

WHOSE EARNINGS ARE "INCOME"?

THIS KEY QUESTION IS ANSWERED IN THE INTERNAL REVENUE CODE

CITIZENS ARE DECEIVED AND MISLED BY THE I.R.S.

There is much confusion and misunderstanding as to the meaning of the term "income" when it is used in tax law to describe monies received by individuals. People who study the Internal Revenue (I.R.) Code, (Title 26 of the U.S. Code, available in public libraries) to find the meaning of "income" are surprised when they cannot find a definition of the term "income" in the Code. It cannot be found because it is not there, as explained in the decision in the case of U.S. v. Ballard, 535 F2d 400, p. 404 (1976). The Court states:

"The general term 'income' is not defined in the Internal Revenue Code." (emphasis added)

The Court's statement causes most people to accept the false idea promoted by the IRS that all monies that "come in" to individuals are "income". This idea sounds very logical to most people.

Those individuals who study further often rely on court decisions that make statements about "income" such as the words of the U.S. Supreme Court in the decision in the case of Stratton's Independence v. Howbert, 231 U.S. 399, p. 415 (1913), a corporation case arising under the Corporation Excise Tax Act of 1909. The Court stated:

"Income may be defined as the gain derived from capital, from labor, or from both combined." (emphasis added)

This statement might lead to the conclusion that if there is a profit or gain to an individual, then it is "income". As will be shown, this may, or may not, be true depending on the citizenship of the recipient. Most of the court statements on which these people rely involve corporations or individuals who voluntarily filed "income" tax returns, thus voluntarily acknowledging under penalty of perjury that their receipts are "income".

I.R. CODE IS TRICKY

Most people, including many accountants and attorneys, do not know that the taxes on "income" apply to the receipts

of a certain legal class of individuals only - not to all individuals, and that the I.R. Code identifies the legal class of individuals to whom the laws apply. In order to understand the true meaning of the I.R. Code, it is absolutely necessary to learn whose monies are "income" and whose monies are not "income" according to the Code. I.R. Publication 1140 (Rev. 4-87) tells how to determine facts about the tax laws. It states:

"Research the Internal Revenue Code to determine if it allows the issue. The Code is the highest authority that you can cite and should be used in lieu of any other legal instrument."

Since there is no definition of the term "income" in the I.R. Code (see U.S. v. Ballard above), to find an answer to the key question we must see if receipts of any kind are listed or identified as being "income" in the Code. Any such provision would answer the key question, "Whose earnings are income?", without being a definition of the term "income".

Sec. 1461, in chapter 3 of the I.R. Code, is well known by those who have studied the Code to be the ONLY section making anyone liable for the payment of "income" tax. Therefore, sec. 1461 is a logical place to start in determining what monies are involved in the creation of liability for payment of "income" tax. Sec. 1461 states:

"Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax..."

The words "this chapter" mean Chapter 3 which is titled, "WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS".

SEC. 1441 ANSWERS THE KEY QUESTION

The only section in Chapter 3 requiring anyone to "deduct and withhold any tax" is sec. 1441 in which subsection(a) states:

"...all persons...having the control, receipt, custody, disposal, or payment of any of the items of in-

come specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any foreign partnership shall... deduct and withhold from such items a tax equal to 30 percent thereof..." (emphasis added).

Subsection 1441(a) applies to "items of income specified in subsection 1441(b)...of any nonresident alien individual, or of any foreign partnership", only, but NOT TO RECEIPTS OF CITIZENS.

Subsection 1441(b) identifies the receipts of nonresident aliens and foreign partnerships as being "income". It states:

"Income items. The items of income referred to in subsection (a) are interest..., dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income,..." (emphasis added).

This section of the law very clearly shows that THE LISTED MONIES ARE "INCOME" WHEN RECEIVED BY NON-RESIDENT ALIENS AND FOREIGN PARTNERSHIPS ONLY - BUT NOT BY CITIZENS OR RESIDENT ALIENS.

LAW MEANS ONLY WHAT IS STATED

Of vital importance is the fact that there is nothing in sec. 1441 or elsewhere in the I.R. Code that identifies receipts belonging to individual citizens as being "income". Many people who learn about sec. 1441 mistakenly assume that, because the receipts of nonresident aliens are "income", the receipts of individual citizens must also be "income". The U.S. Supreme Court has ruled that the tax laws mean only that which is stated and nothing more. In the decision in Gould v. Gould, 245 U.S. 150 (1917) the U.S. Supreme Court stated:

"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the

clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen." (emphasis added)

When discussing the meaning of the term "income" as used in the I.R. Code, IRS agents sometime cite sec. 61(a) as being a section defining "income". That section defines "gross income" as being all "income" from all sources, but it does not define the term "income". Sec. 61(a) lists 15 sources of monies that could be "income" to an individual, but only if that individual is a nonresident alien, according to I.R. Code sec. 1441 quoted above.

According to the law, money from these sources would not be income if received by a citizen because NOWHERE IN THE I.R. CODE DOES IT STATE THAT RECEIPTS OF CITIZENS ARE "INCOME". Note that sec. 61(a) does not explain that, for the monies coming from the various sources to legally be "income" to an individual, the recipient must be a foreign person only (as stated in sec. 1441); not a U.S. citizen!

TAXING FOREIGNERS' RECEIPTS IS CONSTITUTIONAL

Those who have studied the legality of the "income" tax know that the decision of the U.S. Supreme Court in *Brushaber v. Union Pacific R.R. Co., Inc.*, 240 U.S. 1 (1915) is the cornerstone decision establishing the constitutionality of the "income" tax when applied as an indirect excise tax. The IRS relies on this decision when the constitutionality of the "income" tax is challenged.

However, the I.R.S., in its own document, T. D. (Treasury Decision) 2313, clearly shows that the "income" involved in the *Brushaber* decision was MONEY ACCRUING TO NONRESIDENT ALIENS, NOT TO CITIZENS. T. D. 2313 states:

"...it is hereby held that INCOME ACCRUING TO NONRESIDENT ALIENS...IS SUBJECT TO THE INCOME TAX..." (emphasis added)

In essence, the Court ruled that it is constitutional to impose an excise tax on the

receipts ("income") of nonresident aliens, but it did not rule that the receipts of citizens could constitutionally be taxed.

In the U.S. Constitution, Article 1, Section 9 prohibits various actions of Congress. Clause 4 of Section 9, very pointedly states:

"No capitation,..."

This means no tax on individual citizens. *Black's Law Dictionary* defines a capitation as:

Capitation- "A tax or imposition upon the person."

In the decision in the case of *Peck v. Lowe*, 247 U.S. 165 (1918) the U.S. Supreme Court, commenting on the "income" tax, stated:

"The Sixteenth Amendment does not extend the power of taxation to new or excepted subjects... Neither can the tax be sustained as a tax on the person, measured by income. Such a tax would be by nature a capitation rather than an excise..." (emphasis added)

I.R. Code sec. 1, which imposes "income" tax, is under Part 1 in the table of contents of the I.R. Code. Part 1 has the heading, "TAX ON INDIVIDUALS", but careful reading shows that sec. 1 imposes a tax on "taxable income" - not on individuals as implied by the heading of Part 1.

Careful reading also shows that I.R. Code, Chapter 21, sec. 3101, which imposes the so called "Social Security" tax, likewise imposes the tax on "income". It is not imposed on "wages" as many people mistakenly believe and it is not a "TAX ON EMPLOYEES", as deceptively stated in the heading of Subchapter A in the table of contents at the beginning of Chapter 21.

I.R. Code sec. 7806(b) explains that words in the table of contents have no legal effect. The words, "TAX ON INDIVIDUALS" and "TAX ON EMPLOYEES" placed in the table of contents tend to confuse and deceive citizens into mistakenly believing that the taxes are imposed on them personally, even though the laws impose all taxes on "income" - not on individuals.

SUMMARY

Since the term "income" applies to receipts of foreign persons only, but not to receipts of citizens, according to the I.R. Code, **BOTH THE GRADUATED INCOME TAX AND THE SO-CALLED SOCIAL SECURITY TAX APPLY TO RECEIPTS OF FOREIGNERS ONLY.** These facts are proven by I.R. Code sec. 1461 which is the ONLY section making anyone liable for payment of "income" tax. Sec. 1461 makes certain persons liable for payment of "income" taxes required by sec. 1441 to be withheld from receipts of foreigners only, but not from the receipts of individual citizens.

Unfortunately, most citizens have been deceived and misled into believing that their receipts are "income" and that they are liable for payment of a tax on that "income", so they file returns. When they file Form 1040 "income" tax returns (voluntary actions), they certify under penalty of perjury that their receipts are "income" and that they are liable for payment of "income" tax. These certifications are considered by the IRS and by the courts to be grounds for presumptions establishing that the citizens receipts are "income" and are subject to the "income" tax.

The above facts may surprise many people, but millions of citizens have already learned the truth about the misapplication of the income tax laws by the IRS and they have stopped filing income tax returns, according to a report in USA TODAY on September 30, 1992. The report stated: **"As many as 10 million people and businesses didn't file for 1990, the IRS says."** In subsequent years there have been even larger numbers of non-filers reported.

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