

What's the "Source" of Your Income?

by Larken Rose
<http://www.taxableincome.net>

This article consists of two parts: 1) a letter from Mr. Rose to the Attorney General of the United States; and 2) a document entitled "Legal Basis for Not Filing / Not Paying" which explains some of the letter's fundamental principles.

The letter offers a general overview of the confusion caused by the IRS Code as well as a reasonable person's resulting conclusions. You'll see why some folks refuse to automatically comply with the IRS Code . . . it's simply too unclear, ambiguous and seemingly contradictory to be easily understood or rationally obeyed.

The "Legal Basis for Not Filing / Not Paying" is more technical and intellectually challenging. If you're serious about learning the 861 "sources" defense, you'll want to study the "Legal Basis" article. If your interest in tax law is less intense, you might want to read the letter but skip the highly technical "Legal Basis" attachment. But even though the "Legal Basis" is hard to follow, it presents the bones of a very hot defense. No pain, no gain, hmm?

March 6, 2001
John Ashcroft, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Ashcroft,

Though my wife and I run a small business, and receive income from that business, 1996 was the last year for which we filed a federal income tax return or made any federal income tax payments.

While in the past I had always believed the federal income tax to be immoral and unconstitutional, we did not stop paying in "protest"

of any law. On the contrary, we stopped filing and paying because we took the time to examine the *law itself*, to determine what it required of us. After extensive personal research, I came to a rather disturbing conclusion:

While the federal income tax is entirely valid and Constitutional, it does not apply to the income of most Americans. I do not just mean it *cannot* apply to such income; I mean the law itself shows that it *does* not apply to such income. During my research into the law, not only

did I find abundant evidence proving my conclusions, from the actual federal income tax statutes and regulations (past and present), but I also believe I have substantial documentation proving an ongoing and deliberate attempt by some in the federal government to conceal the truth, and to intentionally deceive and defraud the American public.

"Thou shalt not steal." *"Thou shalt not bear false witness."* I trust that you believe that these statements apply to agents of the United States government, and I hope you do not believe that political power or the "compelling interest" of the state supersede those commands. The organization over which you now preside has participated (whether knowingly or not) in the biggest extortion racket in the history of mankind.

The enforcers of the law, both at the IRS and at the DOJ, have been enforcing a *non-existent* law when they demand income tax returns and payments from United States citizens who live and work exclusively within the 50 states, and when those agents harass and persecute such citizens when they do not "comply." Ironically, the victims of this injustice usually *assume* that they have broken the law. However, the fact that people have *attempted* to evade a tax is only legally relevant if a tax was actually *owed*. (False assumptions and erroneous "conventional wisdom" do not create legal obligations.)

"The United States Attorney. . . is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer . . . It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78 (1935)



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I am no fan of lawyers per se, but I believe prosecutors have a tendency to be more honest, more driven by principle, and have more interest in having justice be served than in winning every case at all costs. I would guess that most U.S. attorneys who prosecute individuals for “failure to file” or “tax evasion” are under the impression that they are simply enforcing the law, and punishing those who are intentionally avoiding their legal responsibilities. Ironically, the defendants probably believe the same. However, in the majority of cases, both are mistaken.

I am enclosing a brief summary of the legal basis for my decision not to file or pay, as well as a more in-depth explanation of the results of my research—a report entitled “Taxable Income” (10/23/00 revision)—which documents the strictly *limited* application of the federal income tax. I am well aware of the many unfounded “tax protestor” theories which are based upon “creative interpretation” or twisted logic, and I agree that many such arguments are “frivolous” and without merit. My findings, in contrast, are based entirely on what the federal income tax statutes and regulations *themselves* say (and have said since long before I was born).

However, I did not stop at what I saw in the statutes and regulations. After reaching my conclusions, I *sought out* opposing views; I have repeatedly attempted to get government officials, including IRS officials, to refute what I have found, to show me where I may have made a mistake.

While many have *asserted* that my conclusions are incorrect, they produced no *evidence* to support that assertion. In fact, the so-called “experts” have routinely contradicted *each other* when trying to explain away the many citations I am relying on, and have consistently contradicted what the Treasury regulations say in plain English. (I would be happy if someone from the Department of Justice wants to try to show me where I may be in error.)

All of this no doubt sounds absurd to you. I expect you are unable to even consider the *possibility* that my conclusions could be correct. You may not wish to consider the possibility that

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the government you serve extorts and defrauds the citizenry far more than it “protects” them.

You of course are a busy man, and I suspect you will simply dismiss this as nonsense, without ever looking into it (and I admit that would be somewhat understandable, considering how “unconventional” my conclusions are). But this fraud must end, and your attention to it is paramount. At the moment I know of no better way to get your attention than by doing this:

By signing below, I hereby declare (under penalty of per-jury) that I have not filed any federal income tax return for the 1997 year or any subsequent year, nor have I paid any federal income taxes for those years. During those years, I received sufficient income that, if my income had been subject to the federal income tax, both payments and returns would have been required by law. If you believe my conclusions of law are in error, and my actions illegal, I hereby publicly and openly invite the Department of Justice to prosecute me.

I have posted my research, my attempts to get answers from the IRS, my experiences, and my case history at <http://www.taxableincome.net> for all the world to see (and I would be happy to post any rebuttal you can supply there as well). The truth will eventually come out, one way or the other. Which side you end up on depends upon your principles, your honesty, and your willingness to examine the evidence and face the truth.

I believe you have a moral and legal obligation, not only to immediately cease the baseless tax-related prosecutions of those U.S. citizens who are not actually subject to the federal income tax (i.e. most Americans), but also to initiate an investigation into the Department of the Treasury, and possibly some members of Congress, for ongoing attempts to intentionally deceive and defraud the people of the United States. What I actually *expect* you to do is another matter, but I hope you will demonstrate that your allegiance to political power does not outweigh your allegiance to your God, to your principles, to the law, to the truth, and to justice.

By signing below, I hereby declare under penalties of perjury that the above information is true and correct to the best of my knowledge.

Sincerely,
s/ Larken Rose
[address deleted for privacy]

cc: Charles O. Rossotti
Commissioner, Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Legal Basis for Not Filing / Not Paying

The following is a summary of a larger, 60-page report that is available for free from Mr. Rose's website at: <http://www.taxableincome.net/docrequest.html>. Be warned that because this article summarizes the 60-page report, the text is abbreviated, incomplete and hard to read. If the IRS isn't your issue, you might want to skip to the next article.

On the other hand, if income tax is important to you, this is a hot strategy and you should read this text as an introduction to what appears to be a very strong defence against the IRS.

Overview:

The regulatory definition of "gross income" is "income from whatever *source* derived, *unless excluded by law*"[1] (26 CFR § 1.61-1).

The general statutory definition of "gross income" is "income from whatever *source* derived"[2] (26 USC § 61).

The federal "income tax" is imposed upon individuals by 26 USC § 1, and is imposed upon "taxable income"[3], which generally means "gross income" minus deductions (26 USC § 63, 26 CFR § 1.1-1(a)(1)).

Generally speaking, the requirement to *file* income tax returns is found in 26 USC § 6012, and depends upon the receipt of "gross income"[4] in excess of one's "exemption" amount.

[The, blue bracketed numbers above correspond to the "issues" addressed below.]

Issue #1, "Excluded Income":

In the general definition of "gross income" found in the regulations (26 CFR § 1.61-1), the term "unless excluded by law" is often misread to refer only to *statutory* exclusions. However, the predecessor regulations make clear that the phrase refers to exemption by statute, *or* by "fundamental law" (26 CFR § 39.21-1 (1956)), meaning the Constitution.

The prior regulations stated that in addition to the statutory exemptions, other income was "under the Constitution, *not taxable* by the Federal Government" (26 CFR § 39.22(b)-1 (1956)).

The older statutory definitions of "net income" (now "taxable income") and "gross income" used broad wording (26 USC §§ 21, 22(a) (1939)), and did not need to mention Constitutional limitations, since "every statute is to be read in the light of the constitution," and "[h]owever broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach" (*McCullough v. Com. Of Virginia*, 172 U.S. 102 (1898)).

Since regulations (when published in the Federal Register) are the official notice to the public of what the law requires of them (44 USC), the regulations must give specifics. For decades, the regulations defining "gross income" specifically stated that income of U.S. citizens derived from "foreign commerce" *must* be included in their "gross income," and also described income of foreigners, and income of those

who receive most of their income from federal possessions (Regulations 62, Article 31 (1922), 26 CFR § 39.22(a)-1 (1956)).

The current regulations under 26 USC § 61 mention neither the Constitution, nor the types of commerce from which income “must be included” as “gross income”. However, the regulations still show that some income is “excluded by law” (26 CFR § 1.61-1)—i.e., excluded by statute or by the Constitution, itself.

However, current income tax regulations specifically state that the “items” of income listed in 26 USC § 61 make up “classes of gross income” (26 CFR § 1.861-8(a)(3)). Further, such income is sometimes *excluded* “for federal income tax purposes” (26 CFR §§ 1.861-8(b)(1), 1.861-8T(d)(2)(ii)(A)).

The regulations then list what is *not* exempt (26 CFR § 1.861-8T(d)(2)(iii)), and give essentially the same list of types of commerce which were previously listed in the older regulations defining “gross income” (26 CFR § 39.22(a)-1 (1956)). These types of commerce are all related to *international* and *foreign* commerce (including commerce within federal possessions).

The general power to “lay and collect taxes” (U.S. Constitution, Article I, Section 8, Clause 1) *combined* with the power to “regulate commerce with foreign nations” (U.S. Constitution, Article I, Section 8, Clause 3) undoubtedly gives Congress the power to impose an income tax on income derived from *foreign* commerce (*William E. Peck & Co. v. Lowe*, 247 U.S. 165 (1918)). However, mere receipt of income from *intrastate* commerce *cannot* be a proper subject of a federal ex-

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cise tax. (Both the Supreme Court (*Stanton v. Baltic Mining* (240 U.S. 103)) and the Secretary of the Treasury (Treasury Decision 2303) agree that the income tax is in fact an “indirect” excise.)

Congress cannot gain jurisdiction over an event, or regulate an event not otherwise under federal jurisdiction (such as *intrastate* commerce), simply by exerting such control via taxation legislation. “To give such magic to the word ‘tax’ would be to break down all constitutional limitation of the powers of Congress” (*Bailey v. Drexel Furniture Co.*, 259 U.S. 20 (1922)), and such a law “cannot be sustained as an exercise of the taxing power of Congress conferred by section 8, article 1” (*Hill v. Wallace*, 259 U.S. 44 (1922)).

Mind you, this is *not* to say that the income tax is in any way invalid. These cases merely show *why* the income tax statutes and regulations *themselves* limit the tax to those engaged in *international* or *foreign* commerce.

Issue #2, “Sources of Income”:

When income tax regulations implementing the Internal Revenue Code of 1954 were first published, they did not specifically mention the Constitutional restrictions on what constituted “gross income.” Instead, the regulations began by stating that 26 USC § 861 and following (and the related regulations), “determine the *sources* of income for purposes of the income tax” (26 CFR § 1.861-1 (1958 to present)).

Under 26 USC § 61, the three major printings of the United States Code (USC, USCS, USCA) currently all contain editorially-supplied cross-references to 26 USC § 861 regarding “income from sources *within* the United States.” This cross-reference is not currently part of the actual text of the law, but it was in 1939 (26 USC § 22(g) (1939)). However, the text of 26 USC § 861 identifies which income “shall be treated as income from sources *within* the United States.”

It’s not unusual for one section of the federal statutes to broadly describe a requirement, only to have other sections show that the general requirement applies only to those engaged in commerce under federal jurisdiction [e.g. the federal “anti-discrimination” laws at 23 USC §§ 623(a)(1), 630(b), 630(g)].

The federal income tax is no different. The early sections of the Internal Revenue Code generally describe a tax on income (26 USC §§ 1, 61, 63). But congress was well aware of its limited jurisdiction, and (in what is now Subchapter N, Chapter 1 of Title 26) Congress enumerated those situations in which “income from sources *within* or *without* the United States” was subject to the tax. All of the activities

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or types of commerce listed therein as subject to income tax concern those engaged in international or foreign commerce.

Although many assume that income from all types of commerce not listed (such as intrastate commerce) is also taxable, such assumptions are contrary to established law. When interpreting taxing statutes,

“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.” Gould v. Gould, 245 U.S. 151 (1917).

The regulations clearly state that 26 USC § 861 and following, and related regulations, “*determine* the *sources* of income for purposes of the income tax,” and those sections *only* show income from certain *international* and *foreign* commerce to be included. It is in error to assume a greater scope to the law than what is “specifically pointed out.”

Issue #3, “Taxable Income”:

Section 861(b) of the Title 26 statutes is entitled “Taxable income from *sources* within United States,” and the text thereof describes what “shall be included in full as taxable income from sources within the United States.” There are numerous citations showing that 26 USC § 861(b), and the related regulations (beginning with 26 CFR § 1.861-8), are the sections to use to *determine* “taxable income from sources within the United States” (26 CFR §§ 1.861-1(a), 1.861-1(b), 1.861-8(a), 1.862-1(b), 1.863-1(c), etc.).

The current regulations (in addition to the historical statutes and regulations) make clear that only income from certain activities or types of commerce (i.e. “specific sources”) is shown by 26 USC § 861(b) and 26 CFR § 1.861-8 to constitute “*taxable* income from sources within the United States” (26 CFR §§ 1.861-8(f)(3)(ii), 1.861-8(a), 1.861-8(f)(1), 26 CFR § 29.119-1 (1945), 29.119-9 (1945), 29.119-10 (1945)). This fact has been so obfuscated over the years that, today, 26 USC § 86 (read by itself out of context) seems to indicate that most domestic income is taxable.

However, the predecessor statutes make it abundantly clear that under that section, only the domestic income of those engaged in certain activities related to international or foreign commerce is taxable (Revenue Act of 1921, §§ 217, 232).

The activities enumerated by Congress in Subchapter N of the IRC, and the regulations promulgated by the Secretary of the Treasury under 26 USC § 861, match precisely the types of commerce which Issue #1 (above) shows to be constitutionally taxable by the federal government.

In sum, Part I (26 USC § 861 and following) give the general rules about the “source” and taxability of income from limited types of commerce. Part II and portions of Subchapter N enumerate those *types* of taxable commerce (e.g. 26 USC §§ 871, 882, 911, 936, etc.).

Issue #4, "Filing Requirement":

Both the statutes and regulations use the term "gross income" in two ways: in the generic sense, to mean *all* income; and in the "term of art" sense, to mean only that income which is *subject* to the federal income tax. The requirement to file an income tax return (26 USC § 6012) depends upon receipt of "gross income" in the latter sense, i.e. income *subject* to the tax.

In fact, the older regulations stated that income exempted by statute or "fundamental law" (Constitution) "should *not* be included in the return of income and need not be mentioned in the return" [Regulations 62, Article 71 (1922)]. Those regulations, consistent with what has been previously outlined, stated that citizens deriving income from *foreign* commerce "must" include such income in their "gross income."

The current 1040 instruction booklet and the current IRS Publication 525 ("Taxable and Nontaxable Income") each declare that U.S. citizens "must" report income they receive from "sources" *outside* the United States, but say nothing of the domestic-source income (within the United States) of citizens.

IRC Section 61 gives the general definition of "gross income from whatever source derived" for purposes of Title 26 (including 26 USC § 6012- "Persons Required to Make Returns of Income"). If some income is not specifically shown by law to constitute "income from sources *within* the United States" (26 USC § 861), or "income from sources *without* the United States" (26 USC § 862), then such income does not legally constitute "income from whatever *source* derived," and cannot create any filing requirement under 26 USC § 6012.

Mr. Rose seems to argue that *unless* the source of your income is specifically listed by law as "taxable," it's probably *not* taxable. Intense study of the Internal Revenue Code and relevant regulations and statutes concerning "sources" of income reportedly indicates that most of us derive our incomes from *sources* which are not truly taxable.

For more complete information, Mr. Rose has authored a 60+ page report entitled "Taxable Income," which offers a comprehensive explanation and proof of the Section 861 defense. You can download a free copy of his report at: <http://www.taxableincome.net/docrequest.html>

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