

TAKE THE RED PILL UNDERSTANDING THE IRS MATRIX

I. BASIC PHILOSOPHICAL DIFFERENCES: A PRIORI NATURAL LAW VERSUS A POSTERIORI POSITIVISM

Parts of this analysis will be a mind-bending philosophical exercise for some. This is because the conflict between “us” and “them” on at least one level represents a fundamental and perhaps irresolvable conflict between a priori thinkers and a posteriori thinkers. Those with an a priori worldview believe in God and immutable, natural laws that “come first.” We can be Christian, Jewish, Muslim, Hindi or even Zoroastrian marijuana worshipers. We understand that as rational, free-will beings we “discover” these eternal laws and our unique individual paths from reason applied to circumstance. We are the Rule of Law remnant who believes in God-given unalienable rights, jury trials and the power of common men to nullify unjust laws through jury nullification and other civil means. A priori thinkers believe that an unjust law is not a law. Most of us accept that every individual’s subjective economic choices are immeasurably valuable and cannot be planned by others without causing real and serious damage. To a priori’s, socialism, a system that by definition promotes the taking of money and property from A and giving it to B, is an irreconcilable moral evil.

A posteriori thinkers are the judges and growing legions of authoritarian legal positivists who believe that morality and things like the Ten Commandments and the Golden Rule are nothing more than sociological customs that can be interpreted and changed according to the whims of the ruling caste. The notion of a law that defies God’s law—stealing from A and giving to B—is absurd to the a posteriori positivist. The a posteriori’s fit comfortably in either Republican or Democrat jerseys and worship at the altar of the state. These people include the elites, the neoconservatives, the Progressivists, and most of modern academia. Collectively, these people are the modern-day Pharisees. To these people, only fallible men have the power to “create” law, men do not discover law. They seek to deny and limit the right to a jury in income tax disputes. To them, all man-made laws are legitimate and all rules must be obeyed or changed by a process over which they have exclusive control. The a posteriori credos are might makes right and ends justify the means. To a posteriori’s, truth is a malleable concept.

The United States were birthed by the greatest non-sectarian statement of a priori principles in the history of mankind—The Declaration of Independence. In that great document the 57 signatories acknowledged that “all men” are created equal and endowed with unalienable rights. Although the US Constitution is also an excellent document, it really represents a compromise between the a priori thinkers (enumerated powers, Bill of Rights, 10th amendment, due process, jury

trials) and a posteriori thinkers. The a posteriori influence on the Constitution is evidenced by the fact that slaves were counted as 3/5ths of a person and the original exclusion of the Bill of Rights.

II. BACKGROUND: THE DIFFERENCE BETWEEN “DIRECT” AND INDIRECT “EXCISE” TAXES

Federal income tax apologists argue that it applies to all U.S. citizens doing anything that earns money. The problem is that the Code does not say this anywhere. It doesn't even come close. Indeed, the Code is in fact very careful to avoid stepping beyond the very limited scope of its clear federal jurisdiction—over federal officers and employees and those of U.S. territories. Through a series of very artful tricks, traps and bullying obfuscations, the federal government has asserted jurisdiction over millions of innocent people who “voluntarily” but unwittingly submit to federal authority.

In order to understand how all this can be true, it is important to understand taxes generally and a little bit of history.

Courts and scholars have divided taxes into “direct” taxes and indirect taxes. Excise taxes are a type of indirect tax. The current federal income tax is an indirect, excise tax.

A. Direct Taxes Tax People or Things and Don't Require a Taxable Event

Direct taxes tax discrete individuals and identifiable private property. Property taxes on your home are direct taxes. When direct taxes are aimed at people, they are sometimes called “capitation” or “poll” taxes. In the history of civilization, capitation taxes **on individuals**—being taxed for merely being alive and perhaps producing income—have always been viewed as a somewhat morally abhorrent form of slavery. The poll tax was a source of [Jewish rebellion in Christ's time](#). Our own Supreme Court has held that states that require payment of a state poll tax as a condition to voting violate the US Constitution. Unlike excise taxes, direct taxes do not generally require a “taxable event”; that is, the person or property is subject to the direct tax for simply existing. The property tax bill on your house may go up or down depending on tax rates and value and you do not have to sell your house to trigger the obligation. The tax is direct and not dependant on your house **doing** (e.g. being sold, leased, etc.) anything. If the federal income tax was a direct tax on all people, it would apply to people without regard to their activity. It doesn't and so it isn't.

B. Apportionment Means Fairness (and Power)

Article I, Section 8 of the Constitution requires that all direct taxes be “apportioned.” Apportionment means pro rata fairness. If the federal government today were to establish a direct tax on individuals or property and the tax was apportioned, that would mean that the federal government would identify the amount it needed and then apportion (divide) that amount among the states according to the people or property in the states. The original intent of the Founders regarding direct taxes was that, **if** the federal government were to levy a direct tax, **then** the federal government would send the states a tax bill representing their apportioned (fair pro rata share) of the tax and the states would collect it. An interesting description of how this worked prior to 1913 is found in [Pollock v. Farmer’s Loan & Trust Co., 157 U.S. 428 \(1895\)](#) (“Pollock I”). Pollock is a great a priori victory in which the Supreme Court held that a federal direct income tax on all “United States citizens” violated the Constitution and further castigated the federal officials who had perpetrated the fraud on the innocent people of the United States. Is there any judge today who would be brave enough to write this:

The injustice and harm which must always result from overthrowing a long and settled practice sanctioned by the decisions of this court could not be better illustrated than by the example which this case affords. Under the income-tax laws which prevailed in the past for many years, and which covered every conceivable source of income...**vast sums were collected from the people of the United States.** The decision here rendered announces that **those sums were wrongfully taken**, and thereby, **it seems to me, creates a claim, in equity and good conscience, against the government for an enormous amount of money...** I say, creating a claim, because, **if the government be in good conscience bound to refund that which has been taken from the citizen in violation of the constitution**, although the technical right may have disappeared by lapse of time, or because the decisions of this court have misled the citizen to his grievous injury, **the equity endures, and will present itself to the conscience of the government.**

157 U.S. at 637-38. Pollock provides hope for a priori’s.

Apportionment can be either by population, property or land. Apportionment requires that each state contribute pro rata in relation to the subject of the direct tax. If the federal income tax today was a direct tax that was apportioned based on population, the total federal contribution of the citizens of Montana would be approximately 1/53rd of what the citizens of California pay (California has 53 representatives, Montana 1). This concept, together with state sovereignty, has

been slowly eroding ever since 1776, with significant erosions occurring in 1791 (Constitution), 1862 (Civil War), 1913 (income tax and Federal Reserve), and the final nail in the coffin—the establishment of withholding in 1942.

Pro rata fairness is really what the Civil War was all about. Throughout the 19th century more populous states battled to compel subsidies from less populous states. A necessary consequence of a representative government with growing populations in some states means that some states can exert legislative power and thus, economic control, over others. Aiding this leverage is the fact that the Constitution counted black slaves as only 3/5ths of a person for purposes of representation. By 1850, the result was that Southern states paid a disproportionate share of the federal budget and thus subsidized the North. Protectionist tariffs on southern commodity exports artificially increased operating costs in the South and subsidized the North.

If you believe that the Civil War was “about” slavery you have been misled. If you believe Abraham Lincoln was a good guy who really wanted to “free” all of the slaves you are mistaken. Take the Red Pill, review the [Emancipation Proclamation](#) and ask yourself why it did not free the thousands of slaves in the Northern slave states. That’s right, [Northern slave states](#). There were at least five of them: Delaware, Kentucky, Maryland, Missouri and West Virginia. This doesn’t include New Jersey, which did not outlaw slavery until after the war. You won’t find this mentioned in any modern government school textbook. Did you know that Abraham Lincoln opined on the inferiority of the black race and thought that freed slaves should be shipped to Haiti and the U.S.-created African [Republic of Liberia](#)? Liberia, liberate, freed slaves, get it? By Lincoln’s [own admission](#), the Emancipation Proclamation was a war measure, cruelly intended to cause fear and uncertainty **only** among **southern** slaves and **southern** slave holders.

The unplugged-from-the-Matrix reality is that the Civil War was a violent, bloody and murderous tax collection action and the North, including its slave states and many reluctant foreign mercenaries, was the federal government’s tax collector. Slavery without a doubt was a factor in the war as the cost of production in the South was subsidized by slave labor and the federal tariff was a coercive attempt to equalize the South’s costs of production. But it is a fact that the Southern states no longer wanted to pay a disproportionate share of [federal tariffs](#) and it is also a fact that Lincoln’s troops invaded the heavily taxed non-paying slave states, not the subsidized Northern slave states. Need more proof? When news of secession reached him, Lincoln asked: “[what, then, will become of my tariff?](#)”

A final bit of direct-indirect-apportionment background. The solitary impact of the 16th Amendment, if any, according to the Supreme Court, is to remove any question that the current federal income tax is subject to apportionment—it is not.

The current federal income tax is an excise tax, not a direct tax. In several decisions the United States Supreme Court has reaffirmed the principle, embodied in Article I, Section 8, that any direct tax must still be apportioned. For this reason and others articulated below, although the Supreme Court had not stated it clearly, **the current federal income tax is an excise tax effectively applied as though it were a direct tax.**

C. **Excise Taxes Must Have a Subject (Person or Thing) and a Verb (Subject Doing a Taxable Thing)**

Excise taxes differ from direct taxes in that they must have both a subject (a person or thing taxed) and a verb (a “taxable event” or transaction that triggers the tax). Excise taxes thus tax a particular thing upon the occurrence of a taxable event. They are “indirect” taxes because they don’t tax a person or thing directly, but rather tax the person or thing only when it “does” something. The federal gas tax of 18.4 cents per gallon is an example. The gas tax is derived from and limited to a thing—gas. The taxable event that triggers the tax is the **sale** of gas. 2000 gallons of gas sitting in a tank underground, no matter how valuable, does not generate any excise tax until someone sells it. The subject of the tax—gas—must be **doing** something taxable in order to trigger the tax. If A owns the 2000 gallons and sells 10 gallons to B, A charges B the tax and sends it to G, the government. If A gives gas to B, there is no sale and therefore no taxable event. G gets nothing. In some respect, therefore, excise taxes are “voluntary.” B can choose not to buy gas. B can also choose to ride a bike instead of driving a car and therefore avoid paying the tax. For excise taxes, voluntary avoidance of excise taxes is possible and the excise tax is generally proportionate to the activity—the more gas B burns, the more gas he buys and the more tax he pays.

The proponents of the income tax most broadly claim that it is an excise tax that applies to “people” who “earn income.” It does not, for example, tax “cows” that “eat grass.” As a matter of logic and statutory interpretation, therefore, it is very important to understand that excise taxes must have both a subject and a verb and that both are clearly identified.

III. **MORE BACKGROUND: A ROTHBARDIAN UNDERSTANDING OF MONEY AND INCOME—THERE IS NO SPOON**

It was some time ago now that I read Murray Rothbard’s simple and elegant explanation of money received from the fruits of one’s labor. To paraphrase the great Mr. Rothbard, money received in free market **exchanges is nothing more than a receipt** for services performed. There is never any “profit,” “gain” or “income” in a true free market exchange. While one person may receive more for

similar work, absent fraud or breach of contract, the amount received always represents the value that he or she brings to the transaction. The best way to understand this is to take money out of the equation. If I sell my legal services to a printer and the printer pays me with 1000 brochures advertising my practice, neither he nor I have any gain in the transaction. After negotiation, the agreed-upon value of my legal services to both me and the printer equals 1000 brochures. Although we both employ our time, labor and capital to trade for something we desire, neither of us has any real gain or profit in the transaction. If I spend time marketing myself to another printer and sell the identical service for 2000 brochures, there is still no profit or gain to me. I have spent my most valuable resource—my productive time—finding someone who places a higher value on my services and am rewarded for that time and energy. Although some would say the second printer was overcharged, he did not think so and I can as easily claim that the first printer was undercharged because other buyers of my legal services are willing to pay more.

Inserting money into the equation we see that money is just a substitute for this zero-sum exchange. In a free market exchange between individuals with reason and free will, money received can never represent income or gain. It is always what the market is willing to pay for the value of the seller's time, labor and capital. So when the Code attempts to capture tax dollars received in zero-sum exchanges where dollars are simply a substitute for goods and services, the Code's words can do nothing but fail. In free-market transactions, there is no "gain," no gratuitous "income" and no unearned "profit."

There is no spoon.

When great men like Irwin Schiff go into a federal court making this Rothbardian income observation, they end up in jail. A posteriori, positivist judges either mischaracterize the arguments or call the argument frivolous and absurd. The funny thing is that, from a positivist judge's frame of reference, a Rothbardian understanding of money **is absurd**. This is because a substantial share of the money a judge receives as a tax-funded government agent **actually is gain, profit and income**. Although there is a free market for many public functions—police/private security, civil judge/arbitrator—there is no private market for incarcerating people who, for example, sell marijuana to consenting adults or refuse to pay a federal tax that they sincerely believe they are not obligated to pay or because they believe the tax supports a corrupt and immoral empire. In short, there is no market for and no one would voluntarily pay someone else to incarcerate innocent people who have harmed no one and simply want to live their lives in peace and free from federal government coercion. If you get paid for something that the free market would never support, what you receive for that is certainly gain.

Several months ago, a Minnesota federal judge incarcerated a man accused of running a Ponzi scheme and also incarcerated a local businessman who had failed to withhold social security taxes from his poor Hispanic immigrant employees. Before putting the businessman behind bars, the judge publicly reprimanded the businessman for irresponsibly threatening the system. This poor judge apparently did not have the self-awareness to see to log in his own eye when pointing out the mote in the businessman's. This judge does not understand that the Social Security system is not a trust fund, that it is functionally bankrupt by virtue of the demographics of an aging population and that the judge's own actions, imprisoning a man who wanted to put money in his employees' pockets rather than send that money to Washington D.C., was merely to serve as the muscle in a much bigger, much more dangerous federal Ponzi scheme. That is "the system" this a posteriori judge seeks to protect.

Ironic.

IV. THE FIRST REAL STEP: THE CODE AS A LOGIC GAME

Although the Code was enacted well before, it did not really get going until 1942, with the advent of the current form of withholding in the midst of World War II. [As indicated in this piece](#), today we enter the Code through the back door, Subtitle C's withholding. We do this with our first job when we fill out a W-4 and authorize withholding that does not apply to most of us. As detailed below, the clear terms and definitions in Subchapter C fail to include any private actor working in the 50 States within its scope. Yet bullied employers require employees to complete W-4's, take part of their employees' pay and tender it to the IRS because of (clearly intentional) ambiguities in the Code and because the sanctions for non-compliance are severe. Once in the Matrix, with the federal government unlawfully holding our money, we look for a way out. We find that we are behind the bars of Subchapters A and B, where everything earned is income and all gain, tangible or intangible, is taxable. Although many have died on the wall of jurisdiction, the Code as applied is in part a lesson in the application of federal personal and subject matter jurisdiction. Our pay is withheld and we do not object in the first instance and thus unwittingly submit to the IRS's personal jurisdiction trap. We enter the Matrix and a world where up is down, down is up, money-as-receipts-for-services is not recognized and the Bill of Rights does not exist or has been transformed into a Soviet bureaucratic administrative process. Although neither the federal government nor the IRS has any "subject matter" jurisdiction over our free-market earnings, our "income" is caught in the trap and therefore so are we.

A. Where Is the Gas?

Because many tax educator arguments tend to involve technical, precise and sometimes confusing parsing of words and definitions, it is important to put the Code in context. The bureaucrats who drafted and administer the Internal Revenue Code are the same as those who drafted and administer the federal government's other big money-making tax, the federal gas tax. [As pointed out here](#), it is therefore useful to compare and contrast the language, words and logic in both of these tax structures to put the income tax Code's ambiguities, omissions, inconsistencies and fallacies in context. Comparing the language in the gas tax structure shows very clearly that this analysis is not lawyerly nitpicking and pettifoggery, but that the Fabian Socialist drafters of the Code have purposefully created a web of fallacies and ambiguities that result in the fraudulent transfer of billions of dollars from productive people to their relatively non-productive rulers.

The subject of the federal gas tax is "taxable fuels":

(a) **Taxable fuel**

For purposes of this Subchapter—

(1) **In general**

The term "taxable fuel" means—

- (A) gasoline,
- (B) diesel fuel, and
- (C) kerosene.

26 U.S.C. § 4083.

The gas tax money-maker is section 4081, where the Code drafters link the subject (taxable fuel) with verbs, the taxable events (removal, entry or sale) that trigger the federal gas tax:

(a) **Tax imposed**

(1) **Tax on removal, entry, or sale**

(A) **In general**

There is hereby imposed a tax at the rate [18.4 cents per gallon] specified in paragraph (2) on—

- (i) **the removal** of a taxable fuel from any refinery,
- (ii) **the removal** of a taxable fuel from any terminal,
- (iii) **the entry** into the United States of any taxable fuel for consumption, use, or warehousing, and
- (iv) **the sale of a taxable fuel** to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such

fuel under clause (i), (ii), or (iii).

In case there is any doubt about whether something mixed with gasoline is gasoline, the gas tax provides clarification:

The term “gasoline”—

(A) **includes any gasoline blend**, other than qualified methanol or ethanol fuel (as defined in section 4041 (b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041 (m)(2)), or a denatured alcohol, and

(B) includes, to the extent prescribed in regulations—

(i) any gasoline blend stock, and

(ii) **any product commonly used as an additive in gasoline** (other than alcohol).

For purposes of subparagraph (B)(i), the term “gasoline blend stock” means **any petroleum product component** of gasoline.

Here is a Venn Diagram showing how section 4081 links taxable subjects with taxable activities and how easy it is when the subject and activities are clearly defined. The middle of the diagram below shows that gas that is subject to the tax—taxable fuel that is sold.

No gas station in America is confused about either the subject (gas) or the verb (a sale) of the federal gas tax. The taxing authorities have been able to clearly define what “taxable fuel” means so that gas stations do not apply to tax to sales of things like bread, bubble gum or soda pop. No gas station owner applies the 18.4 cent per gallon tax to the sale of products “derived from” taxable fuel, things like petroleum jelly, tires or even motor oil.

The foregoing shows how important words are in drafting positive law statutes and particularly in defining the subjects of a positive law excise tax. Ethanol is a combustible liquid and we can use it to run our cars, but it is not “gasoline” according to section 4083. Section 4083 could say that gas means “all brown teddy bears.” If it did, then all brown teddy bears would be gas for purposes of section 4083 and black teddy bears would not. More importantly, however, is section 4083’s use of the term “any” after “includes.” Any means “all.” Section 4083 fairly clearly indicates that section 4083 gasoline means **all gasoline blends** “other than” specifically excluded methanol, etc. The Venn Diagram above shows that the Code’s drafters know how to encompass many tax subjects and how to exclude others.

B. Subchapters A and B—Inside the Matrix Looking Out

Although the ultimate key to understanding the Code lies in the withholding tax, the Rubik's Cube bureaucrats have reorganized the Code and placed the withholding tax—the rabbit hole through which we enter the Matrix—and hidden it in the middle of the Code, in Subtitle C. For the moment, therefore, we will forget about the white rabbit—withholding—and go right into the Matrix through the front door.

i. Subtitle A—Taxing a Question

Subtitle A governs the “income tax” part of the Code. If we want to identify what income is taxable, etc., we must drill down to Subchapters A and B of Subtitle A. Subchapters A and B respectively indicate that they provide authority for how one should “determine” and “compute” income tax liability. Subchapter contains sections 1-3 and purports to identify “who” is subject to the income tax. It does not.

Here is an example in [section 1](#):

- (a) Married individuals filing joint returns and surviving spouses
There is hereby imposed **on the taxable income of—**
(1) **every married individual** (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and
(2) every surviving spouse (as defined in section 2 (a)),
a tax determined in accordance with the following table:

...

All of the sections in [Subchapter A](#) begin with the statement that the Code imposes a tax on the “taxable income” of every person and entity that one could possibly list. The term “taxable income,” like “taxable fuel,” is a compound noun. The adjective “taxable” limits the term “income”—a term that the Code never separately or specifically defines. The limitation is jurisdictional because the term “taxable” begs the questions “by whom?” and “to whom?” As much as it may bother the IRS, the “gross income” of a married Australian Aborigine is not “taxable income” under the Code. The Aborigine’s income, whatever that may be, is not taxable by the US government. Subchapter A thus begs two questions. The first is, which “married individuals” is subchapter A talking about? Because the income tax is an excise tax just like the gas tax, it also begs the question: “what must those married individuals be doing in order to have “taxable income”?”

All of Subchapter A reads the same. This is what Section 1 looks like in a Venn Diagram:

Section 1, standing alone, does not answer any tax liability questions. All it says is that married individuals with taxable income must pay income tax. By linking an undefined noun to an undefined noun, it does not identify **who** those married individuals are. The inclusion of the term “every” before the term “married individual” does not change this analysis. It is only married people with taxable income who are at the intersection of these two categories and therefore included within the scope of section 1. For example, if you are a married Aborigine living in Australia, it seems more likely than not that you will not have taxable income under the Code. Indeed, as you will see from the Code’s definitions below, it is true that **every married individual** Australian Aborigine **is not liable** for the US income tax.

The term “taxable income” is therefore more of a jurisdictional question than it is an identifiable tax subject. If I am a married individual and have income as otherwise defined by the Code, I can only determine if I am responsible for paying income tax by determining if the express terms of the Code include both me and my income as “taxable” within the scope of its express jurisdiction. If you are a married individual citizen of one of the 50 States concluding your first year of free-market employment and the federal government has withheld a portion of your pay, you of course **assume** that you are included in the middle of the diagram above. You assume this because you are inside the Matrix looking out. Your employer demanded that you fill out your W-4 and you complied, your employer sent a portion of your earnings to Washington D.C. and you did not object, and you perhaps naively think that no one would be so dishonest as to take the hard-earned fruits of your labor without clear legal **and** moral authority. And then you wake up.

This is not playing word games. The Code could, like the gas tax above, clearly identify the subject of the excise tax—the gas—and clearly identify the activity that triggers the tax (a sale) and from that we could identify our tax liability.

From outside the Matrix, we clearly see that Subchapter A says only that an unidentified “some” people have taxable income. Comparing Subchapter A to section 4081 of the federal excise tax above, Subchapter A joins two nouns instead of a noun and a verb. When it does this it fails to help us identify the people in the ambiguous middle, the married people with jurisdictionally taxable income. The middle of the Venn Diagram is unidentifiable and nothing in Subchapter A helps us find it. The analysis is the same for every category listed in Subchapter A because having “taxable income” functionally operates as a qualifier or condition precedent to each and every category in Subchapter A.

The only logical conclusion we can draw from section 1 above is:

Some married people have taxable income.

We cannot deduce from this argument that all married people have taxable income, because we do not know who, according to the Code, is within its jurisdictional scope.

ii. Subchapter B—Computing Taxable Income Does Not Answer Subchapter A’s Question

[Subchapter B](#) is entitled “Computation of Taxable Income” and so at least implies that this is where to look if we want to determine a particular individual’s taxable income. Although not particularly relevant to this analysis, Subchapter B is the Fabian Socialists’ attempt to define up as down, down as up, left as right, and right and wrong. Subchapter B abrogates all classical liberal notions of income and has therefore been the legitimate target of many righteous Rothbardian tax educators, including Irwin Schiff. If it were a gas tax, Subchapter B would be thousands of words used to describe and capture every form of every kind of gas, including all fumes “derived from” the gas, etc. Section 61 of Subchapter B defines gross income as “all income from whatever source derived” and includes not only dollars received for goods and services, but intangible “gain” from exchanges. If Subchapter B were a gas tax, the homeless glue-sniffer getting high on fumes would have a taxable gain.

[Section 61](#) further attempts to define a tax subject that was not a tax subject at the time the Constitution was written. The tax subject in Subchapter B is: “taxable income.” Recall above that the Founders contemplated direct taxes (on people or property) or indirect excise taxes (on people or things doing specific activities). Subchapters A and B combine to identify and define the tax subject not as people or property, but as the unanswered question from Subchapter A: “taxable income.” Conspicuously absent from all of Subchapter B is the identification of **any specific individual human being who has “taxable income” and is therefore obligated to pay the tax.**

Here’s how section 61 looks in a Venn Diagram:

Like Subchapter A, Subchapter B completely fails to identify **the people** in the very large middle. The only reason that the two circles aren’t completely overlapping is because Subchapter B exempts some income from taxation and also makes some income non-taxable when it is spent on “allowable deductions,” like

mortgage interest. The only conclusion one can reasonably draw from Subchapter B is that there are some unidentified people for whom almost every activity is a taxable activity. We know from Subchapter A that this includes “some” married people, but other than that Subchapter B provides no clear, material guidance. The individual married Australian Aborigine doing section 61 stuff may or may not have taxable income depending on the express jurisdictional scope of the Code. All we can deduce from section 61 is that, whoever the people in the middle of the Venn Diagram are, virtually everything they do is a taxable activity. Sad for them.

Here is what Subchapter A and B look together on a Venn Diagram:

The people in the middle of this diagram—the “some” married individuals doing the things identified in section 61 and having money (**or any ethereal gain**) left over from their labors and therefore taxable income according to Subchapter B—are impossible to identify until we understand the express jurisdictional scope of the Code. Stated another way, applying the Code’s positive law definitions we need to determine who is in the middle. It could be federal workers, individual married Australian Aborigines, brown teddy bears or married individuals living in Minnesota serving the free market. We don’t know until we look at the Code’s definitions.

C. Following the White Rabbit into the Rabbit Hole in Search of the Gas

Identifying the real “gas”—people getting paid for doing things that make them subject to federal income tax jurisdiction—in the income tax requires a little history. The first time an employee in the United States was subject to a withholding tax was during the Civil War. The Revenue Act of 1862 allowed the federal government to withhold, from all federal employees—the federal tariff collectors—three percent of their wages. The 1862 Act also enacted the first, largely ineffective, income tax on individuals. The tax was ineffective because it had no meaningful reporting mechanism and taxed primarily capital gain income, not wages. The only people who were hurt were those who “voluntarily” ensnared themselves in the system by self-reporting or by responding to federal demands to report their income. The sad case of *Springer v. U.S.*, 102 U.S. 586 (1881) is an example of the dangers of responding to the [federal Javerts](#) without objecting. The income tax from 1865 to 1942 didn’t raise substantial revenues because, for the most part, it required self-reporting and people do not voluntarily contribute to causes they oppose or do not understand.

i. The White Rabbit

Everything changed in 1942, in the midst of the patriotic fervor of World War II. The 1942 Revenue Act established “withholding,” whereby “employers” who paid “wages” ostensibly became obligated to withhold a portion of those employees’ wages and send them to the federal government. On August 21 and 22 1942, at a congressional finance subcommittee meeting at which Milton Friedman, Sen. John A. Danaher, Sen. Bennet Clark and Charles O. Hardy of the Brookings Institution were present, Mr. Hardy admitted that the tax would be withheld from both taxpayers and non-taxpayers but, according to Friedman, non-taxpayers (including individuals and corporations) **would be entitled to a refund upon filing their returns**. The withholding from non-government employees would essentially operate as an interest-free loan to support the war. The spigot was never turned off and our current system is the result of this immoral, a posteriori, ends-justify-the-means thinking.

ii. The Rabbit Hole

Here is how the Code operates to get everyone believing they have a legal obligation to pay income tax. It begins with very clever use of inexact language in a context that demands precision. Subtitle C, the withholding part of the Code, threatens employers with fines and imprisonment if they do not report their employees income and do not withhold a federal tithe from their employees’ wages.

Subtitle C is entitled “Employment Taxes.” The most material provisions of Subtitle C are found in Chapter 21 (Federal Insurance, e.g. FICA and FUTA) and Chapter 24 (entitled “Collection of Income at Source,” i.e. Shearing of Sheep at the Feeding Trough).

Section 3402 of Chapter 24 is very broad and requires “every employer making payment of wages” to withhold from those wages a tax as determined by the administrators of the Code. Section 3401 is somewhat tricky because the definition of employer is defined as a “person” for whom “an individual” performs services as, here’s the money language, “an employee.” To determine if one is an employer that must withhold taxes on our employees, we must therefore determine if the employer has any Code-defined “**employees**.” Here is the Code’s definition of employee, found at section [3401\(c\)](#):

(c) Employee

For purposes of this chapter, the term “employee” **includes** an officer, employee, or elected official of the United States, a State, or any political

subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term “employee” also includes an officer of a corporation.

That’s it, that’s the gas. Section 3401 **includes only** people whose income derives from getting paid for doing things for the federal government—federal officers, employees and elected officials and States (very narrowly defined in sections [7701](#) and [3121](#)) and officers of [federal or federally controlled] corporations. Section 3402’s definition of “wages” references money paid to “employees” and so circles back to the dead-end definition above. From the plain, express language of section 3401, Subchapter C does not “include” within its scope any free market employee working in the 50 States.

Again, you may think that this is picking nits. It’s not. Remember, non-government, free-market earnings were not coercively dumped into the federal withholding system until 1942. So anyone who does not fall within the definition of section 3401 and has had money withheld from their paycheck since 1942 has been a victim of government-coerced theft. Don’t believe that is possible? Read the excerpt above from Pollack gain. The Supreme Court in Pollack lambasted the feds for their robbery.

There are certainly very broad definitions of “employee” and “employer” in the Code, most notably in Subtitle C, chapter 21, particularly section 3121. Subtitle C relates to “employment tax” and chapter 21 relates to “federal insurance,” e.g. FICA and FUTA. These are 1930’s New Deal social programs developed by that other famous employee of the New York Federal Reserve, Franklin Delano Roosevelt. So a broad and self-limiting definition (almost all Code definitions limit themselves to “this chapter”) of employee within section 3121 will not apply to other sections of the Code, and more importantly, the meaning of “wages” that measure the tax imposed on workers in that chapter hinges on the term “employment”, not “employee”; and not everyone who qualifies as an “employee” as defined in that chapter is in “employment as THAT term in defined in that chapter...

Anyway, the drafters of the Code were at least honest in the scope of their authority and jurisdiction. For example, even though the Federal Insurance provisions of section 3121 contain some very broad definitions, section 3121’s definition of United States is oddly self-limiting. The definition of United States does not include, or even mention, any of the 50 sovereign states:

(e) State, United States, and citizen

For purposes of this chapter—

(1) State

The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

The term “United States” when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

Weird, huh? But if you wanted to write a Constitutional law that did not infringe on the rights of individuals residing within the 50 sovereign states isn't that how you would write it? The definition of “state” includes only federal territories because the Constitution and, particularly, the 10th Amendment, bars the federal government from invading the sovereign states.

A detailed discussion of the word “includes” is found below, but it is clear from the plain reading of section 3121 (Employment Tax general definitions) and section 3104 (Federal Insurance definitions) that at the point of entry into the federal Matrix, wage withholding and FICA and FUTA payments, the Code's definitions don't apply to most folks. For now, the individual married Australian Aborigine is safe. The IRS has no subject matter jurisdiction over any “taxable income” in Australia. Not true for the individual married native Samoan in “employment”, he's screwed.

Again, this is not a silly semantic game. Words in positive law statutes have meanings and those words have real world consequences. The power to invent a new form of socialist taxation was never delegated to Congress by the 50 States or the people. The Code, by accident or design, recognizes that fact. If a State, under the Code, **means** a territory that the United States has acquired as part of the growth of its empire and the geographic areas listed in the definition are places where the residents pay taxes but do not have representatives in the U.S. Congress, then Iraq and Afghanistan better fit the Code's definition of “State” than do Minnesota or Montana.

D. The Unidentified Middle—No Gas in Subchapters A and B

If any reader can identify where and how the 3 million word Code applies to someone in the intersection of the Venn Diagram below—a non-governmental person doing an identifiable taxable activity—I will be happy to make any necessary corrections or retractions to this article.

V. “INCLUDES,” LOGIC AND STATUTORY CONSTRUCTION

The fallacies of [composition](#) and [hasty generalization](#) prohibit extrapolating something that applies to “some” to “all” or even to “some not of the type listed.” These logical principles are embedded in the legal principles that honest judges must employ in interpreting positive law statutes. Although ignored by many, all judges are bound to interpret statutes according to the principle of ejusdem generis, which obligates them to construe statutory categories and lists narrowly so that they do not overstep or usurp the legislature.

Black’s Law Dictionary defines this principle as follows:

Of the same, kind, class or nature. In the construction of laws, wills and other instruments, the “ejusdem generis rule” is, that where general words follow and enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, **but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.**

As a rule, when we lawyers draft something we follow the logical-grammatical ejusdem generis principle. If we want our words to include a broad spectrum of things that we may not be able to completely articulate, we start theoretically big, list examples and leave open other options. If I was waterboarded and forced to draft a tax statute intended to include all public and private employees in the 50 States I would say:

For purposes of this chapter, employee means any person residing or working in the 50 States who receives compensation for their services. This includes, but is not limited to, all people who perform services for private and public (tax funded) employers.

I would have to separately define some of the terms, but you get the idea. The drafters of the Code clearly know how to do this. Section 61 of the Code (Subtitle A Income Tax) is a textbook example of how to use “includes, but not limited to” and how to start with big conceptual lists and then list non-exclusive examples. Also, recall that the federal gas tax, in defining “taxable fuel,” said that taxable fuel “means” three specific types of fuel. Subtitle A, Subchapter B (Income Tax) never says that taxable income “means” anything, it just tells us how to calculate it for those who are subject to it without telling us who those people are. In contrast,

the gas tax clearly closes any loopholes in the subjects of the tax by defining gasoline to “include any” gasoline blend.

The Code itself acknowledges that it is bound by logic and the principle of ejusdem generis. Although section [7701\(c\)](#) states it in a rather backward way, it states that the term “includes” does not and cannot include things outside of the same meaning as the things listed:

(c) Includes and including

The terms “includes” and “including” when used in a definition contained in this title shall not be deemed to exclude other things **otherwise within the meaning of the term defined.**

This definition is simply a restatement of the ejusdem generis rule. It says that “includes” means only things of the same type.

As harsh as it may sound, government workers do not “pay” taxes. Any taxes they pay are simply giving back a portion of what has been taken out of the free market to support them. While one can debate the necessity of police officer versus a kindergarten hangnail grief counselor, the categorical distinction between a tax consumer and tax producer is unassailable. The government school teacher and the police officer receive their income not from a voluntary, free-market exchange, but from tax revenues. When section 3401 defines employees to “include” a government employee, it cannot therefore be construed to mean a free-market employee. They are polar opposites. Similarly, when section 3121 defines “state” to mean Samoa, it cannot be construed to mean Connecticut. The former is a militarily conquered vassal of the empire, the latter a free state that voluntarily joined the Union in 1791.

VI. THE IRS’S BEST ARGUMENTS (A/K/A THE EMPEROR HAS NO CLOTHES)

In the spirit of Ludwig von Mises’ command: “Tu ne cede malis, sed contra audentior ito” (do not give in to evil, but proceed ever more boldly against it), as part of looking into the Code I decided to look at the IRS’s best analysis of and arguments in support of the Code. In February of 2009 the IRS published “The Truth About Frivolous Tax Arguments.” You can find it [here](#). Not surprisingly, this document is a lesson in obfuscation and deception. Analogizing again to the movie The Matrix, the arguments in this piece are really a restatement of the fundamental arguments of the agents and architects of the Matrix, i.e.:

The programs in the Matrix always apply to the same things and always

lead to the same results.

Of course this is true. If I invent a game and in that game I make a rule which provides that, for purposes of the game, $2 + 2 = 5$, then for purposes of the game, $2 + 2 = 5$. If I am in the game, then $2 + 2 = 5$. If I am not, then reality of course says that $2 + 2 = 4$. Nowhere does this IRS publication answer the fundamental questions: (1) To whom does the game legally apply?; and (2) Who in the game is legally obligated to pay? It is not enough to say, “see X, he believed what you believe and X is in jail.” That someone is in jail because of neo-Soviet show trial is not much of an argument.

The real core difference between the view in this analysis and the IRS’s view is found at pages 11 to 25, in the Section entitled: “The Meaning of Income: Taxable Income and Gross Income.” If you have gotten this far, you understand that the deception starts with the section title. To be charitable to the IRS, the title should read: “Income **as Defined by** the Code: Taxable Income and Gross Income.” Changing this title would reflect the truth: that the Code’s indirect descriptions of “income” are not what income really is, but rather what the social planners and wordsmiths want it to mean **for purposes of a positive law statute**. I will draw out just a few examples here, but you should be able to understand and dissect all the arguments (some of which have merit) yourself if you compare them to this analysis and the Code’s express language.

i. Tax educators v. IRS: Wages are Income

In the real, ordinary world most people would agree that wages are income. In the real, ordinary world most people would agree that their wages reflect the fair value of their services to the market. Very few would say that they are overpaid; indeed, most would probably say that they are underpaid. On thorough examination, most ordinary people therefore have a Rothbardian understanding of income—that it is at best a zero sum exchange, money in exchange for time, sweat, and risk of capital.

The Code, of course, rejects this view. Although the Code never defines “income,” section 61 does define “gross income” as any and all income from whatever source derived and defines “taxable income” as gross income less allowable deductions. OK, so $2 + 2 = 5$. But am I in this game?

Here is what the IRS says in response at page 12 of its [“Truth”](#) publication:

The Law: For federal income tax purposes, “gross income” means all income from whatever source derived and includes compensation for services. I.R.C. § 61. Any income, from whatever source, is presumed

to be income under section 61, unless the taxpayer can establish that it is specifically exempted or excluded. In *Reese v. United States*, 24 F.3d 228, 231 (Fed. Cir. 1994), the court stated, “an abiding principle of federal tax law is that, absent an enumerated exception, gross income means all income from whatever source derived. The IRS issued Revenue Ruling 2007-19, 2007-14 IRB 843, advising taxpayers that wages and other compensation received in exchange for personal services are taxable income and warning of the consequences of making frivolous arguments to the contrary.

Powerful stuff. At least it is if you have not read this analysis, the Reese case and the Revenue Ruling cited. Understanding how the Code works, when I read that passage I make several notes and ask several questions. First, in the Reese case I note that it was decided in 1994 by the [Federal Circuit](#). If the IRS is the 800-pound gorilla and federal courts generally are the jungle, then the Federal Circuit, located in Washington D.C., is the gorilla’s home in the middle of the jungle. It decides appeals of claims made in the [D.C. federal district court](#) which decides claims against the federal government and has exclusive jurisdiction over the Guantanamo and Anthrax cases. At the district court level, if there is a jury it is comprised of federal bureaucrats and the decision-maker is, by definition, a dyed-in-the-wool statist. I then wonder: (1) who is Reese?; (2) where does Reese live?; (3) what does Reese do for a living? and (4) is Reese employed by the federal government or one of its “instrumentalities”?

OK, I’m not making this up. If you read the Reese case you will not find where Reese lived (significant if it is D.C, a “State” under the Code), but you will find that Reese’s “income” was not the result of free market exchange within the 50 States. The issue in the case was whether money Reese received as punitive damages in a sexual harassment lawsuit brought in Washington D.C. federal district court asserting claims under the District of Columbia Human Rights Act, a **federal law**, was taxable income. Another twist in many cases interpreting the Code is that courts have fairly uniformly held that the federal government has the unqualified right to tax income deriving from federal licenses and privileges—if you pull bananas out the jungle the 800-pound gorilla always gets a piece of the action. It is enough for me, therefore, that Reese’s income was not money received for free market services performed within the 50 States but was the result of the adjudication of a federally-created positive law right. Because this is the IRS’s best argument, however, I was still curious about who Ms. Reese’s employer was and where she lived. I searched online databases, earlier reported cases, I accessed and searched the District of Columbia District Court’s PACER database, and even attempted to contact Ms. Reese’s attorneys. The Court’s PACER database oddly shows no documents in the case. Because Ms. Reese sued the case out in the D.C. district court (the gorilla’s home turf) based on D.C. law,

the evidence powerfully suggests that Reese was a federal employee, perhaps a member of the Maryland National Guard, and may have lived in D.C., but I have not been able to confirm that. But it is clear that Reese's income was not earned in a free-market exchange in one of the 50 sovereign states; it was the result of the adjudication of a federal law. Moreover, the award was not compensatory; that is, it did not represent lost income. It was a **punitive damages** award. In sum, Reese would never have gotten this money but for the adjudication of the federal law that gave her a positive law right to receive it. So, if the Reese case is the IRS's best argument, the case the IRS relies on to tell the "truth" about frivolous tax arguments, then Irwin Schiff and the rest of us should be free very soon.

The quote above also references I.R.S. Revenue Ruling 2007-19, 2007-14 I.R.B. 843. Now a little about Revenue Rulings. These are the decisions and analyses of federal bureaucrats responsible for administering the Code. Trusting and innocent people petition the IRS for decisions on the taxability of income or transactions. To perhaps abuse and mix more metaphors, decisions and analyses from these people would be like Neo appealing to agent Smith to please let him out of the Matrix. Revenue Rulings either repeat all of the errors above or attempt to administratively make the statutes above say and mean things they do not. Revenue Rulings come straight from the belly of the beast. What you will find in all of these Revenue Rulings and in the [Truth About Frivolous Tax Arguments](#) is the following deceptive argument.

All wages are taxable income.

Tax educators who assert otherwise make frivolous arguments.

This is a very clever misrepresentation of the tax educator argument and leads to the source of the evil— withholding. You see, tax educators correctly respond to the above statement by pointing out that the statement "all wages are taxable income" is true for **some people**—federal workers and Samoans in "employment"—and **not for others**—free market workers in the 50 States and Australian Aborigines. The source of the IRS's fallacy is section 3402 of the Code which states that all "employers" must withhold tax from the "wages" of their employees. Section 3121 also contributes to the misperception. But, as noted above, when we drill down on the definitions of "employee", "employer" and "employment" and identify the express jurisdictional scope of the Code we see that it applies only to federal workers and people working in specialized circumstances in the federal territories.

Another case that the IRS cites in support of the proposition is *Murphy v. IRS*, 460 F.3d 79 (D.C. Cir. 2006). From the citation, you will notice again that this decision comes from the gorilla's home in middle of the jungle, the D.C. Circuit Court, the most federal of federal circuit courts. Here is a quotation from that

decision, right out of Alice in Wonderland:

[a]lthough the 'Congress cannot make a thing income which is not so in fact,' [. . .] **it can label a thing income and tax it**, so long as it acts within its constitutional authority, which includes not only the Sixteenth Amendment but also Article I, Sections 8 and 9." The court ruled that Ms. Murphy was not entitled to the tax refund she claimed, and that the personal injury award she received was "within the reach of the congressional power to tax under Article I, Section 8 of the Constitution" -- even if the award was "not income within the meaning of the Sixteenth Amendment". See also the Penn Mutual case cited above.

The Court is saying that even though Congress does not have the power to define income, it does have to power to define taxable income **provided that it does so within its Constitutional authority**. So, if Congress says that brown teddy bears are income for purposes of the Code, they are income. What is undefined and unstated in Murphy is the Constitutional jurisdictional scope of Congress's power. For that, we need to draw out the facts of the case.

We already know that Murphy's income, like Reese's above, was the result of the settlement of a lawsuit. If you read the case, however, you will find that Ms. Murphy's "income" was not a personal injury lawsuit, as the passage above implies. Ms. Murphy was a member of the **New York Air National Guard** who asserted **federal law whistleblower claims** and pursued those claims **through a federal Department of Labor administrative proceeding**. Not only was Ms. Murphy's income the result of the operation of federal law, she was **a federal employee** who obtained her income through **adjudication of federal, positive law** as a result of a **federal administrative proceeding**. She was nowhere near being a free market employee operating within one of the 50 sovereign States. . . These are the IRS's best arguments. I repeat, set Irwin Schiff free.

ii. IRS Use of Passive Voice Keeps the Mystery Alive

At the bottom of page 12 of the [Truth About Frivolous Tax Arguments](#) document, the IRS perpetuates the subterfuge by speaking in the passive voice:

All compensation for personal services, no matter what the form of payment, **must be included** in gross income.

If my seventh grader wrote this sentence for a paper and asked me to review it, I would tell him to rewrite it and clearly identify the subject of the sentence; that is, remove "must be included" and tell me **WHO** must include all compensation from services in their gross income. If he did go back and rewrite it, he would say that all of the following are the proper subjects of this sentence:

officers, employees, or elected officials of the United States, a State, or any political subdivision thereof, or the District of Columbia,

He would rewrite the sentence to say that all of the above people must include all their compensation for personal services in calculating their gross income. If he searched the Code to find any other identifiable subjects of the sentence, he wouldn't find any.

iii. More BS

What follows are some citations from an IRS publication allegedly supporting its position. As a former law review editor and student of the law and legal writing I can tell you that whenever anyone uses the terms “see” or “see, e.g.” the citation is very often baloney. The IRS says these cases stand for the proposition that Courts have rejected the notion that every dollar received is taxable income according to the Code:

See *Casper v. Commissioner*, 805 F.2d at 905; *Funk v. Commissioner*, 687 F.2d at 265. Courts recognize a distinction between selling labor and selling or exchanging property. See *Reading v. Commissioner*, 70 T.C. 730, 733-34 (1978), *aff'd*, 614 F.2d 159 (8th Cir. 1980). Further, the courts have concluded that a taxpayer has no tax basis in one's labor and, therefore, the full amount of the wages or other compensation received represents gain which may be taxed as income. See, e.g., *Casper*, 805 F.2d at 905; *Abrams*, 82 T.C. at 407; *Reading*, 70 T.C. at 733-34.

Every time I read a case the IRS cites it either supports my analysis or doesn't stand for the proposition stated (i.e, is “frivolous”). With every layer, the truth becomes more and more obvious. I confess that I have not thoroughly analyzed the foregoing cases, but I would not be surprised at all if three federal judges sitting on a Federal Court of Appeals put someone in jail without ever reading the underlying statute. I was once before a federal judge who cut and pasted sections of a memorandum from an earlier case (wrong names, wrong parties) and decided my client's very serious and life-altering case based on the cut and paste. These people are fallible humans just like the rest of us, often moreso. The analysis in this piece is based on history, the Constitution and the **actual words in the Code**.

VII. THE END OF REPRESENTATIVE GOVERNMENT AND THE 10TH AMENDMENT

In October of 2008, the most organized crime syndicate in the history of the world—the U.S. Congress (so well organized it operates according to Roberts Rules of Order, publishes its activity in the Federal Register and broadcasts on CSPAN)—refused to listen to the 98 percent pitchfork majority of its constituents

and voted to give 750 billion newly printed dollars to Wall Street and international banks. Since then, it has continued to inflate and increase the money supply by funneling new dollars into myriad financial institutions and the moribund U.S. auto industry. This and separate Federal Reserve inflationary actions will inevitably cause a sharp and perhaps uncontrollable increase in wages, prices and commodities—the most pernicious and socially destabilizing form of taxation. Through these actions, Congress has shown that it no longer represents “the people,” but rather represents exclusively those who feed at the federal trough.

While federal courts have done their best to eviscerate it and make it a dead letter, the 10th Amendment provides a Constitutional means for the free people of the 50 States to non-violently and civilly roll back the federal government. The 10th Amendment expressly reserves all undelegated powers to the States **or** “to the people”:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The 10th Amendment thus provides the people living within the 50 sovereign states with the Constitutional power to peacefully and civilly unwind the national socialist system that has held the country in its amoral grip for nearly 100 years. As explained below, no person alive today ever expressly, or even tacitly, delegated to Congress the power or legal right to seize his earnings either directly through a federal income tax or indirectly through inflation. With no representative government, the only power the common man has left is the power to control or influence the flow of fiat dollars. Just as depositors continue to flock to banks that have refused to accept TARP funds, the citizens of the 50 states can still seek to understand the Code, evaluate the IRS’s best arguments and civilly and peacefully vote with the only meaningful vote they have left—tax dollars.

VIII. THE PATH TO FREEDOM, FEDERAL AGENTS AND INSTRUMENTALITIES ARE NOT IMMUNE FROM STATE LAW ACTIONS

So what do we do? As the father of four children, I wish I had a silver bullet answer to that question. I recommend disseminating the truth and keep in mind that several cases from America’s last Great Depression held federal government agents personally responsible for acts that exceeded their legal authority and harmed others. After the truth is out, we will need brave state lawmakers, brave state court judges and perhaps even brave members of state “National” guards who take a primary oath to obey the Constitution to step up and defend the

Constitution, with truth. The income tax, as it is written, is Constitutional. As applied, it is federally-perpetrated theft.

Below are some how-to examples.

In *Keifer & Keifer v. R.F.C.*, 306 U.S. 381, 388 (1939), the Supreme Court held that a federal corporation, the New Deal's "Reconstruction Finance Corporation," could be sued for negligence arising out of its failure to honor its agreement to feed and care for livestock even though Congress did not expressly authorize it. This case also serves as an Austrian free-market economics lesson to the planners in the current administration. The government's agents made a promise they had no incentive (profit motive) to honor, breached the agreement and caused damage to innocent people and ultimately attempted to avoid liability from suit by invoking "sovereign immunity."

The Kiefer case also favorably references a Minnesota State Court case in which the plaintiffs successfully sued another Socialist New Deal entity for negligence. *Casper v. Regional Agricultural Credit Corp.*, 278 N.W. 896 (1939) is another sad case of the federal government run amok causing people damage. In the Casper case the feds extended a "barn loan" (New Deal equivalent of an SBA loan) to a farmer, unilaterally determined itself "insecure," foreclosed and wrongfully sold the farmer's property. The farmer heroically recovered a \$6,000 judgment against the federales for conversion.

Kiefer and Casper provide powerful precedent for state courts willing to hold federal agents accountable for their actions.

Several courts have also held that prejudgment interest awards are available against agents of the federal government when those agents venture into (and thus interfere with) the private economy. *Standard Oil Co. v. United States*, 267 U.S. 76 (1925). *National Home for Disabled Volunteer Soldiers v. Parrish*, 229 U. S. 494 (1913).

IX. STATE INCOME TAX

It is not surprising that virtually all state income tax systems borrow directly from the federal system; that is, they apply a tax rate after accepting a federally-defined "taxable income" pulled directly from their citizens' federal returns. This isn't surprising because of the extreme difficulty involved in developing and implementing a workable income tax scheme. Rather than reinvent the wheel, states have simply accepted the premise that the federal scheme is legal, moral and legitimate and glommed on. As will all arguments and positions, if a premise is

destroyed, so is the argument.

X. CONCLUSION

The Internal Revenue Code is a scam enforced by coercive and unjust violence perpetrated on innocent, generous and trusting people for nearly 100 years. Because we are blinded by fear and the threat of harsh and unjust punishment, to date no one has fully and dispassionately untangled the IRS's knot. I hope this piece provides at least a solid start.

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APPENDIX

Below is a summary of the most important U.S. Supreme Court decisions interpreting the income tax. Language contained in these cases is often cited to support propositions broader than the case's holdings. As any lawyer knows, any and every case can be limited to its facts and it is vitally important to know the facts in order to determine how broad the court's holding is and who it affects. This is particularly true where the scope of a tax is at issue.

Pollock v. Farmer's Loan & Trust Co., 157 U.S. 428 (1895) ("Pollock I"). The first of two cases that provide hope for a priori's. At issue was the Constitutionality of the 1894 "Wilson Tariff Act," imposing a tax of **two percent** on the "gains, profits and income of every citizen of the United States." The plaintiff in the case was Charles Pollock, a shareholder in the company, Farmer's Loan & Trust. Mr. Pollock successfully enjoined Farmer's from paying the federal tax because the Supreme Court held that the tax on the corporation's profits was an unconstitutional direct tax that required apportionment. Is there any judge today who would be brave enough to write this:

The injustice and harm which must always result from overthrowing a long and settled practice sanctioned by the decisions of this court could not be better illustrated than by the example which this case affords. Under the income-tax laws which prevailed in the past for many years, and which covered every conceivable source of income... **vast sums were collected from the people of the United States.** The decision here rendered announces that **those sums were wrongfully taken**, and thereby, **it seems to me, creates a claim, in equity and good conscience, against the government for an enormous amount of money...** I say, creating a claim, because, **if the government be in good conscience bound to refund that which has been taken from the**

citizen in violation of the constitution, although the technical right may have disappeared by lapse of time, or because the decisions of this court have misled the citizen to his grievous injury, **the equity endures, and will present itself to the conscience of the government**..

157 U.S. at 637-38. Wow. This case also provides an excellent history of the Constitutional debates on federal taxation and shows that all of the Founders respected State sovereignty and never contemplated or agreed to a Fabian Socialist income tax.

Pollack v. Farmer's Loan & Trust Co., 158 U.S. 601 (1895) ("Pollock II"). Same case, same result as above, but this time the dissenting a posteriori judges provided long arguments in support of their baseless positions.

Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916). First major case under the 1913 Code. In this case a shareholder of the federally supported and subsidized Union Pacific Railroad sought to enjoin the railroad from paying income taxes. The funny thing about many important tax cases is that the taxpayer—here the federally supported railroad—actually wants to pay taxes and makes no objection to federal subject matter jurisdiction. It is the corporation's shareholder, Brushaber, who tried prevent the railroad from paying federal taxes.

Although the Court denied the shareholder's request and held that the income tax was constitutional as applied to the federally-subsidized railroad that wanted to pay taxes, the court did make several significant statements. First, it acknowledged that the 16th Amendment did not authorize "a hitherto unknown power of taxation," and that the 16th Amendment did not invalidate or affect Article I, section 9's requirement that direct taxes be apportioned. In a backhanded way, the Court held that the income tax is an indirect, excise tax.

Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1926). This uneventful case held that a loss on a loan, even though the loss would have been much greater if the loan had been paid off in relatively worthless Weimar Republic fiat notes rather than gold-backed dollars, was not income under the Code. The opinion, written by St. Paul's Justice Pierce Butler does, however, provide a prescient and timely example of the perils of an unbacked, fiat currency.

Commissioner v. Glenshaw Glass, 348 U.S. 426 (1955). This just continues the pattern of cases that the U.S. Supreme Court agrees to hear. In this case, the Glenshaw Glass company, like Murphy and Reese above, recovered money in a lawsuit based on positive, federal law. Glenshaw recovered \$800,000 in a federal anti-trust case. As part of the decision the Court also decided another case involving Goldman Theatres. The issue there? Whether Goldman's income from

a federal anti-trust case was income. Not surprisingly, the Supremes held that companies that take bananas out of the jungle must give some to the gorilla.

Penn Mutual Indemnity Co. v. Commissioner of Revenue, 277 F.2d 16 (1960)
Tricky case. The petitioner was the liquidating agent (akin to a bankruptcy trustee) of an insurance company. Company had a loss but IRS rules required that they declare premiums received as income and pay tax anyway. The petitioner sought relief from the Tax Court and not surprisingly received a harsh result. You may be saying, well an insurance company isn't a federal instrumentality, so this blows the theory, right? It would if the Code's [definition of corporation](#) didn't expressly include insurance companies.

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