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## **The Flimflam of Income-Tax Denial**

**by Sheldon Richman**

My recent three-part series in *Freedom Daily*, “Beware Income-Tax Casuistry” (August–October 2006), provoked some vigorous objection. Unsurprisingly, members of what is known as the tax-protester movement, but which should be called the tax-denial movement, took issue with every aspect of the articles — and more. The movement doesn’t merely object to the income tax on moral, or natural-rights, grounds. Any libertarian would do that. Instead, the movement insists on several dubious legalistic points, among them that (1) the government has no *constitutional* authority to tax wages and salaries, and (2) Congress has never passed a law to make typical wage earners liable for the income tax. That most people believe otherwise is proof, the movement maintains, that the government has perpetrated a monumental hoax on America.

Sad to say, there is no basis whatsoever for these contentions. What’s more, no court anywhere in the land has ever endorsed them or given them the slightest bit of encouragement. The collection of inconsistent arguments is flimflam of a most dangerous kind. Gullible people who follow the movement’s advice could end up paying thousands of dollars over and above their tax bills and, worse, could end up in prison, as prominent tax protesters Irwin Schiff and Larken Rose, among many others, have. (Actor Wesley Snipes could be next.)

Before proceeding, I feel compelled to repeat what I said in the previous articles. The income tax is immoral not because it’s an *income* tax but because it’s an income *tax*. By that I mean that any time someone takes property from someone else without permission, it is theft. If the takers are government agents, nothing changes.

But that alone doesn’t mean an income tax is either unconstitutional or illegal (in the narrow sense of having been put on the books according to the government’s procedures). Governments do immoral things all the time, and constitutions can embody immorality. Why should that surprise anyone? They are documents written by human beings and officially interpreted by those with an interest in the expansion of government.

The thrust of the previous three articles is that the income tax passed in 1913 and its successors to the present day were both constitutional and legal. Consult the series for details.

The courts have held without exception that from the founding of the United States, Congress has had the power to tax anything, including wages and salaries. The Constitution's presumed apportionment requirement for how one kind of income (from property) could be taxed led the U.S. Supreme Court to strike down the 1894 income tax. But the Sixteenth Amendment to the Constitution, adopted in 1913, eliminated that requirement by declaring that Congress could tax incomes "*from whatever source derived*" without apportionment among the states.

Two important points must be kept in mind. First, the Supreme Court in 1895 did *not* strike down the tax on wages and salaries; on the contrary, it upheld it as uncontroversial. Second, therefore the Sixteenth Amendment did not empower Congress to tax wages and salaries because it *already had that power*. As libertarians, we might not like those facts. But they *are facts*.

The tax-denial movement insists the Constitution does not permit the taxation of wages and salaries, even with the addition of the Sixteenth Amendment. But the movement's voluminous materials fail to defend this bald assertion. Nor will you find an explanation of why judge after judge and justice after justice has held the opposite view. The tax-denial literature alleges that the courts have defined income as synonymous with corporate profit, but no proof of this claim is ever made. That's because there isn't any. No court has defined "income" as "corporate profit." No one has ever won a court case or gotten out of paying taxes on the grounds that his salary does not constitute income. On the contrary, many cases have affirmed the government's position that wages and salaries are included in the category "income."

Shamefully, to make their argument the tax deniers quote court opinions out of context, seizing on a sentence or phrase in cases that did not even deal with the government's power to tax wages. In the years after the 1913 income tax was passed, many challenges were made over whether "income" covered particular kinds of revenue, such as a repaid loan principal or an insurance company's payment to a policyholder. In one case, a corporate stockholder challenged the government's claim that a stock dividend was taxable income. In some of these cases the courts sided with the taxpayers and in others with the government. In the course of writing their opinions judges and justices referred to the concepts "income," "compensation," and the like. But in each of these cases, the power of government to tax wages was never at issue. Hence, the judges and justices were not pronouncing on whether such taxation was constitutional or legal.

The use of fragments of judicial opinions (and in one case, quotations from a *defendant's brief*) may impress the unwary, who are not likely to read court cases. One has to admit that a protester's long list of cases, accompanied by apparently supporting quotations, seems persuasive — until one reads the cases for oneself. Then like dominoes the argument falls down point by point.

There's a second, related argument that many in the tax-denial movement make. They claim that Congress never passed a law creating a liability for taxes on wages and salaries. Rather,

it is said, Congress created the *impression* that there is such a law and does nothing to correct it. (Why they created only the impression and not the legislation is something of a mystery. Different deniers have different theories.)

In support of their contention, deniers incessantly repeat that IRS officials and politicians refuse or are unable to identify the law under which the income tax is enforced. I can't explain why any particular official can't or won't cite the law, but it takes little effort to find it for oneself. When I entered "tax code" in Google the first entry to come up is the Cornell Law School website with U.S. Code, Title 26 — Internal Revenue Code. It took five seconds. The same thing happens if you put "tax code" into the search box at the IRS site. You are directed to the Cornell site.

Some protesters won't be satisfied, claiming Title 26 is tax regulations not laws. But that is wrong. Congress enacted the tax code into law some time ago.

### **What is income?**

The next tack taken by the movement is to insist that the tax code does not define "income." Laws often leave ordinary words undefined. "Tobacco" and "alcohol" are not defined in the sections taxing those substances. Besides, any definition would have to consist of words that were undefined or else the code would have an infinite regress of definitions. The courts have defined "income" as a "gain or profit from capital or labor" and "any accession to wealth, clearly realized and over which the citizen has complete dominion." In 1991 the Supreme Court said it is "incredible" for someone to believe that wages are not taxable income. (However, the Court ruled that if a jury were convinced that this belief was sincere, it could acquit a criminal defendant of *willfully* violating the law. At the same time the Court said a defendant could not escape criminal liability for not paying income taxes because he sincerely believed the tax is unconstitutional. That belief the Court called unreasonable and "frivolous.")

While the tax code does not define "income," it does define "gross income." But that is a point of controversy as well for the deniers. Title 26 §61, "Gross Income Defined," states, "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: ..." This introduces a list of 15 examples, beginning with "Compensation for services, including fees, commissions, fringe benefits, and similar items." Compensation for services includes wages.

You'd think that this would be an open-and-shut case, but logic is not the strong suit of the denial movement. Are the "items" in the list examples of income or examples of *sources* of income? A plain reading says they are examples of income. This is reinforced by the inclusion of items that include the word "income," such as "income from life insurance and endowment contracts." But the protesters insist these are *sources* of income. That makes no sense. Otherwise, the code would be saying that a source of income is income from life insurance. Income isn't a source of income. It *is* income.

The deniers also claim that only corporate income was intended to be taxed. But as tax expert Dan Pilla points out, if that were so why does the list include pensions and alimony?

More fundamentally, what does it matter? Whether the items are examples of income or sources of income makes no difference whatever. It is a classic distinction without a difference. Unfortunately, it is characteristic of the denial movement to “discover” arcane distinctions and to insist they make all the difference in the world. Protesters won’t explain the significance; they simply invoke it to support their assertion that wages are not income but only a source of it. To this I ask, So?

Protesters also argue that this “alleged” law does not create a tax liability. It would be nice if it were true, but it’s not. The code’s §1 states, “There is hereby imposed on the taxable income....” Subchapter 1 is headed “Determination of Tax Liability.” The Constitution prescribes no magic words that have to be used, but those seem definitive. (The civil and criminal penalties are listed in §6651, §7201–7203, and others.)

One can make the moral objection that under natural law governments cannot create a tax liability. But that is not what the denial movement argues. Rather, it insists that the government in principle *could have* created a liability but so far has failed to.

There are many more arguments that could be refuted. The movement has no shortage of them, but all are of the same shallow, illogical nature. What’s more, no court has accepted them.

It is perfectly justified to object to income taxation and to seek to persuade enough of the population to object with the goal of repealing this freedom-violating law. What is not justified is trying to persuade the naive that there is no law to be repealed. Such easily knocked-down arguments only discredit the serious libertarian movement.

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