

“We’re (not really) here to help you”

# The Non-Responsive Response

Many of the “patriot” theories on income tax are spawned by the IRS’s inability to provide concise, reliable information to persons asking for help to understand and apply our tax laws. Most of us have heard of the various studies in which identical tax returns were sent to a dozen IRS offices for computational “assistance”. Result? Virtually no two IRS offices agreed on the final tax, and variations in “computed” monetary liability ranged over several thousand dollars. A Government Accounting Office (GAO) study indicated that over 20% of IRS advice provided by telephone to taxpayers is wrong. Apparently, even the IRS doesn’t understand the tax laws. As a result of IRS ignorance, the public has begun to study, analyze, and educate itself on the tax laws.

But the problem extends beyond mere IRS ignorance. When new students of tax law discover a legal point that seemingly declares that the income tax does not apply to most people, one of the first things they do is send a letter to the IRS asking for confirmation or explanation. However, the IRS routinely refuses to provide requested information on tax laws. Although they will usually respond to inquiries, their responses are typically generic, “boiler plate” replies that may generally apply to some people, but do not clearly apply to the specific person making the inquiry.

The following IRS letter illustrates this IRS tendency to refuse to specifically respond to the questions or legal challenges brought by American citizens. The italicized highlights are my additions; the footnotes are my comments. It’s almost amazing how much information you can find or infer in a single, seemingly simple letter.

June 20 1994

Mr. Patrick H. Shaffer  
Mesquite, TX

Dear Mr. Shaffer:

This is in response to your March 26, 1994, letter to President Clinton concerning several tax-related matters.

As much as he would like to, the President cannot reply personally to all of the correspondence he receives. Therefore, he has asked the departments and agencies of the Federal Government to reply in his behalf in those instances where they have special knowledge or special authority under the law. For this reason, your letter was recently forwarded to me.<sup>1</sup>

You *seem to believe*<sup>2</sup> that U.S. citizens and resident aliens do not have to file federal income tax returns unless they have foreign earned income reportable on Form 2555. You also questioned the regulations listing control numbers that the Office of Management and Budget (OMB) assigns to tax forms.

Because of the volume of work before us, *we are*

<sup>1</sup> Although President Clinton is understandably too busy to reply to Mr. Schaffer’s letter of inquiry, he has forwarded Mr. Schaffer’s letter to an IRS Assistant Commissioner Gwen A. Kraus (the author of the IRS letter) who has “special knowledge or special authority” to reply “in [the President’s] behalf”. Note that by forwarding Mr. Schaffer’s letter, the President is implicitly *ordering* Ms. Kraus to respond.

<sup>2</sup> This IRS concession concerning Mr. Schaffer’s “beliefs” may protect him from possible criminal charges (which must be based on “willful”, knowing acts), but also skates around the fundamental point: Mr. Schaffer did not write to President Clinton to initiate a philosophical discussion; he wrote in an act of near desperation to ask that someone, somewhere, help him understand certain specified aspects of tax law which he had studied and understood to mean he was not required to pay income tax.

unable to address the issues in your letter on a point-by-point basis.<sup>3</sup>

Also, we cannot disclose confidential tax information about other individuals. However, the following general information<sup>4</sup> may be of interest to you.

By agreement with OMB, all Internal Revenue Service regulations that are subject to the Paperwork Reduction Act must be listed in section 602.101 of the Code of Federal Regulations along with the OMB control numbers assigned to them. This is intended to comply with the requirement under the Act that collections of information must display OMB control numbers. Many regulations listed in section 602.101 have the same OMB number as the tax forms that are related to them. However, the listing in section 602.101 is not meant to be the legal authority for filing any tax forms represented by the OMB control numbers shown there.

Section 1.1-1 of the Regulations is contained in the list with OMB number 1545-0067, which is also the OMB number assigned to Form 2555. Section 1.1-1 provides rules and cross references for the computation of income tax on individuals and does not contain any information collec-

<sup>3</sup> There's always an excuse for not specifically answering a citizen's questions. In this case, they're "too busy". Maybe so. But how "busy" will they be when it comes time to take Mr. Schaffer through a series of court trials and appeals to collect his money? More importantly, the *President of the United States* has implicitly ordered IRS Ass't. Commissioner Gwen A. Kraus to answer Mr. Schaffer's letter. (After all, if the President wanted to merely ignore Mr. Schaffer's letter, there are plenty of White House flunkies to write a generic, boilerplate reply thanking Mr. Schaffer for his "interest in this troubling problem and your continuing support for President Clinton".) Because Mr. Schaffer's letter was forwarded to an Assistant Commissioner with "special knowledge or authority", it appears President Clinton wanted specific answers be provided for Mr. Schaffer's questions. Nevertheless, claiming she's too busy, Ms. Kraus refused to obey the *President's* implicit order. (Interesting. Who does she think she is? Hilary?)

Realistically, there are somewhere between ten and twenty fundamental "patriot" arguments against the income tax. There are hundreds of thousands of alleged taxpayers using these fundamental arguments – but the IRS claims to be "too busy" to explain why those arguments are invalid! Surely, the IRS understands those arguments. So why not create twenty IRS boilerplate responses (one for each potential patriot argument)? Then, when the IRS receives a letter like Mr. Schaffer's, an IRS clerk could identify the letter's fundamental arguments and send a boilerplate response with legal information that specifically refutes each patriot argument.

If the IRS routinely refuted each fundamental patriot arguments with compelling proof, the tax resistance movement would wither and "voluntary" compliance would again become the norm. Nevertheless, the IRS refuses to find time to provide specific answers. What can we infer from that refusal except that the patriot arguments are fundamentally correct and no IRS assertion to the contrary is possible?

<sup>4</sup> If the balance of "information" in this letter is "general" in nature, it must be nonspecific boilerplate. Surely, if the "overworked" Ass't Commissioner who wrote this letter didn't have time to research and reply to Mr. Schaffer's specific questions, she also didn't have time to go digging through her notes to provide a personalized collection of "general information" that "may be of interest" to Mr. Schaffer. Point: the majority of the letter is nonresponsive, nonspecific, and probably boilerplate.



tions or filing requirements subject to the Paperwork Reduction Act. *Section 1.1-1 was mistakenly listed in section 602.101 and should not appear there at all.* Our Office of Chief Counsel is taking steps to have it removed from section 602.101.<sup>5</sup>

*Whether an individual is liable*<sup>6</sup> for income tax is determined under Subtitle A of the Internal Revenue Code, Chapter 1, Subchapter A - Determination of Tax Liability. Part I, section 1, imposes a tax on the taxable income of every individual.<sup>7</sup> Whether an individual has taxable income is determined under Chapter 1, Subchapter B - Computation of Taxable Income. Part I, section 63, defines "taxable income," generally, as gross income minus the deductions allowed by Chapter 1.<sup>8</sup>

Code section 6012 provides that every individual whose gross income for the tax year equals or exceeds specified amounts must make a return with respect to income taxes under Subtitle A. Section 6151 provides that, except as specifically provided otherwise, when a return of tax is required by the Code or the regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed.

*The law itself does not require individuals to file a Form 1040.*<sup>9</sup> However, Code section 6001 provides that every person liable for any tax imposed by the Code shall make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6012-1(a) (6) of the Income Tax Regulations provides that Form 1040 is prescribed for general use in making the return required under Code section 6012. The OMB numbers related to these sections (as well as sec-

<sup>5</sup> First, who says the published law is mistaken? Is this "mistake" a legal fact, or merely an opinion expressed by IRS officials? Second, if the IRS published information that is "mistaken", why doesn't the IRS have to "recall" all the books containing this bogus information, just like Chevrolet would have to recall all Chevy pickup trucks with defective (sometimes exploding) gas tanks? After all, many alleged taxpayers may be risking serious fines and even jail terms if they rely on this "mistaken" information provided by the IRS. On the other hand, how can the IRS indict and try anyone if they know their own Code books are defective? If one section of the published law is "mistaken", how can we be sure other sections are not also "mistaken"? What, then, is the law? Who should obey or be held liable for failing to obey improperly published laws?

<sup>6</sup> "*Whether an individual is liable*" implicitly concedes that some individuals are *not* "liable". This in turn implies that some of the patriot arguments may be valid.

<sup>7</sup> At first, the phrase, ". . . imposes a tax on the taxable income of every individual . . ." sounds like *every individual* must pay income tax. Not so. The tax is imposed on "*taxable income*"-- not individuals. Further, the IRS implies that some "income" is not "taxable". Again, this implication lends credence to patriot arguments that challenge whether a particular kind of income is truly "taxable".

<sup>8</sup> One of the key issues in the income tax debate concerns the *definition* of "income". While the IRC *has defined* "taxable income," generally, as *gross income* minus the deductions allowed by Chapter 1," there is *no similar IRC definition* for the more fundamental term "*gross income*". Although there are court cases which define "income" as "*corporate profit*", the IRC provides *no clear definition* of the central subject ("gross income") on which the "income tax" is based. Without a clear, legal definition of "*gross income*", how can we know what is legally subject to the "income tax"?

In this letter, the IRS admitted that it mistakenly published an inaccurate section of law but was also "taking steps to have it removed". OK, why not take similar steps to include a legal definition of the *fundamental substance* ("gross income") that is subject to being taxed? The IRS may have dozens of valid reasons why a definition of "gross income" has not been published in the IRC for the last forty years -- but what is their excuse for not publishing that definition *tomorrow*? If that single definition were published, it would probably eliminate about half of the patriot challenges to the income tax. Nevertheless, no IRC definition of "gross income" is published or anticipated.

Patriot researchers contend the IRS failure to define "gross income" is not accidental but stems back to the original definition of "gross income" in Section 22(a) of the 1939 IRC. According to these researchers, the IRS intentionally deleted a couple of key words when Section 22(a) of the 1939 IRC became Section 61 of the 1954 IRC. If this research is valid, it indicates the IRS is knowingly and intentionally deceiving the public into "voluntarily" paying taxes that are not mandatory.

<sup>9</sup> People think the patriots are crazy to argue that there is no legal requirement to file an income tax return -- and yet here's an Assistant Commission in the IRS agreeing that "the law itself does not

tions for itemized deductions, etc.) were listed in your letter to the Honorable Sam Johnson.

The Government expects voluntary compliance with the federal tax law. This means that we expect taxpayers to comply with the law without being compelled to do so by action of a Government agent; it does not mean that the taxpayer is free to disregard the law.<sup>10</sup> If an individual is required by law to file a return or pay tax, it is mandatory that he or she do so.<sup>11</sup>

I hope that this information will be helpful.<sup>12</sup>

Sincerely yours,  
Gwen A. Krauss  
Ass't. Commissioner (Taxpayer Service)  
Internal Revenue Service  
Washington, D.C. 20224

In the final analysis, the reason “patriot” arguments persist is not because patriots are stupidly stubborn, but because the IRS refuses to unequivocally and specifically answer and refute those arguments.

The public’s belief that tax law is clear, the income tax universally mandatory, and the patriot arguments impossible has been fostered not by clear and convincing statements from the IRS, but by court room convictions of folks who espouse the patriot arguments. Based on these highly publicized convictions, the public naturally assumes the income tax must be mandatory. However, few Americans realize that the courts don’t really rule that the income tax is mandatory for all Americans, only for the specific defendant in each case. Also, unlike IRS officials who may be held personally liable for lying to the people, the courts can rule the sea is red, the earth is flat, and the income tax mandatory and incur no personal liability should their rulings be false -- so there’s an inherent advantage to letting the courts serve as the IRS’ primary advocates. As a result, judges are notoriously biased against “tax resisters”, routinely suppress or ignore defendants’ evidence, and dispense jury instructions which generally guarantee convictions. Simply put, innocent people are sometimes, perhaps regularly, convicted based on judicial bias and/or corruption.

In sum, the public’s belief that income tax is mandatory is based less on clear statements by the IRS than on the implications inherent in convictions by the courts.

require individuals to file a Form 1040.” The Ass’t. Commissioner does insist that “every person *liable* . . . shall make returns . . .”, but in doing so, she again lends credence to patriot arguments that the income tax is not mandatory for all Americans but only for that minority who are “liable”.

<sup>10</sup> “[F]ree to disregard the law”? Here, the IRS actually insults Mr. Schaffer and the patriot community. I’ll guarantee that Mr. Schaffer has spent thousands of eye-straining hours reading and trying to understand the virtually incomprehensible tax laws. If he or the patriot community believed they didn’t have to obey the law, why would they dedicate their lives to its study? The folks who “disregard the law” are the ones who simply quit filing, never crack a law book, and never write a letter of inquiry to the IRS or President Clinton. Mr. Schaffer and the patriot community does not disregard the law, they hold it in high regard. And more importantly, not only agree to obey the law, they insist that government also obey the law. And *that’s* what makes government mad because, if the patriot arguments are correct, it’s our government in general and the IRS in particular that operates as if it were “free to disregard the law”.

<sup>11</sup> Is the income tax “mandatory” or “voluntary”? Here’s a partial answer from the IRS itself: “If an individual is required . . . it is *mandatory* that he do so.” If, if, if! Therefore, for some people under certain circumstances, the income tax is mandatory. For the rest of us (“those *not* liable”), the income tax is not mandatory. Point: whether any particular patriot’s argument that the income tax is voluntary is correct or not is debatable -- however, it is clearly *possible* that his “voluntary” argument is valid.

But if the income tax is not “mandatory”, does that necessarily mean it must be “voluntary”? Perhaps Mr. Schaffer and the patriot community have spent so much time trying to prove the income tax is *not* normally “mandatory”, that they’ve ignored the *reverse* side of the same coin. Why not write a letter to President Clinton or the IRS asking if the income tax is ever paid “voluntarily”? I.e., does the IRS ever accept “voluntary” contributions? How often? How much? If “voluntary” contributions are allowed, what are the laws, regulations, and required forms with which you might agree to “voluntarily” pay an income tax to the IRS? I wonder if the IRS has any boilerplate replies for those questions.

<sup>12</sup> How could this information be “helpful” if it did not specifically address Mr. Schaffer’s questions? If there’s any “help” here, it’s help in sustaining the IRS system without revealing the true nature of that system.

