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**APPENDIX**

**ORDERS**

***Harriss v. Commissioner*, consolidated Nos. 12528-14  
and 25358-14, United States Tax Court,  
Memorandum Findings of Fact and Opinion entered  
January 5, 2017**

T.C. Memo. 2017-5

**UNITED STATES TAX COURT**

**BRIAN E. HARRISS, Petitioner v.  
COMMISSIONER OF INTERNAL REVENUE,  
Respondent**

Docket Nos. 12528-14, 25358-14.

Filed January 5, 2017.

Brian E. Harriss, pro se.  
Randall B. Childs and Caroline R. Krivacka, for  
respondent.

**MEMORANDUM FINDINGS OF FACT AND  
OPINION**

VASQUEZ, Judge: In these consolidated cases  
respondent determined deficiencies, additions to tax,  
and penalties with respect to Petitioner's 2010 and  
2011 Federal income tax as follows:

**SERVED Jan 05 2017**

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[*2]		Additions to tax		Penalty
Year	Deficiency	sec. 6651(a)(1)	sec. 6651(a)(2)	sec. 6662(a)
2010	\$49,968	---	\$3,341.33	\$3,427
2011	40,259	\$3,211.25	---	2,569

After concessions,<sup>1</sup> the issues for decision are: (1) whether compensation petitioner received from his employers is includible in income for the 2010 and 2011 tax years; (2) whether a distribution from petitioner's individual retirement account (IRA) is includible in income for the 2010 tax year; (3) whether petitioner is liable for a 10% additional tax on the IRA distribution under section 72(t) for the 2010 tax year; (4) whether petitioner is liable for an addition to tax under section 6651(a)(1) for the 2011 tax year; (5) whether petitioner is liable for an addition to tax under section 6651(a)(2) for the 2010 tax year; (6) whether petitioner is liable for accuracy-related penalties under section 6662(a) for the 2010 and 2011 tax years; and (7) whether the Court should impose a penalty on petitioner under section 6673(a)(1).<sup>2</sup>

### [\*3] FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference.

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<sup>1</sup> Before trial respondent conceded that he had incorrectly included a \$29 dividend in petitioner's 2010 income and a \$1,174 dividend in petitioner's 2011 income.

<sup>2</sup> Unless otherwise indicated, all section references are to the Internal Revenue Code (Code) in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Petitioner resided in Alaska when he timely filed the petitions.

Petitioner is a licensed engineer with bachelor's and master's degrees from the Georgia Institute of Technology. During 2010 petitioner worked as an engineer for Bergaila & Associates, Inc. (Bergaila). Bergaila paid petitioner \$26,425 for the services he performed in 2010. That same year petitioner withdrew \$28,250 from an IRA that he held at TD Ameritrade. Petitioner was below age 59-1/2 in 2010.

At some point in 2010 not established by the record, petitioner resigned from Bergaila and began working as an engineer for CH2M Hill Alaska, Inc. (CH2M). CH2M paid petitioner a salary of \$128,970 in 2010 and \$161,000.96 in 2011.

On February 16, 2013, petitioner filed Forms 1040, U.S. Individual Income Tax Return, for the 2010 and 2011 tax years via certified mail in a single envelope addressed to respondent. On his 2010 return he reported zero wages. Petitioner also reported a taxable amount of zero with respect to the above-described IRA distribution. Petitioner attached to his 2010 return three Forms 4852, Substitute [\*4] for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. On his Forms 4852 petitioner: (1) claimed that Bergaila had paid him zero wages and withheld \$6,984 in Federal income, Social Security, and Medicare taxes; (2) claimed that CH2M had paid him zero wages and withheld \$36,429 in Federal income, Social Security, and Medicare taxes, and (3) reported a distribution of \$28,250 from his IRA but claimed the taxable amount was zero.

Petitioner also reported zero wages on his 2011

return. He attached to his 2011 return one Form 4852 in which he claimed that CH2M had paid him zero wages and withheld \$34,475 in Federal income, Social Security, and Medicare taxes.

In a cover letter accompanying his returns, petitioner explained that he was disputing information returns prepared by Bergaila, CH2M, and TD Ameritrade because "our non-federally-connected work or business arrangement is an entirely private agreement, not involving the exercise of any federal privilege."

Respondent selected petitioner's 2010 and 2011 returns for examination. Following the examination, respondent sent petitioner a timely notice of deficiency for each tax year. The notice for 2010 included petitioner's unreported wages and IRA distribution in income, determined a 10% additional tax on [\*5] petitioner's premature IRA distribution, and determined an addition to tax under section 6651(a)(2) and an accuracy-related penalty under section 6662. The notice for 2011 included petitioner's unreported wages in income and determined an addition to tax under section 6651(a)(1) and an accuracy-related penalty under section 6662.

#### OPINION

##### I. Preliminary Matters

Petitioner argues that respondent bears the burden of proof with respect to his unreported income for both tax years. For the reasons below, we disagree.

Generally, the Commissioner's determinations in a notice of deficiency are presumed correct, and the taxpayer bears the burden of proving that the Commissioner's determinations are erroneous. See Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115

(1933).<sup>3</sup> Under section 6201(d), if a taxpayer asserts a reasonable dispute with respect to an item of income reported on an information return filed by a third party and the taxpayer meets certain other requirements, the Commissioner bears the burden of producing reasonable and probative evidence, [\*6] in addition to the information return, concerning the deficiency attributable to the income item.

Petitioner argues that we should set aside the notices of deficiency because respondent failed to satisfy the requirements of section 6201(d) when he relied only on third-party information returns. However, section 6201(d) is not applicable here because petitioner's frivolous position that his wages are not taxable does not constitute a "reasonable dispute" with respect to an item of income. See, e.g., *Nelson v. Commissioner*, T.C. Memo. 2012-232, *aff'd*, 540 F. App'x 924 (11th Cir. 2013).

Petitioner also argues that the presumption of correctness does not apply to the notices of deficiency because respondent failed to establish an evidentiary foundation linking him to income-producing activity. In the Court of Appeals for the Ninth Circuit, to which an appeal of these cases presumably would lie absent a stipulation to the contrary, see sec. 7482(b)(1)(A), (2), the presumption of correctness does not attach in cases involving unreported income unless the Commissioner first establishes an evidentiary foundation linking the taxpayer to the alleged income-producing activity, see *Weimerskirch v. Commissioner*, 596 F.2d 358, 361-362 (9th Cir. 1979), *rev'g* 67 T.C. 672 (1977). The requisite

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<sup>3</sup> Petitioner has not shown entitlement to any shift in the burden of proof to respondent pursuant to sec. 7491(a). See *Higbee v. Commissioner*, 116 T.C. 438, 440-441 (2001).

evidentiary foundation is minimal and need not include direct evidence. See [\*7] Banister v. Commissioner, T.C. Memo. 2008-201, *aff'd*, 418 F. App'x 637 (9th Cir. 2011). Once the Commissioner produces evidence linking the taxpayer to an income-producing activity, the burden shifts to the taxpayer "to rebut the presumption of correctness of \* \* \* [the Commissioner's] deficiency determination by establishing by a preponderance of the evidence that the deficiency determination is arbitrary or erroneous." Petzoldt v. Commissioner, 92 T.C. 661, 689 (1989); see also Hardy v. Commissioner, 181 F.3d 1002, 1004 (9th Cir. 1999), §T.C. Memo. 1997-97.

Respondent has adequately established an evidentiary foundation linking petitioner to his employment activity and the IRA withdrawal. Petitioner stipulated that he was compensated by Bergaila and CH2M for his work as an engineer during the years in issue. Petitioner also stipulated that he withdrew funds from a TD Ameritrade retirement account. In his response to respondent's first request for admissions, petitioner admitted that TD Ameritrade had characterized this account as an IRA. Accordingly, respondent's determinations that petitioner had unreported income and is liable for deficiencies for 2010 and 2011 are presumed correct, and petitioner bears the burden of proving that respondent's determinations are erroneous. See Rule 142(a)(1); Welch v. Helvering, 290 U.S. at 115. [\*8]

## II. Unreported Wage Income

Petitioner concedes that he received the amounts of compensation set out in the notices of deficiency. However, petitioner argues that the compensation he received in 2010 and 2011 was not taxable income within the meaning of the law.

Section 61(a) defines gross income to include "income from whatever source derived". More specifically, section 61(a)(1) includes in an individual's gross income any compensation for services, interest payments, dividend payments, and gains derived from dealings in property. Clearly, petitioner's compensation from Bergaila and CH2M is gross income for Federal income tax purposes. See Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431 (1955) (stating that gross income includes all accessions to wealth that are clearly realized and under the control of the taxpayer); McNair v. Eggers, 788 F.2d 1509, 1510 (11th Cir. 1986) (describing the taxpayer's argument that his wages were not income as "patently frivolous"); Grimes v. Commissioner, 82 T.C. 235, 237 (1984); Reiff v. Commissioner, 77 T.C. 1169, 1173 (1981).

Petitioner's assertion to the contrary, that is, that the payments made to him for his services are not gross income, is frivolous and characteristic of rhetoric that [\*9] has been universally rejected by this and other courts.<sup>4</sup> See Wilcox v. Commissioner, 848 F.2d 1007 (9th Cir. 1988), *aff'g* T.C. Memo. 1987-225. The Court need not address petitioner's assertions "with somber reasoning and copious citation to precedent; to do so might suggest that these arguments have some colorable merit." See

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<sup>4</sup> Petitioner acknowledges that "wages" are taxable but argues that the term does not encompass the compensation he received from his employers. This position has been previously rejected by this Court as baseless and subject to the imposition of sec. 6673 penalties. See Waltner v. Commissioner, T.C. Memo. 2014-35, \_\_ F. App'x \_\_, 2016 WL 5800492 (9th Cir. Oct. 5, 2016); Nelson v. Commissioner, T.C. Memo. 2012-232, M, 540 F. App'x 924 (11th Cir. 2013).

Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984); Wnuck v. Commissioner, 136 T.C. 498 (2011). Consequently, we uphold respondent's determinations with respect to petitioner's wage income for 2010 and 2011.

### III. IRA Distribution

Petitioner argues that the \$28,250 distribution he received from his IRA is not taxable income. We disagree.

Subject to certain exceptions, amounts distributed from an IRA are includible in a taxpayer's gross income as provided in section 72. Sec. 408(d)(1). Petitioner, who has not established that an exception applies, argues that his retirement account was not an IRA. However, petitioner has offered no evidence [\*10] supporting this contention. Accordingly, the distribution is includible in petitioner's gross income.

### IV. Section 72(t) Tax

IRA distributions made before the taxpayer's attaining the age of 59-1/2 that are includible in income are generally subject to a 10% additional tax unless an exception applies. See sec. 72(t)(1), (2)(A)(i). Because the section 72(t) additional tax is a "tax" and not a "penalty, addition to tax, or additional amount" within the meaning of section 7491(c), the burden of production with respect to the additional tax remains on petitioner. See El v. Commissioner, 144 T.C. 140, 148 (2015). Petitioner, who was under 59-1/2 years of age in 2010, has neither argued nor established that any of the statutory exceptions applies. See sec. 72(t)(2). Accordingly, the distribution is subject to the 10% additional tax under section 72(t).

### V. Additions to Tax

#### A. Section 6651(a)(1)



Respondent determined that petitioner is liable for the section 6651(a)(1) late-filing addition to tax for the 2011 tax year. Section 6651(a)(1) imposes an addition to tax for failing to file a return by the filing deadline (as extended) unless such failure is due to reasonable cause and not due to willful neglect. Pursuant to [\*11] section 7491(c), respondent has the burden of production with respect to this addition to tax. See Higbee v. Commissioner, 116 T.C. 438, 446 (2001).

Petitioner stipulated that he filed his 2011 return on February 16, 2013, several months after the extended filing deadline of October 15, 2012. Consequently, respondent has met his burden of producing evidence that the late-filing addition to tax should be imposed for 2011. Petitioner has not demonstrated that he had reasonable cause for his failure to file a timely return. He is therefore liable for the section 6651(a)(1) addition to tax for 2011.

**B. Section 6651(a)(2)**

Respondent also determined that petitioner is liable for the section 6651(a)(2) late-payment addition to tax for the 2010 tax year. Section 6651(a)(2) imposes an addition to tax for failure to pay the amount of tax shown on a taxpayer's Federal income tax return on or before the payment due date unless such failure is due to reasonable cause and not due to willful neglect. The section 6651(a)(2) addition to tax applies only when an amount of tax is shown on a return filed by the taxpayer or prepared by the Secretary. Sec. 6651(a)(2), (g)(2); Cabirac v. Commissioner, 120 T.C. 163, 170 (2003), aff'd without published opinion, 94 A.F.T.R. 2d (RIA) 2004-5490 (3d Cir. 2004). Pursuant to section 7491(c), [\*12] respondent has the burden of production with respect

to this addition to tax. See Higbee v. Commissioner, 116 T.C. at 446. Respondent has not carried his burden here. Petitioner's 2010 return, which respondent received and processed, shows a tax of zero. There is nothing in the record to indicate that a substitute for return (SFR) meeting the requirements of section 6020(b) was ever prepared for the 2010 tax year.<sup>5</sup> We therefore hold that petitioner is not liable for the section 6651(a)(2) addition to tax.

#### VI. Accuracy-Related Penalty

Respondent also determined that petitioner is liable for accuracy-related penalties under section 6662(a) for the 2010 and 2011 tax years.<sup>6</sup> Pursuant to section 6662(a) and (b)(1) and (2), a taxpayer may be liable for a penalty of 20% [\*13] on the portion of an underpayment of tax attributable to: (1) negligence or disregard of rules or regulations or (2) a substantial understatement of income tax. Whether applied because of a substantial understatement of income

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<sup>5</sup> Over petitioner's objection respondent introduced a literal transcript of account for petitioner's 2010 tax year. The literal transcript contains no reference to any SFRs. Even if it did, the literal transcript does not establish that the requirements of sec. 6020(b) were satisfied. See Wheeler v. Commissioner, 127 T.C. 200, 210 (2006), *affd*, 521 F.3d 1289 (10th Cir. 2008); Gardner v. Commissioner, T.C. Memo. 2013-67, at \*24.

<sup>6</sup> For 2010 respondent determined in the notice of deficiency that the underpayment was attributable to one or more of the following: (1) negligence or disregard of rules or regulations, (2) a substantial understatement of income tax, (3) a substantial valuation misstatement, or (4) a transaction lacking economic substance. For 2011 respondent determined in the notice of deficiency that petitioner's underpayment was attributable to a substantial understatement of income tax. In his answer respondent raised the issue of negligence or disregard of rules or regulations as another basis for the accuracy-related penalty for 2011.

tax or negligence or disregard of rules or regulations, the accuracy-related penalty is not imposed with respect to any portion of the underpayment as to which the taxpayer acted with reasonable cause and in good faith. Sec. 6664(c)(1). The decision as to whether the taxpayer acted with reasonable cause and in good faith depends upon all the pertinent facts and circumstances. See sec. 1.6664-4(b)(1), Income Tax Regs. Generally, the most important factor is the extent of the taxpayer's effort to assess his or her proper tax liability. Humphrey, Farrington & McClain, P.C. v. Commissioner, T.C. Memo. 2013-23; sec. 1.6664-4(b)(1), Income Tax Regs.

The term "negligence" in section 6662(b)(1) includes any failure to make a reasonable attempt to comply with the Code and any failure to keep adequate books and records or to substantiate items properly. Sec. 6662(c); sec. 1.6662-3(b)(1), Income Tax Regs. Negligence has also been defined as the failure to exercise due care or the failure to do what a reasonable person would do under the circumstances. See Allen v. Commissioner, 92 T.C. 1, 12 (1989), aff'd, 925 F.2d 348, 353 (9th Cir. 1991); see also Neely v. Commissioner, 85 T.C. 934, 947 [\*14] (1985). The term "disregard" includes any careless, reckless, or intentional disregard. Sec. 6662(c).

Petitioner reported zero tax liabilities on his 2010 and 2011 returns. However, petitioner received taxable wage income in both years and, as discussed above, was liable for Federal income tax on his wages. Petitioner therefore had an underpayment for each year within the meaning of section 6662(a). Petitioner does not dispute that he worked during 2010 and 2011 and that he received payments from his employers in the amounts set forth in the notices

of deficiency. In fact, petitioner acknowledges that he received information statements from his employers reporting these payments, but, instead of relying on these statements, he attached to his returns Forms 4852 that reported zero wages.

As discussed above, it is well settled that wages are taxable income and should be reported as such. See, e.g., Wilcox v. Commissioner, 848 F.2d at 1008-1009. Petitioner's position to the contrary demonstrates not only a failure to comply reasonably with the Code, but also negligence and a clear disregard of rules or regulations. Petitioner did not act with reasonable cause and in good faith. Accordingly, the Court holds that petitioner is liable for accuracy-related penalties under section 6662(a) for the 2010 and 2011 tax years. [\*15]

#### VII. Section 6673

Section 6673(a) authorizes the Tax Court to impose a penalty not in excess of \$25,000 on a taxpayer for proceedings instituted primarily for delay or in which the taxpayer's position is frivolous or groundless. While petitioner advanced frivolous arguments in this proceeding, we decline to impose a section 6673 penalty against him at this time. However, we warn petitioner that continuing to advance frivolous or groundless arguments may result in substantial penalties in the future.

We have considered the parties' arguments and, to the extent not addressed herein, conclude that they are moot, irrelevant, or without merit.

To reflect the foregoing,

Appropriate orders will be issued, and decisions will be entered under Rule 155.

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***Harriss v. Commissioner of Internal Revenue, Tax***  
**Court No. 12528-14, Decision entered May 2, 2017**

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

BRIAN E. HARRISS,	)	
Petitioner,	)	Docket No. 12528-14
v.	)	
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent.	)	

**DECISION**

Pursuant to the opinion of the Court filed January 5, 2017, and incorporating herein the facts recited in respondent's revised computation as the findings of the Court, it is

**ORDERED and DECIDED** that there is a deficiency in income tax due from petitioner for the taxable year 2011 in the amount of \$39,848.00;

That there is an addition to tax due from petitioner for the taxable year 2011, under the provisions of I.R.C. section 6651(a)(1), in the amount of \$3,108.50; and

That there is a penalty due from petitioner for the taxable year 2011, under the provisions of I.R.C. section 6662(a), in the amount of \$2,486.80.

**(Signed) Juan F. Vasquez**  
**Judge**

**Entered: MAY 2, 2017**

**Served: May 2, 2017**

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***Harriss v. Commissioner of Internal Revenue*, Tax  
Court No. 25358-14, Decision entered May 2, 2017**

**UNITED STATES TAX COURT  
WASHINGTON, DC 20217**

BRIAN E. HARRISS,	)	
Petitioner,	)	Docket No. 25358-14
v.	)	
COMMISSIONER OF	)	
INTERNAL REVENUE,	)	
Respondent.	)	

**DECISION**

Pursuant to the opinion of the Court filed January 5, 2017, and incorporating herein the facts recited in respondent's computation as the findings of the Court, it is

**ORDERED AND DECIDED:** That there is a deficiency in income tax due from petitioner for the taxable year 2010 in the amount of \$49,958.00;

That there is no addition to tax due from petitioner for the taxable year 2010, under the provisions of I.R.C. § 6651 (a) (2) ; and

That there is a penalty due from petitioner for the taxable year 2010, under the provisions of I.R.C. § 6662(a), in the amount of \$3,425.00.

**(Signed) Juan F. Vasquez  
Judge**

**Entered: MAY 2, 2017**

**Served: May 2, 2017**

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FILED  
AUG 27, 2019  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BRIAN EDWARD HARRISS, Petitioner-Appellant,  v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	No. 17-72233  Tax Ct. Nos. 12528- 14, 25358-14  MEMORANDUM*
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Appeal from a Decision of the  
United States Tax Court

Submitted August 19, 2019 \*\*

Before: SCHROEDER, PAEZ, and HURWITZ,  
Circuit Judges.

Brian Edward Harriss appeals pro se from the Tax Court's decision upholding the Commissioner of Internal Revenue's determination of deficiency for tax years 2010 and 2011. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo the Tax Court's conclusions of law and for clear error its fact-

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

ual findings. *Meruelo v. Comm'r*, 691 F.3d 1108, 1114 (9th Cir. 2012). We affirm.

The Tax Court properly upheld the Commissioner's deficiency determinations for tax years 2010 and 2011 because the record showed that Harriss had earned taxable income, and the legal basis for Harriss's argument to the contrary was frivolous. See 26 U.S.C. § 61(a)(1) (explaining that "gross income" includes "compensation for services"); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981) (compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts to be income, and subject to income tax).

The Tax Court did not err by imposing penalties against Harriss for filing an untimely tax return for 2011 and for inaccurately reporting his income for tax years 2010 and 2011. See 26 U.S.C. § 6651(a)(1) (addition appropriate when taxpayer fails to file timely taxes unless such failure was due to reasonable cause and not due to willful neglect); *id.* § 6662(a) (imposing penalty for negligence or disregard of rules or regulations).

**AFFIRMED.**



## **CONSTITUTIONAL PROVISIONS**

### **U.S. Constitution, Article 1, Section 2, Clause 3**

Representatives and direct Taxes shall be apportioned among the several States....

### **U.S. Constitution, Article 1, Section 8**

The Congress shall have power to lay and collect taxes, duties, imposts and excises, ...; but all duties, imposts and excises shall be uniform throughout the United States;....To make all laws which shall be necessary and proper for carrying into execution the foregoing powers....

### **U.S. Constitution, Article 1, Section 9**

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

### **U.S. Constitution, Amendment I**

Congress shall make no law...abridging the freedom of speech, ...; or the right of the people ... to petition the government for a redress of grievances.

### **U.S. Constitution, Amendment V**

No person shall be....deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **U.S. Constitution, Amendment XVI**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

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STATUTES

**Revenue Act of 1862 (37th Congress, Sess. II. Ch. 119. 1862, pp. 472-473)**

**Sec. 86** *And be it further enacted*, That on and after the first day of August, eighteen hundred and sixty two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment....

**Sec. 90** *And be it further enacted*, That there shall be levied, collected, and paid annually, upon the annual gains, profits, or income of every person residing in the United States, whether derived from any kind of property, rents, interest, dividends, salaries, or from

any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, except as hereinafter mentioned. if such annual gains, profits, or income exceed the sum of six hundred dollars, and do not exceed the sum of ten thousand dollars, a duty of three per centum on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of ten thousand dollars, a duty of five per centum upon the amount thereof exceeding six hundred dollars; and upon the annual gains, profits, or income, rents, and dividends accruing upon any property, securities, and stocks owned in the United States by any citizen of the United States residing abroad, except as hereinafter mentioned, and not in the employment of the government of the United States, there shall be levied, collected, and paid a duty of five per centum.

**Internal Revenue Code 1986, 26 U.S.C. §61. Gross income defined.**

**(a) General definition** Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;

- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

**Statutes from which §61(a) of the I.R.C. of 1986 is derived:**

**Revenue Act of 1921 (67<sup>th</sup> Congress, Sess. Ch. 136, p. 238), Sec. 213.**

That for the purposes of this title (except as otherwise provided in section 233) the term “gross income”—

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such),

...

**Classification Act of 1923, Sixty-Seventh Congress, Sess. IV, p. 1488 (1923), Chap. 265 [repealed in 1949; but text of Rev. Act of 1938 enacted when these provisions were still in force], Sec. 2.**

...The term “department” means an executive department of the United States Government, a

governmental establishment in the executive branch of the United States Government which is not a part of an executive department, the municipal government of the District of Columbia, the Botanic Garden, Library of Congress, Library Building and Grounds, Government Printing Office, and the Smithsonian Institution.

...

The term "position" means a specific civilian office or employment, whether occupied or vacant, in a department other than the following: [list of exceptions]

The term "employee" means any person temporarily or permanently in a position.

The term "service" means the broadest division of related offices and employments.

...

The term "compensation" means any salary, wage, fee, allowance, or other emolument paid to an employee for service in a position.

**Revenue Act of 1938, Sec. 22(a).**

"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States

taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts taxing the compensation of such Presidents and judges are hereby amended accordingly.

**Internal Revenue Code of 1939 (italicized language added by amendment by the Public Salary Tax Act of 1939, sec. 1), Sec. 22(a).**

“Gross income” includes gains, profits, and income derived from salaries, wages, or compensation for personal service (*including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing*), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts taxing the compensation of such Presidents and judges are hereby amended accordingly. In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.

**Internal Revenue Code of 1986, 26 U.S.C. §3121.**

**Definitions.**

**(a) Wages** For purposes of this chapter, the term “wages” means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include— [list of exclusions]

**(b) Employment** For purposes of this chapter, the term “employment” means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—[22 enumerated exceptions with subparts]....

**(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....

**(f) American vessel and aircraft**

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States....

**(h) American employer**

For purposes of this chapter, the term "American employer" means an employer which is—

- (1) the United States or any instrumentality thereof,
- (2) an individual who is a resident of the United States,
- (3) a partnership, if two-thirds or more of the partners are residents of the United States,
- (4) a trust, if all of the trustees are residents of the United States, or



(5) a corporation organized under the laws of the United States or of any State.

**Internal Revenue Code of 1986, 26 U.S.C. §3401.**

**Definitions.**

(a) **Wages** For purposes of this chapter, the term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—[list of exclusions]

...

(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.

(d) **Employer** For purposes of this chapter, the term “employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

...

(2) in the case of a person paying wages on behalf of a ... foreign corporation, not engaged in trade or business within the United States, the term “employer” (except for purposes of subsection (a)) means such person.

**Statutes from which §3401(a) of the I.R.C. of 1986 is derived:**

**The Current Tax Payment Act of 1943, sec. 2(a)  
(adding new subchapter D to Ch. 9 of the I.R.C. of  
1939), Sec. 1621**

As used in this subchapter-

(a) The term “wages” means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—[list of exclusions]

...

(c) The term “employee” includes an officer, employee, or elected official of the United States, a State, Territory, 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.

(d) The term “employer” means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person,  
except that— ...

(2) in the case of a person paying wages on behalf of a ... foreign corporation, not engaged in trade or business within the United States, the term “employer” (except for the purposes of subsection (a)) means such person.

**Internal Revenue Code of 1986, 26 U.S.C. §6051.  
Receipts for employees.**

(a) **Requirement** Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been

required to deduct and withhold a tax under section 3402 ... or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, ... a written statement showing the following: ...

(3) the total amount of wages as defined in section 3401(a),

...

(5) the total amount of wages as defined in section 3121(a), ...

**26 U.S.C. §6201. Assessment authority. (Enacted in Taxpayer Bill of Rights 2, Pub.L. 104-168, 110 Stat. 1452, 1463, enacted July 30, 1996).**

**(d) Required reasonable verification of information returns.**

In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and

probative information concerning such deficiency in addition to such information return.

**26 U.S.C. §7491. Burden of proof (The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685, enacted July 22, 1998, Sec. 3001)**

**(a) Burden shifts where taxpayer produces credible evidence**

**(1) General rule** If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

**Internal Revenue Code of 1986, 26 U.S.C. §7701. Definitions.**

**(a)** When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof – ....

**(4) Domestic** The term “domestic” when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

**(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.

**[Amendments]**

1960—Subsec. (a)(9), (10). Pub. L. 86-624, § 18(i), (j), struck out reference to the Territory of Hawaii.

1959—Subsec. (a)(9). Pub. L. 86-70, § 22(g), substituted “the Territory of Hawaii” for “the Territories of Alaska and Hawaii”.

Subsec. (a)(10). Pub. L. 86-70, § 22(h), substituted “Territory of Hawaii” for “Territories”.]....

**Statutes from which §7701(a)(4), (9) and (10) of the I.R.C. of 1986 are derived:**

**Revenue Act of 1938 (52 Stat. 447, 583), Sec. 901**

....(4) The term “domestic” when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory....

(10) The term “United States” when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

**Internal Revenue Code of 1939 (enacted as Revised Statutes of 1873, Sec. 3140)**

....(10) The word “State” shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

**Internal Revenue Code of 1986, §7701. Definitions.**

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—....

(26) **Trade or business** The term “trade or business” includes the performance of the functions of a public office.

**Statutes from which 26 U.S.C. §7701(a)(26) is derived:**

**Internal Revenue Code of 1939, Sec. 48**

When used in this chapter—....

(d) **Trade or business** The term “trade or business” includes the performance of the functions of a public office.

**26 U.S.C. §7701(c) (enacted in Revenue Act of 1924, 68th Cong. Sess I, Ch. 234, 1924, Sec. 2(b))**

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.

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**REGULATIONS**

**26 C.F.R. §601.106(f)(1)**

An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution....