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June 5, 2002

Ms. Wendy Isherwood
10017 Connecticut Street
Bonita Springs, Florida 34135-4642

Dear Ms. Isherwood,

You are not alone in your concern on the legality of the income tax. It has long been said that the two things in life you cannot escape are death and taxes, and both are held in about equal regard by the American people. None of us like paying the income tax, and I am always interested in hearing alternative ways in which we might fund the vital services the federal government provides. As I am sure you know, there has been much discussion in Congress to come up with a fairer option. Everything from flat tax, a national sales tax and value-added taxes has been on the table as part of the debate; however, at this time, there does not seem to be any clear consensus on which direction tax reform will lead. So, for the present, the income tax is the law of the land and the approved mechanism for collecting monies need to support the activities of government.

I must say however, I have heard many of the arguments from the We the People Foundation and I have found their version of tax history lacking in many aspects. I am not a tax law expert or a scholar of the Constitution, but there are several holes in the argument that U.S. citizens are not subject to an income tax. In this letter I will attempt to answer some general questions I have heard about the income tax before. However, the best source is still probably the Internal Revenue Service for tax information, as they are the experts on this issue.

Let me begin with the contention held by some that the 16th Amendment was never properly ratified. In 1985 William Benson and "Red" Beckman released a book entitled "The Law That Never Was," in which they claimed that they had discovered new facts proving the illegality of the 16th Amendment. Since that time about half-a-dozen court cases have occurred where the defendant used this premise as a reason for not paying income tax. They have all been dismissed but I believe in *Miller v. the United States* (868 F.2d 236) there is good summary of why this argument has failed.

"Benson and Beckman did not discover anything, they rediscovered something that Secretary Knox considered in 1913. Thirty-eight states ratified the sixteenth amendment, and thirty-seven sent formal instruments of ratification to the Secretary of State... only four instruments repeat the language of the 16th amendment exactly as Congress approved it. The others contain errors of diction, capitalization, punctuation, and spelling... [the defendant] insists that because the states did not approve exactly the same text, the

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amendment did not go into effect. Secretary Knox considered this argument. The Solicitor of the Department of State drew up a list of errors in the instruments and -taking into account both the triviality of the deviations and the treatment of earlier amendments that had experienced more substantial problems--advised the Secretary that he was authorized to declare the amendment adopted. The Secretary did so... his decision is now beyond review."

The idea that 16th Amendment was never ratified seems to come down upon the idea that there were slight errors in language, and not intent, in the versions of the amendment the states passed. Very few standards of jurisprudence would claim that these are adequate grounds to dismiss an amendment-- and this has been the case historically. Several Supreme Court rulings, most prominently, *Brushaber v. Union Pacific Railroad Company* (240 U.S.1), have accepted the Constitutionality of the 16th Amendment. Indeed for over 85 years the 16th Amendment has been a major component of our Constitutional order. In the absence of proof of any fraud, I think it is prudent to take this very well established amendment as legitimate.

Also, I would like to clarify which parts of the code relate to the tax code. First, let me generally refer to the broad outlines of portions of the tax code that you may find relevant in this instance: 26 U.S.C. 1 is the actual imposition of the tax, 26 U.S.C. 61 defines gross income, 26 U.S.C. 63 defines taxable income, 26 U.S.C. 6011 provides for a general requirement of filing a return, 26 U.S.C. 6012 requires a person to make returns of income, 26 U.S.C. 7201 provides penalties for evading the income tax, and 26 U.S.C. provides definitions. A glance through the tax code shows there are repeated portions that require all U.S. citizens who make more than the minimal income to pay federal income taxes.

I am sorry to have so weighed down this letter with "legal-ese" but let me please conclude with the words of another court case entitled *Melton v. United States* (4th Circuit 1996).

"Federal courts have all agreed that wages or compensation for services constitute income and that individuals receiving income are subject to the federal income tax-regardless of its nature... In short, the debate over whether the income tax is an excise tax or a direct tax is irrelevant to the obligation of the citizens to pay taxes and file returns... Furthermore, the duty to file returns and pay income taxes is clear. Section 1 of the Internal Revenue Code imposes a federal tax on the taxable income of every individual. 26 U.S.C. 1 Section 63 defines "taxable income" as gross income minus allowable deductions. 26 U.S.C. 63 Section 61 states that "gross income means all income from whatever source derived," including compensation for services... The duty to pay federal income taxes therefore is "manifest on the face of the statutes, without any resort to IRS rules, forms or

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to pay federal income taxes therefore is "manifest on the face of the statutes, without any resort to IRS rules, forms or regulations."

As I stated earlier, I am not a tax expert, but it does seem clear that we all have a legal obligation according to multiple parts of the United States Code to pay taxes and that this obligation has been widely supported by the courts for 85 years.

Thanks again for sharing your thoughts.

Kindest regards,



Porter Goss
Member of Congress

PG:es