.O.s published in the Federal Register authority to administer an un-apportioned direct tax on salaries, wages and compensation only in the area external to the boundaries of the 50 states of the Union. **If the Commissioner has been delegated authority to administer an un-apportioned direct tax on salaries, wages and compensation in the area internal to the boundaries of the 50 states of the Union, that authority has not been published in the Federal Register and is therefore a secret, so it could not concern American citizens "at home," without violating their due process Rights.**

Further, federal income tax returns are allegedly required to be filed at IRS service centers. But the Administrative Procedures Act demands that any part of an agency's field structure which affects the domestic American public must be published in the Federal Register. **The absence of publication in the Federal Register of these extremely important parts of the IRS field structure further indicates that the service centers do not legally affect the domestic American public and can, therefore, be ignored by the ordinary American wage earner living and working at home.**

But perhaps the most compelling proof of the "locational" application of the federal income tax in the manner noted above is derived from analysis of the IRS' compliance with the Paperwork Reduction Act. **The federal income tax is imposed via § 1 of the IRC.** But the "information collection request" **applicable to this section is Form 2555, entitled "Foreign Earned Income."** Further as shown by the OMB control number assigned to 26 C.F.R. § 1.6091-3, the specific tax return required to be filed at service centers is Form 1040NR. And a "TIN" can only be obtained by a non-resident alien; see Form W-7.

Another theory of the meaning of Section 25 of the 1916 Act is that it is based on classifications of people, distinguishing between aliens and citizens, imposing no un-apportioned direct tax on the salaries, wages and compensation of American citizens, no matter where they live and work, **but authorizing an un-apportioned direct tax on the salaries, wages and compensation on resident aliens working here and on employees of the federal government who voluntarily agreed to labor for the government.**

**Countering the "location" theory and in support of the "classification" theory is the argument that the fundamental law prohibits the imposition of an un-apportioned tax directly on the salaries, wages and compensation of American citizens, no matter where they may be living and working,** and there is **no** Supreme Court ruling that an un-apportioned tax can be imposed directly on the salaries, wages and compensation of American citizens living and working abroad.

Most Americans believe that today, the tax scheme of the 1913 act is still in effect, but the truth of the matter is that it is not.

In fact, the present tax scheme is the exact opposite of the 1913 tax scheme, created by the 1916 act amended by the Act of 1917.

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## QUESTIONS

1. Admit or deny that the government is violating the Supreme Court's clear, unambiguous mandate to not impose the income tax on the salaries, wages and compensation of working Americans.
  2. Admit or deny the government is violating the law (APA and PRA) by not using the required information collections with lawfully assigned OMB control numbers, and by not publishing the legally required TDOs, organization structure, and other IRS operating procedures that directly effect the public.
  3. Admit or deny that no delegation order has been published in the Federal Register that authorizes the Commissioner of Internal Revenue to administer and enforce an un-apportioned direct tax on the salaries, wages and compensation of ordinary Americans living and working at home in the United States of America (defined so as to include all of the 50 States in this American Union).
  4. Admit or deny that the current organizational structure of the Internal Revenue Service has not been published in the Federal Register.
  5. Admit or deny that the Right of due process protects from prosecution, under Subtitle A and C of the Internal Revenue Code, all ordinary Americans earning salaries, wages and compensation at home or abroad who do not file a Form 1040 tax return, and employers who do not withhold and turnover to the IRS a percentage of their earnings - that is, in every case of doubt, statutes are to be construed most strongly against the government and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import.
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## END NOTES

1. *United States v. Wigglesworth*, Fed. Cas. No. 16,690 (Cir.Ct. D. Mass. 1842).

2. See also *Houston Street Corp. v. Commissioner*, 84 F.2d 821, 822 (5th Cir. 1936); *Higley v. Commissioner*, 69 F.2d 160, 162-63 (8th Cir. 1934); *Long v. Rasmussen*, 281 F. 236, 238 (D.Mon. 1922); *Botta v. Scanlon*, 288 F.2d 504 (2nd Cir. 1961); *Shelton v. Gill*, 202 F.2d 503, 506 (4th Cir. 1953); *Adler v. Nicholas*, 166 F.2d 674, 678 (10th Cir. 1948); *Stuart v. Chinese Chamber of Commerce of Phoenix*, 168 F.2d 709, 712 (9th Cir. 1948); *State of Ohio v. Harris*, 229 F. 892, 898 (6th Cir. 1916); *Best v. City of Birmingham*, 16 Ala.App. 353, 78 So. 100, 102 (1918); *In re Kite's Estate*, 194 Iowa 129, 187 N.W. 585, 587 (1922); *Commonwealth v. P. Lorillard Co.*, 129 Va. 74, 105 S.E. 683, 685 (1921); *In re Green's Estate*, 178 N.Y.S. 353, 356 (1919); *Commonwealth v. Provident Trust Co. of Philadelphia*, 319 Pa. 385, 180 A. 16, 18 (1935); *People ex rel Pickerill v. New York Cent. R. Co.*, 391 Ill. 377, 63 N.E.2d 405, 410 (1945); *State v. Gay*, 40 So.2d 225, 229 (Fla. 1949); *City of Miami v. Schonfeld*, 132 So.2d 767, 768 (Fla.App. 1961); *Motor Cargo, Inc. v. Div. of Tax Appeals*, 10 N.J. 580, 92 A.2d 774, 777 (1952); *Pittsburgh Milk Co. v. City of Pittsburgh*, 360 Pa. 360, 62 A.2d 49, 51 (1948); *A.P. Green Fire Brick Co. v. Missouri State Tax Comm.*, 277 S.W.2d 544, 545 (Mo. 1955); *Swartz v. Berg*, 411 P.2d 736, 738 (Mon. 1966); *Calvert v. Humble Oil & Refining Co.*, 381 S.W.2d 229, 232 (Tex.App. 1964); *City of Richmond v. Valentine*, 203 Va. 642, 125 S.E.2d 854, 858 (1962); *C.D. Utility Corp. v. Maxwell*, 189 So.2d 643, 646 (Fla.App. 1966); *Newport Gas Light Co. v. Norberg*, 338 A.2d 536, 538 (R.I. 1975); *Barten v. Turkey Creek Watershed Joint Dist. #32*, 200 Kan. 489, 438 P.2d 732, 743 (1968); *In re Carolina Tel. & Telegraph Co.*, 1 N.C.App. 133, 160 S.E.2d 128, 132 (1968); *Calvert v. Wilson Communications, Inc.*, 443 S.W.2d 419, 421 (Tex.App. 1969); *Dennis Devel. Co., Inc. v. Dept. of Revenue*, 122 Ariz. 465, 595 P.2d 1010, 1013 (1979); *Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth N.B. & T. Co.*, 229 Kan. 511, 625 P.2d 494, 496 (1981); *In re Estate of Morrow*, 390 Pa. 422, 135 A.2d 913 (1957); *In re Estate of Nolan*, 390 Pa. 426, 135 A.2d 914 (1957); *People v. Chapman*, 370 Ill. 430, 19 N.E.2d 351, 355 (1939); *Lake Worth Towers, Inc. v. Gerstung*, 262 So.2d 1 (Fla. 1972); *Graves v. McDonough*, 264 Ala. 407, 88 So.2d 371 (1956); and *Union Twist Drill Co. v. Harvey*, 37 A.2d 389 (Ver. 1944). The taxation of property not subject to tax is a taking without due process of law; see *Welsh v. Kosydar*, 37 Ohio App.2d 115, 308 N.E.2d 462 (1973), and *State ex rel. Kansas City Power & Light Co. v. Smith*, 111 S.W.2d 513 (Mo. 1938). See also §66.01, Sutherland on Statutory Construction (5th Ed.).

3. It should be noted that regulations § 1.6091-4, regarding exceptional cases, § 20.6091-1, regarding decedents, and § 25.6091-1, regarding gift tax returns also identify "citizens". These sections are irrelevant to me.

4. It should be noted that 26 U.S.C. § 7701(a)(14) describes a taxpayer as any person subject to any internal revenue tax. However, the term "internal revenue tax" does not occur in the Internal Revenue Code until subtitle E, regarding alcohol, tobacco and firearms taxes. Interestingly, when one examines the regulations concerning § 7701, the word "citizen" in regards to an American citizen only occurs in the context of a citizen abroad; see § 1.7701(l)-3(f)(1)(iii) [foreign personal holding company(s)]; § 301.7701(b)-1(d)(2) [Non-application to citizens]; § 301.7701(d)-1 [regarding determinations as to whether a citizen is a resident of Guam or a territory or possession of the United States]; § 301.7701(b)(7) [concerning tax treaties with foreign countries]; and § 301.7701-7 [regarding foreign trusts].

5. A fundamental rule of statutory construction is that acts in pari materia are to be read and construed together. "[A]ll acts in pari materia are to be taken together, as if they were one law." See *United States v. Stewart*, 311 U.S. 60, 64 (1940), *Sanford's Estate v. Commissioner of Internal Revenue*, 308 U.S. 39, 44 (1939) and *Harrington v. United States*, 78 U.S. 356, 365 (1877). This is particularly true of the federal revenue laws. While there are many such acts, all of them are regarded as parts of one system of taxation, and construction of any one act may be assisted by review of other acts in this "system." See *United States v. Collier*, Fed.Cas.No. 14,833 (Cir. Ct. S.D.N.Y. 1855). A prior tax act, even one which has been repealed, still is to be considered as explanatory of later acts. See *Southern Ry. Co. v. McNeill*, 155 F. 756, 769 (Cir. Ct. E.D.N.C. 1907).

6. It must be remembered that during 1917, World War I was raging, creating great war expenditures for the federal government.

7. See *Spreckels Sugar Refining Co. v. McClain*, 192 U.S. 397, 416 (1904).

8. Congress possesses tremendous power over aliens in this country; see *Chae Chan Ping v. United States*, 130 U.S. 581 (1889); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Harisiades v. Shaughnessy*, 342 U.S. 580, 586-87 (1952); and *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953). "Congress \* \* \* does not lose its hold on [an alien] until the last hour" before naturalization; see *United States v. Kusche*, 56 F.Supp. 200, 222 (E.D.N.Y. 1944). The relevant law regarding the issuance of social security numbers to specifically identified individuals appears to apply chiefly to aliens; see 42 U.S.C. § 405.

9. It is clear via §§ 2197 and 3174 of the 1939 IRC, and § 5065 of the 1954 and 1986 Internal Revenue Codes that the federal alcohol taxes apply within the boundaries of the United States. However, there is no similar provision for the federal income tax. See also R.S. § 3448.

10. Section 4 of the 1939 Internal Revenue Code was not incorporated within the 1954 Internal Revenue Code.