

# Tax (and other) Courts of the United States

by Gerald Brown

I received this article as E-mail forwarded from constitutionalist Dan Meador. The author's information on identifying Article III courts is superb, and read closely, ties in nicely with some of the speculation in our previous articles concerning Census 2000.

However, author Brown apparently does not share my opinions on the difference between National and Federal government. Perhaps Mr. Brown is way ahead of me and my speculation on "National government" is simply wrong. Or perhaps I've moved a little further down one trail while Mr. Brown moved down another.

In any case, while I generally agree with Mr. Brown's assertions, I wonder if his use of the terms "federal" and "federal government" is imprecise. That is, he uses "federal" in contexts where I suspect the term "national" might be more accurate. (See "Federal v. National," this issue.)

Also, if I'd written this article, I would probably have capitalized the word "state" whenever it referenced a "State of the Union," and left the non-Union, incorporated "states" uncapitalized. I do not imply that my way is better than Mr. Brown's. I don't know what the correct answers are. I do, however, have a growing appreciation for the questions.<sup>1</sup>

I've added my own blue and [bracketed] comments to Mr. Brown's text.

It's not only important to know the nature of a tax, but also the nature and scope of authority of the court and the government that created the court that administers a particular tax.

For example, in the 1933 case of *O'Donoghue v. United States* (289 U.S. 516, 53 S.Ct. 740), the United States Supreme Court presented an "exhaustive review" of the differences between the judicial courts created under Article III of the Constitution and the legislative courts created under Article I or the territorial courts created under Article IV. Shepards shows that the *O'Donoghue* case has not been reversed, overturned, or modified by any later ruling.

According to the *O'Donoghue* court:

"As the only judicial power vested in Congress is to create courts whose judges shall hold their offices during good behavior, it necessarily follows that, if Congress authorizes the creation of courts and the appointment of judges for a limited time, it must act independently of the Constitution and upon territory which is not part of the United States within the meaning of the Constitution." [Emph. add.]

But 26 U.S.C., section 7441 states,

"There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court. The members of the Tax Court shall be the chief judge and the judges of the Tax Court."

26 U.S.C., section 7443(e), ("Membership") states,

"(e) Term of Office.—The term of office of any judge of the Tax Court shall expire 15 years after he takes office."

It appears from these Title 26 code sections that Tax Court is an Article I court whose judges serve for a *limited time*, namely 15 years.

[I suspect it's a "territorial" court under Article IV. If so, if you can successfully deny that you're in that "territory," you might evade that court's jurisdiction. For example, if the court presumes you're in a government-owned territory (possibly identified by "TX" and/or Zip Code) but you can deny that assumption and claim you've always been in "Texas" (State), you might be able challenge jurisdiction of the territorial court.]

Judging by the *O'Donoghue* ruling – the U.S. Tax Court, it's proper issues, administrative procedures under the IRS Code,

and its regulations – have nothing to do with the states of the Union and/or the people who live therein – except when an individual enters into some privileged capacity with respect to the federal government or any of its instrumentalities.

How does Congress get away with making all those references to the “states” in the Internal Revenue Code?

The *O’Donoghue* court set out 4 general conclusions regarding the differences between the states of the Union and the District of Columbia and the territories:

1. The District of Columbia and the *territories* are not “states” within the judicial clause [Article 3] of the Constitution giving jurisdiction in cases between citizens of different states;

2. *Territories* are not “states” within the meaning of Revised Statutes section 709, permitting writs of error from this court in cases where the validity of a “state” statute is drawn in question;

3. The District of Columbia and the *territories* are “states” as that word is used in treaties with foreign powers, with respect to the ownership, disposition, and inheritance of property;

4. The District of Columbia and the *territories* are not within the clause of the Constitution providing for the creation of a supreme court and such inferior courts as “Congress may see fit to establish.”

[Emph. add.]

### Foreign “states”?

The third conclusion (“The District of Columbia and the territories are “states” as that word is used in treaties with *foreign* powers, with respect to the ownership, disposition, and inheritance of property”) is at odds with the other conclusions as well as

our common understanding of the word “state”. However, this definition of “state” is the one which Congress uses in the Internal Revenue Code.

Under the treaty with Spain, the territories (insular possessions) were called “states” for the purpose of ownership, disposition, and inheritance of property. These states include such territories as the Philippines (which elected to become independent of the United States in 1946), Puerto Rico, The Virgin Islands, Guam, etc. It is these inchoate states that are the subject of the Internal Revenue Code, not the sovereign states of the Union.

Neither does Congress include any of the states of the Union in the general definition of the terms “United States” or “State”. Moreover, Congress deleted references to Alaska and Hawaii in Title 26 as each of these Territories was admitted into the Union. (See Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141 and Hawaii Omnibus Act, P.L. 86-624, 74 Stat. 411 where references to Alaska and Hawaii were removed from the Internal Revenue Code of 1954 “each relating to a special definition of “State””.)

### A “state” by any other name does not smell so sweet

Two other U.S. Supreme Court cases also help illuminate the distinctions between different kinds of “states” .

The 1821 case of *Cohens v. Virginia* (6 Wheat. 264; 5 L.Ed. 257) is still quoted in the bar review books and sets out the limited legislative power of the federal government, to wit:

“It is clear that Congress, as a legislative body, exercise two species of legislative power: the one, limited as to its objects but extending all over the Union; the other, an absolute, exclusive legislative power over the District of Columbia.”

In the case of *Ellis v. United States*, 206 U.S. 246; 27 S.Ct. 600 (1907), the United States Supreme Court considered whether the minimum wage law of the United States would apply to the dredging of Chelsea creek in Boston harbor, Massachusetts. Notice these quoted conclusions:

- Congress possesses no power to legislate except such as is affirmatively conferred upon it through the Constitution, or is fairly to be inferred therefrom.

- An act which may be constitutional upon its face, or as applied to certain conditions, may yet be found to be unconstitutional when sought to be applied in a particular case.

- The work of dredging in Chelsea creek, in Boston harbor, as shown in the record, is not part of the “public works of the United States” within the meaning of the statute in question.

- It is unnecessary to lay special stress on the title to the soil in which the channels were dug, but it may be noticed that it was *not in the United States*. The language of the acts is “public works of the United States.” As the works are things upon which the labor is expended, the most natural meaning of “of the United States” is “belonging to the United States.” [Emph. add.]

Two conclusions can be drawn from this ruling. First, Chelsea creek in Boston harbor is not “in the United States”. Chelsea creek is in Massachusetts which, as a sovereign state of the Union, is not under the jurisdiction of the United States except for those things that have been delegated to the United States [Federal] government in the U.S. Constitution.

Second, the term “of the United States” means “belonging to the United States”. The states of the Union are not territories

of the United States and do not belong to the United States. The states of the Union have a sovereignty that predates the creation of the federal government.

However, the *territories* have no sovereignty as they are the property of the United States government.

Thus, the term "States of the United States" as expressed in federal codes includes only the *territories* as inchoate states which *belong to* the United States. Consequently, the court concluded that the minimum wage law of the United States did not apply to the work done at Chelsea creek.

### The artful dodgers

Congress has been careful to artfully define its terms in compliance with the rulings of the Supremes. As a result, few Americans understand the distinction between the sovereign states of the Union and the inchoate "States of the United States" which refer to territories.

The Internal Revenue Code is "internal" to the federal government [I'd say "*national government*"; I suspect "internal" might even be government code for "*national*"], its instrumentalities, and the territories upon which Congress has laid this burden. It follows that the administrative procedure set forth in the Internal Revenue Code and the Code of Federal Regulations is incorrectly applied to individuals liv-

ing in the sovereign states of the Union who have not elected to participate in any privileged capacity with the federal government. Pursuant to *O'Donoghue*, application of IRS administrative procedure to individuals living in sovereign states of the Union oversteps the authority delegated to the United States in the Constitution and is thus unconstitutional.

[I agree. However, I suspect that most of us have unwittingly accepted a citizenship, status as beneficiary, or residency that is foreign to the sovereign States of the Union but within some government territory like "TX". So long as we have voluntarily accepted the status of 14th Amendment "citizen of the United States," "U.S. citizen," beneficiary of National governmental programs, or resident of a territory, Congress probably has constitutional authority to impose the IRS Code upon us.

The problem is not that Congress is acting unconstitutionally, but that it acts deceptively. Congress takes advantage of our ignorance because there's no constitutional provision to prevent them from doing so.

Therefore, our remedy is not procedural so much as educational. My people perish, etc..]

The federal government is a creation of the states of the Union, and those states have not

been absorbed into the federal government which they created. Nevertheless, no one currently in government wants to look at the conclusions of the *O'Donoghue* case because it would restrict their empire.

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Dan Meador publishes one of the finest newsletters available on the income tax. You can subscribe by email at DanMeador-subscribe@egroups.com or visit Dan's website at <http://www.egroups.com/group/DanMeador>

<sup>1</sup> The distinction between "States" and "states" is just another illustration that, in law, fundamental meaning can pivot on whether a particular word is or is not capitalized.

Because "State" and "state" sound alike, they are easily mistaken for each other by people whose fundamental media of communication is by voice. But the medium of law is inevitably *written*, not oral. Therefore law depends on a precise understanding of spelling, grammar and other subtle elements of the *written* language.

If sound (speech, music, videos, TV, movies, etc.) is your primary media of communication – and it is for most Americans – you will probably be confused and frustrated by law. Why? Because law exists almost entirely within the *written* media. Our electronic media is fundamentally aural and has educated all of us to be quasi-musicians and poets. Law, on the other hand, is strictly text- and logic-based. It's intended for highly skilled *readers* rather than laid-back musicians and poets.

It's no accident that the first "lawyers" were described in the Bible as "scribes". Only those who *read* proficiently – or better yet, *write* – are likely to become comfortable and competent in law.



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