

No. 18-1405

Supreme Court, U.S.
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In The
Supreme Court of the United States

ROBERT N. TAYLOR, III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

This is a First Amendment matter. I have not personally read the entire Internal Revenue Code (statutes, codes, regulations, and manuals, and court cases), and result, I don't claim to completely understand this code. I cannot put my faith in, or completely trust IRS publication, or the IRS itself which is unaccountable to me. I have attempted to consult with private attorneys to get a written legal opinion regarding alleged tax liability, for both myself and the organizations that I am involved with, to no avail. Thus, these sources cannot be relied upon to aid me in fulfilling my purported legal responsibilities. Therefore, I have no choice but to rely on my good faith understanding of the law regarding my tax responsibility. This Court often has emphasized the importance of siding with the citizen regarding the imposition of taxes. *"In case of doubt they are construed most strongly against the government and in favor of the citizen."* *Gould v. Gould*, 245 U.S. 151. Thus, the specific question presented is:

Whether a citizen who is standing upon his constitutionally protected rights can be compelled, against his good faith understanding of his liability under the law, into a waiver of his constitutional rights, or be forced to pay a tax that he does not owe? *"Waiver of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."* *Brady v. United States*, 397 U.S. 742 (1970).

PARTIES TO THE PROCEEDING

All parties are listed in the caption, and PENN-SYLVANIA DEPARTMENT OF REVENUE, please see the letter of party with no interest in the outcome of the petition.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation. None of the petitioners has a parent corporation or shares held by a publicly traded company.

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Robert N. Taylor, III, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 2018 U.S. App. LEXIS 34485 *; 2018-2 U.S. Tax Cas. (CCH) P50,514; ____ Fed. Appx. ____; 2018 WL 6433699. (Appendix (“App.”) 1-7.). The memorandum opinion of the United States District Court for the Eastern District of Pennsylvania (App. 10-21) is reported at 2018 U.S. Dist. LEXIS 116860.

BASIS FOR JURISDICTION IN THIS COURT

Petitioner seeks review of the decision of the United States Court of Appeals for the Third Circuit entered on December 5, 2018. Timely petitions for rehearing and rehearing en banc were denied on February 5, 2019. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

26 U.S.C. § 6020 "(a) PREPARATION OF RETURN BY SECRETARY If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) EXECUTION OF RETURN BY SECRETARY

(1) AUTHORITY OF SECRETARY TO EXECUTE RETURN

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) STATUS OF RETURNS

Any return so made and subscribed by the Secretary shall be *prima facie* good and sufficient for all legal purposes.

26 U.S.C. § 6652(c)(6)(C)

(C) For purposes of this subsection, the term "person" means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs.

26 CFR § 301.6671-1 Rules for application of assessable penalties.

(a) ***Penalty assessed as tax.*** The penalties and liabilities provided by subchapter B, chapter 68, of the Code (sections 6671 to 6675, inclusive) shall be paid upon notice and demand by the district director or the director of the regional service center and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by subchapter B of chapter 68.

(b) ***Person defined.*** For purposes of subchapter B of chapter 68, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

4 U.S. Code § 110 – Same; definitions

As used in sections 105–109 of this title –

(a)

The term "person" shall have the meaning assigned to it in section 3797 of title 26.

(b)

The term "sales or use tax" means any tax levied on, with respect to, or measured by, sales, receipts from sales, purchases, storage, or use of tangible personal property, except a tax with respect to which the provisions of section 104 of this title are applicable.

(c)

The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

(d)

The term "State" includes any Territory or possession of the United States.

(e)

The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

(July 30, 1947, ch. 389, 61 Stat. 645.)

26 U.S. Code § 7701. Definitions

[...]

(9) UNITED STATES

The term “United States” when used in a geographical sense includes only the States and the District of Columbia.

(10) STATE

The term “State” shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

26 U.S. Code § 3401. Definitions**(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.

STATEMENT OF THE CASE

The Government asserts the Taylor has a tax liability for the years 2003 and 2004. The IRS reconstructed his income for those years on the basis of information provided by his employer and, in 2007, it assessed income taxes of approximately \$65,000

together with penalties and interest. By 2017, the IRS alleged that Taylor owed approximately \$144,000 in tax, penalties and interests.

That year, that Government commenced this action pursuant to 26 U.S.C. § 7403 seeking to reduce the IRS's assessment to judgment and to foreclose on its lien against Taylor's property at 1411 S. Patton Street in Philadelphia, Pennsylvania. (App. 2). The District Court denied Taylor's motions, granted the Government's motion and entered judgment in its favor. The District Court also entered an order for the sale authorizing the Government to sell Taylor's residence at auction. Taylor appealed. However, the U.S. Court of Appeals affirmed the District Court's decision. (App. 3). Taylor now appeals this decision to this court.

ARGUMENT

This Court Should Grant Certiorari To Resolve The Conflict Between The Third Circuit's Decision And The Many Decisions Of This Court Regarding the Application Of Income Taxes To The Citizen Based Upon Limitations Found In The United States Constitution As It Relates To The First Amendment.

Jurisdictional Issues Related to Federal Taxes

In regards to the definition of the "*United States*" look at the definition for "*State*" – it consists of the same items, or entities. The common element of these

entities is that they are areas as constitutionally established (District of Columbia – seat of the federal government), or those areas not granted statehood but that are under congresses' statutory control. None of the fifty States can fit within this meaning, as they are sovereign under the constitution:

“Congress exercises its confirmed powers subject to the limitations contained in the Constitution. If a State ratifies or gives consent to any authority which is not specifically granted by the Constitution of the United States, it is null and void. State officials cannot consent to the enlargement of powers of Congress beyond those enumerated in the Constitution.” – Sandra Day O’Conner, *New York v. United States*, 505 U.S. 144 (1992).

Further proof of the limitation in the meaning can be found in Amendments given at the end of section 7701. There are important amendments in regards to two laws made by congress, for they occurred following the admission of Alaska and Hawaii into the union as sovereign States. Alaska was admitted on Jan 3, 1959, and Hawaii on Aug 21, 1959. These amendments are:

Subsec (a)(9) Pub L 86-70, Sec 22(g), substituted ‘the Territory of Hawaii’ for ‘the Territories of Alaska and Hawaii’ Subsec (a)(10) Pub L 86-70, Sec 22(h), substituted ‘Territory of Hawaii’ for ‘Territories’ Subsec (a)(9), (10) Pub L 86-624, Sec 18(), t), struck out reference to the Territory of Hawaii

Congress took Alaska and Hawaii out of the definition, no department or agency can put it back in by assumption. The same holds true for the Pennsylvania, and it's not a "State" as referred to in the Code for this reason. As a result Taylor isn't domiciled within a federal State or territory. Taylor has made every attempt to disconnect his person, and property from such a jurisdiction.

"9. I, Robert N. Taylor, III, am not domiciled within any "State" or federal area. Due to the fact the Defendant is not a taxpayer, as defined by the I.R.C., such as 28 U.S.C. §§ 1391 and 1396, therefore this court is not the proper venue for the Defendant. (Docket No 1, if 2).

"It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a capital S for the word when applied to a State of the United States" Eisenberg v. Commercial Union Assurance Company, 189 F.Supp. 500 (1960).

US CODE: TITLE 26,3121. DEFINITIONS
TITLE 26 – INTERNAL REVENUE CODE/
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21 – FEDERAL INSURANCE CONTRIBU-
TIONS ACT/Subchapter C – "General Provi-
sions

§ 3121. Definitions

[. . .]

(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. See ECF 17-1.

*“After an exhaustive review of the prior decisions of this court relating to the matter, the following propositions, among others, were stated as being established: ‘1. That the District of Columbia and the territories are **not states** within the judicial clause of the Constitution giving jurisdiction in cases between citizens of different states; 2. That territories are **not states** within the meaning of Rev. St. 709, permitting writs of error from this court in cases where the validity of a state statute is drawn in question; 3. That the **District of Columbia and the territories are states as that word is used in treaties with foreign powers, with respect to the ownership, disposition, and inheritance of property**; 4. That the territories are not within the clause of the Constitution providing for the creation of a supreme court and such inferior courts as Congress may see fit to establish”*

(Emphasis added). O'Donohue v. United States, 289 U.S. 516 (1933)

The U.S. v. Lopez case makes it clear there is a separate federal jurisdiction as opposed to state jurisdiction. While this case is dealing with the firearm regulation under the Commerce Clause, the principle of separate federal and state jurisdiction is confirmed. It's the same constitutional separation of powers that is at the heart of the tax matter presented in this current case.

"We start with first principles. The Constitution creates a Federal Government of enumerated powers. See U.S. Const., Art. I, § 8. As James Madison wrote, "[t]he powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." Gregory v. Ashcroft, 501 U.S. 452, 458 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." Ibid. United States v. Lopez (93-1260), 514 U.S. 549 (1995).

Based upon *Lopez* the federal zone – means in its territorial sense, all places and waters, continental or insular, subject to the sovereign jurisdiction of the United States under Article I, Section 8, Clause 17 of the Constitution of the United States of America. This area is also commonly but mistakenly called the “United States”.

“No Court in America ever yet thought, nor, I hope, ever will, of acquiring jurisdiction by a fiction . . . it is evident that we are not to assume a voluntary jurisdiction, because we think, or others may think, it may be exercised innocently, or even wisely. The Court is not to fix the bounds of its own jurisdiction, according to its own discretion. A jurisdiction assumed without authority, would be equally an usurpation, whether exercised wisely, or un-wisely.” Maxfield’s Lessee v. Levy (1); 4 U.S. 308, 311, 312 (1797)

Person/Individual with a Duty

The term person is limited. There’s no reason to believe that Taylor falls under the term “person” as defined under 26 U.S.C. § 6020(b); 26 U.S.C. § 6652(c)(6)(C), and there’s no direct evidence on the record that he is such a “person” with a duty to file and pay federal taxes. If Taylor is not a person defined in the above code, then he isn’t liable for the tax and there should be no penalty against him or his property.

“26 U.S. Code § 6651. Failure to file tax return or to pay tax. This section of course applies to

'persons'. But what exactly are 'persons' for this part?

"(b) Person defined

"The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

"Liability Under § 6672 – Whether a person against whom the Government issues an assessment under § 6672 may be held liable depends on whether that person comes within the definition of "person" in § 6671(b). Section § 6671(b) provides:

The term "person", as used in this subchapter, includes an officer or employee of a corporation . . . who as such officer [or] employee . . . is under a duty to perform the act in respect of which the violation occurs.

"Duty" under § 6671(b) has a much more focused meaning than the generalized duty of all taxpayers to pay taxes and is expressly limited to the duty that attaches to the position an employee holds within the corporation." US v. Burger, 717 F. Supp. 245 – Dist. Court, (SDNY, 1989)

"A person who may be found responsible under section 6672 "includes an officer or employee of a corporation . . . who as such officer [or] employee . . . is under a duty to perform the act in respect of which the violation occurs." 26

*U.S.C. § 6671(b). The mere fact that an individual is a corporate officer is not, by itself, sufficient to make that individual a responsible person within the definition of the statute. Rather, “[t]he key element . . . is whether that person has the statutorily imposed duty to make the tax payments.” *O’Connor v. United States*, 956 F.2d 48, 51 (4th Cir. 1992). This duty, moreover, “is considered in light of the person’s authority over an enterprise’s finances or general decision making.” *Id. U.S. v. McCombs*, 30 F.3d 310 (2d Cir. 1994)*

*“However, a “person” includes an officer or employee of a corporation who “is under a duty to perform the act in respect of which the violation occurs” (Sections 6671(b), 6672, Code). Not every “officer” or “employee” of a corporation is subject to the “penalty” but only if he be “under a duty to perform the act,” namely, be responsible for making the deductions and payments. The assessment provisions relating to a “tax” also refer to “penalties.” *Botta v. Scanlon*, 288 F.2d 504 (2d Cir. 1961)*

The cases (*United States v. Sloan*, 939 F.2d 499 (7th Cir. 1991), *Beerbower v. United States*, 787 F.2d 588 (6th Cir. 1986), etc., which seems to deal with the Form W-4). (See App. 10). Provided at the district and appellate levels that bluntly state that the argument against sort of taxes that we see practiced by the IRS, which appear to be similar to a direct tax, is frivolous, yet provide little direct reason as to why they should not fall under Apportionment as pointed out in *Brushaber*. Such a tax should be tested through the courts.

However, there doesn't appear that there has been any Supreme Court case that would explain the issue.

There's no reasonable explanation with regard to the cases that have been raised regarding the term frivolous. Thus the matter is, or should be, open to question. If a citizen makes an error and states a fact about himself that's not strictly true from a legal perspective, it seems only reasonable be the obligation of the Government employee, and if he or she, is aware of this mistake, to bring it to the attention of his supervisor and the citizen in order to prevent needless injury to the citizen. This is why the Petitioner has sent his position to the Government. (See ECF 22, Exhibit 1). "*Under our form of government . . .*" *Billings v. Hall*, 7 CA. 1; "*sovereignty resides with the people . . .*" *Juilliard v. Greenman*, 110 U.S. 421 (1884); "In the United States, sovereignty resides in the people . . . the Congress cannot invoke sovereign power of the People to override their will as thus declared." *Perry v. U.S.*, 294 U.S. 330 (1935). Instead, the Petitioner has not received any responsive reply to date, besides the broad claim that the questions raised are "frivolous" without further explanation. As a result the Petitioner is now putting this matter before this court.

"It is contended, however, that the fact that the license tax can suppress or control this activity is unim- [319 U.S. 105, 113] portant if it does not do so. But that is to disregard the nature of this tax. It is a license tax-a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may

not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce (*McGoldrick v. Berwind-White Co.*, 309 U.S. 33, 56-58, 60 S.Ct. 388, 397, 398, 128 A.L.R. 876), *although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory.* *Id.*, 309 U.S. at page 47, 60 S.Ct. at page 392, 128 A.L.R. 876 and cases cited. *A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down.* *Lovell v. Griffin*, 303 U.S. 444, 58 S.Ct. 666; *Schneider v. State*, *supra*; *Cantwell v. Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 128 A.L.R. 1352; *Largent v. Texas*, 318 U.S. 418, 63 S.Ct. 667, 87 L.Ed. __; *Jamison v. Texas*, *supra*.” (Emphasis added). *Murdock v. Pennsylvania*, 319 U.S. 105 at 113 (1943)

Since these cases mention the W-4, or speak to withholding, I want to address the issue briefly, although such an issue is not directly in evidence in my

case. The documents in question may not be “*involuntary*” agreements. Nonetheless, these documents absolutely fall under “26 CFR 31.3402(p)-1 – *Voluntary withholding agreements*.” As such it may act as a waiver of Constitutional right. Moreover, such a “*Waiver of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences*” *Brady v. United States*, 397 U.S. 742 (1970), and by this standard I have never intended to volunteer for the “voluntary withholding agreement”. These agreements don’t state their true voluntary nature anywhere on the forms, the IRS Form W-4, so they tend to act as a “*constructive fraud*”. Therefore, it was never my intention to volunteer into a federal jurisdiction. (See ECF 28) (ECF 17-I, MEMORANDUM OF LAW IN SUPPORT OF ROBERT N. TAYLOR, III’s MOTION TO DISMISS).

Confusion in the Courts

This confusion in the courts makes it hard for the citizen to be sure what the standard is within the courts. Various circuit courts have conflicting views of the tax issues. Thus it’s reasonable that the citizen may have questions as the Petitioner has.

The Supreme Court has stated “*No constitutional right exists under the Ninth Amendment, or to any other provision of the Constitution of the United States, ‘to trust the federal government and to rely on the integrity of its pronouncements*” *MAPCO, Inc. v. Carter*

(1978, Em Ct. App) 573 F2d 1268, cert den 437 US 904, 57 L Ed 2d 1134, 98 S Ct 3090.

“A statute which either forbids or requires the doing of an act in terms so vague that men and women of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” Connally v. General Construction Co., 269 U.S. 385 (1926)

26 CFR § 1.871-7 – Taxation of nonresident alien individuals not engaged in U.S. business.

“5. I am presumed to be a “nonresident alien” in Title 26, U.S.C. § 1.871-4, the Internal Revenue Code (IRC), however, not the same “nonresident alien” defined within the IRC pursuant to Title 42. U.S.C. §411(b). My income is NOT derived from sources “within the federal United States,” nor am I effectively connected with the performance of the functions of a public office “within the United. (ECF 22, Exhibit #1). The government has not offered any direct evidence to the contrary. Instead they state, “Based on data reported to the Internal Revenue Service from Taylor’s employer and third parties, a delegate of the Secretary of the Treasury made the following income tax assessments against him for the 2003 and 2004 tax years, in accordance with 26 U.S.C. §6020”. The IRS Form 4340 doesn’t address the matter of nonresident alien individuals.

According to the Government Accounting Office in their publication GAO-03-913R Reliability of IRS's Form W-4 Information has stated that there is no legal authority to take the above action. Then, continuing he stated:

"For those who refuse to file a return, the Service Center ASFR Unit prepares a substitute return for the individual under the authority of the IRC 6020(B) and issues a Statutory Notice of Deficiency. After the "dummy" return is posted, the IRS sends a letter informing the taxpayer of the proposed assessment and of all appeal rights".

The government fails to follow its own rules; I did not receive a "Statutory Notice of Deficiency", although the Appeals court felt that this was not important. However, it's still a lapse of the government to follow its own rules and, thus, prejudiced my rights to determine the correctness of the claim, and appeal the matter at an earlier point in time. (App.5). The "dummy" return, in this case a 1040A, appears to act as a mechanism to put Taylor into a federal jurisdiction by acting as a self assessment.

Therefore Taylor should be protected from federal jurisdiction by the "*Minimum Contacts Doctrine*".

"It is no longer open to question that the general government, unlike the states, Hammer v. Dagenhart, 247 U.S. 251, 275, possesses no inherent power in respect of the internal affairs of the states, and emphatically not with regard

to legislation." *Carter v. Carter Coal Co.*, 298 U.S. 238, 56 S. Ct. 855 (1936).

Apportionment Clauses of the Constitution Were Never Overturned

The Constitution says that citizens can only be taxed based on Apportionment. Brushaber, which is cited in the district court, clearly confirms this specifically with regard to the 16th Amendment. Thus, I don't see a basis for today's tax under this authority.

This statement is not supported by Brushaber, "Taylor's argument that he is not subject to the income tax system is without merit." (ECF21-2).

"In this case – that of a stockholder against a corporation to restrain the latter from voluntarily paying the income tax imposed by the Tariff Act of 1913 – the defendant corporation notified the government of the pendency of the action and the United States was heard as amicus curiae in support of the constitutionality of the Act.

[. . .]

MR. CHIEF JUSTICE WHITE delivered the opinion of the Court. As a stockholder of the Union Pacific Railroad Company, the appellant filed his bill to enjoin the corporation from complying with the income tax provisions of the tariff act of October 3, 1913 (§II, c. 16, 38 Stat. 166).

[. . .]

*That the authority conferred upon Congress by § 8 of Article I “to lay and collect taxes, duties, imposts and excises” is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. And it has also never Page 240 U.S. 13 been questioned from the foundation, without stopping presently to determine under which of the separate headings the power was properly to be classed, that there was authority given, as the part was included in the whole, to lay and collect income taxes. Again, it has never moreover been questioned that the conceded complete and all-embracing taxing power was subject, so far as they were respectively applicable, to limitations resulting from the requirements of Art. I § 8, cl. 1, that “all duties, imposts and excises shall be uniform throughout the United States,” and to the limitations of Art. I, § 2, cl. 3, that “direct taxes shall be apportioned among the several states,” and of Art. I § 9, cl. 4, that “no capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein-before directed to be taken.” In fact, the two great subdivisions embracing the complete and perfect delegation of the power to tax and the two correlated limitations as to such power were thus aptly stated by Mr. Chief Justice Fuller in *Pollock v. Farmers’ Loan & Trust Co.*, *supra*, at 157 U.S. 557: In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays*

down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises." (Emphasis added). *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916)

I, Petitioner, Robert N. Taylor, III, am not that of a stockholder against a corporation to restrain the latter from voluntarily paying the income tax imposed by the Tariff Act of 1913, such as Mr. Brushaber, thus, not similarly situated. However, the case seems to make it absolutely clear that Constitutional protections still exist for those not similarly situated to Mr. Brushaber as a stockholder.

*"[W]hatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th Amendment became effective, it was true at the time of *Eisner v. Macomber* *Supra*, it was true under Section 22(a) of the Internal Revenue Code of 1938, and it is likewise true under Section 61(a) of the I.R.S. Code of 1954. If there is not gain, there is not income . . . Congress has taxed income not compensation."* *Conner v. U.S.*, 303 F Supp. 1187 (1969). See ECF 22 Page 15.

In this case, the following is clearly stated:

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' rights to live and

own property are natural rights for the enjoyment of which an excise cannot be imposed.”
Redfield v. Fisher, 292 P. 813, 135 Or. 180, 294 P. 461, 73 A.L.R. 721 (1931)

Voluntary or Mandatory

It was never my intention to voluntarily enter into a federal jurisdiction, or enter as a trade or business that I wasn't required to do, thus, violating my rights in the process. *“Our system of taxation is based on voluntary assessment and payment, not upon restraint.”*
United States v. Flora, 362 US 145 (1960).

“Thus, Congress having power to regulate commerce with foreign nations, and among the several states and with the Indian tribes, may without doubt provide for granting coasting licenses, licenses to pilots, licenses to trade with the Indians, and any other licenses necessary or proper for the exercise of that great and extensive power, and the same observation is applicable to every other power of Congress to the exercise of which the granting of licenses may be incident. All such licenses confer authority and give rights to the licensee.

“But very different considerations apply to the internal commerce or domestic trade of the states. Over this commerce and trade Congress has no power of regulation nor

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“any direct control. This power belongs exclusively to the states. No interference by Congress

with the business of citizens transacted within a state is warranted by the Constitution except such as is strictly incidental to the exercise of powers clearly granted to the legislature. The power to authorize a business within a state is plainly repugnant to the exclusive power of the state over the same subject. It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion. But it reaches only existing subjects. Congress cannot authorize a trade or business within a state in order to tax it.” License Tax Cases, 72 U.S. 5 Wall. 462 462 (1866).

However, these cases (App. 7) seem to speak to matters involving the use of I.R.S. W-4s. They are voluntary withholding agreements, which fall under “26 CFR 31.3402(p)-1 – Voluntary withholding agreements.” Agreements are essentially contract, and thus, should be subject to such requirements, such as a meeting of the mind, which didn’t exist when the Petitioner was presented with the voluntary agreement, which is the case from both the acting as employee, and acting as the employer perspective. Thus, the Petitioner contends there’s a problem from this point of the matter.

“16. Any other evidence or presumption to the contrary is hereby REBUTTED. Any past

signatures or authorizations on Internal Revenue Service (1040's and W-4's), Social Security Administration forms (SS-5), driver's licenses, vehicle registrations, birth or trust certificates, voter registrations and other franchises were in ERROR and involuntarily made under threat, duress, and coercion (TDC). I hereby REVOKE, cancel and render void, Nunc Pro Tunc, both currently and retroactively to the time of signing, any and all such signatures." – Exhibit 1, 2. Of course this would also apply to matters of Constructive Fraud where the signing such applications were inadvertently removing various Constitutional protections of my rights.

There's no reasonable explanation with regard to the cases that have been raised regarding the term frivolous. (App.7) Thus the matter should be open to question. If a citizen an error and states a fact of makes an add-on about himself that's not strictly true from a legal perspective, it seems only reasonable be the obligation of the Government employee, it'd be our she, is aware of this mistake, to bring it to the attention of his supervisor and the citizen in order to prevent needless injury to the citizen. This is why the Petitioner has sent his position to the Government. (See ECF 22, Exhibit 1). "Under our form of government . . ." Billings v. Hall, 7 CA. 1; "sovereignty resides with the people . . ." Juilliard v. Greenman, 110 U.S. 421 (1884). Instead, the Petitioner has not received any responsive reply to date, besides the broad claim that the questions raised are "frivolous" without further

explanation. As a result, the Petitioner is now putting this matter before this court.

“Every man has a natural right to the fruits of his own labor, as generally admitted; and no other person can rightfully deprive him of those fruits, and appropriate them at his will.”
The Antelope, 23 U.S. 66, 120 (1825).

So, we have a paradox, either Subtitle A income taxes are “mandatory” and enforced and faith in the Government (IRS) has become the new established religion of the land, in direct violation of the First Amendment, or the taxes are instead voluntary and, thus, don’t conflict with religious views expressed in this Amendment. (See ECF 28 and attached affidavit). It is likely also a violation of the Thirteenth Amendment. However, I was not permitted to put the matter before a jury. Thus, I believe my rights to due process were prejudiced in this regard.

“To punish a person because he has done what the law plainly allows him to do is a due process violation “of the most basic sort.” Bordenkircher v. Hayes, 434 U.S. 357, 363. In a series of cases beginning with *North Carolina v. Pearce* and culminating in *Bordenkircher v. Hayes*, the Court has recognized this basic – and itself uncontroversial – principle. For while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right. United

States v. Goodwin, 457 U.S. 368, 372, 102 S. Ct. 2485, 2488, 73 L.Ed.2d 74 (1982).

CONCLUSION

From all of evidence that I see the income tax is an excise tax, and excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges. The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The individuals' rights to live and own property are natural rights for the enjoyment of which an *excise* cannot be imposed. I didn't properly "volunteer" for this income tax, through the IRS Form W-4, Social Security Number, IRS Form 1040 or any other construct that failed to inform of the voluntary nature of the device and the need to waive constitutional rights. In fact, these devices appear to act as constructive frauds, and thus, should be void or voidable.

"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).

"Every [state] citizen and freeman is endowed with certain rights and privileges, to enjoy

which no written law or statute is required. These are fundamental or natural rights, recognized among all free people." United States v. Morris, 125 F. 322, 325.

For all these reasons, this Court should grant the petition.

Respectfully submitted,

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