

NOV 21 2022

OFFICE OF THE CLERK

No. 22-1232

IN THE

SUPREME COURT OF THE UNITED STATES

Bernard D. Holland

Petitioner

v

Commissioner of Internal

Respondent

Revenue

On Petition for Writ of Certiorari from

The United States Court of Appeals for the Fourth

Circuit, On Petition For Writ of Certiorari from The

United States Tax Court

PETITION FOR WRIT OF CERTIORARI

Petitioner Bernard D. Holland

Proceeding Pro Se

202 Clearwater Drive

Morganton, NC 28655

ORIGINAL

1.

**QUESTIONS FOR REVIEW**

1. Is the Internal Revenue Service required to follow the Law as written in The United States Constitution regarding Direct Taxation?
2. Is the Internal Revenue Service required to follow the Law as written in Title 26, U.S. Code including, but not limited to, the definitions found therein?
3. Does the Internal Revenue Service have the Lawful authority to ignore the Petitioner's use of the proper I.R.S. forms, "Form 4852", to rebut erroneous claims filed on Forms "W-2", Form "1099-R" or Form "SSA-1099", made by a third party, to correct errors?
3. Absent any exercise of "privilege" is it Lawful to tax the Petitioner's earnings?
4. Did The Fourth Circuit Court of Appeals err in denying the Petitioner the opportunity to defend this case?

2.

## **PARTIES TO THE PROCEEDINGS**

Respondents Appellee

Michael J. Haungs, Supervisory Aty. Dir. 202-514-4343

Email: [appellate.taxcivil@usdoj.gov](mailto:appellate.taxcivil@usdoj.gov)

(COR NTC Government)

U.S. DEPARTMENT OF JUSTICE TAX DIVISION

P>O> Box 502 Washington, DC 20044

Stephanie A. Servoss, Clerk (aty) Dir. 202-521-0700

Email: [appeals@ustaxcourt.gov](mailto:appeals@ustaxcourt.gov)

(NTC For information only) United States Tax Court

Firm: 202-606-8574

400 2<sup>nd</sup> Street NW, Washington, DC 20217-0000

Marie Elizabeth Wicks Dir. 202-307-0461

Email: [marie.e.wicks2usdoj.gov](mailto:marie.e.wicks2usdoj.gov)

(COR NTC Government)

U.S. DEPARTMENT OF JUSTICE Tax Div. P.O. Box 502

Washington, DC 20044

3.

**RELATED CASES**

**United States Tax Court**

**Washington, DC 20217**

Bernard D. Holland	
Petitioner	
v.	Docket No. 7115-20
Commissioner of Internal Revenue	
Respondent	

**United States Court of Appeals for the Fourth Circuit**

Bernard D. Holland	
Petitioner – Appellant	
v.	Docket No. 22-1007
Commissioner of Internal Revenue	
Respondent – Appellee	

**TABLE OF CONTENTS**

	Page(s)
QUESTIONS FOR REVIEW_____	1.
PARTIES TO THE PROCEEDINGS _____	2.
RELATED CASES _____	3.
TABLE OF CONTENTS_____	4.
TABLE OF CASES _____	5.
TABLE OF AUTHORITIES _____	6.
STATEMENT OF JURISDICTION _____	7.
<b>CONSTITUTIONAL AND STATUTORY</b>	
PROVISIONS INVOLVED _____	8,9
STATEMENT OF THE CASE _____	8.,- 12.
REASONS FOR GRANTING THE WRIT_____	12., 13
CONCLUSION_____	14.
<b>INDEX TO APPENDICES:</b>	
Appendix A: (1.),(2.) and (3) _____	15. - 32.
Appendix B: (1) and (2.)_____	33., - 40.
COUNSEL OF RECORD_____	

**TABLE OF CASES**

	PAGES
United States Supreme Court, So. Pacific v. Lowe, 247 U.S. 330 (1918) _____	9.
Butcher's Union Co. V. Crescent City Co. 111 U.S. 746 (1883) _____	10.
Coppage V. Kansas 236 U.S. 1 (1915) _____	10., 11.
Jack Cole Company v. Alfred T. MacFarland, Commissioner, 206 Tenn. 694, 337 S.W. 2 <sup>nd</sup> 433 Supreme Court of Tennessee (1960) _____	11, 12.
Simms v. Ahrens, 271 S.W. 720 (1925) _____	12.

**TABLE OF AUTHORITIES**

	PAGES
“F. Morse Hubbard, Treasury Department Legislative draftsman, House Congressional Record, March 27 <sup>th</sup> , 1943 page 2580_____	9., 10.
John R. Luckey, Legislative Attorney with the Library of Congress, Frequently Asked Questions Concerning The Federal Income Tax (C.R.S. Report for Congress92-303 A) (1992)_____	10.

## **STATEMENT OF JURISDICTION**

The Supreme Court's jurisdiction in this case is found in Article III of The Constitution of the United States of America as the Court of appellate jurisdiction of all controversies to which the United States is a party.

Judgement of the Tax Court and the affirming of the Tax Court's Order by the Fourth Circuit Court of Appeals on September 28, 2022 (unpublished per curium Opinion) provides the basis of Petitioner's appeal.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

### **INVOLVED**

The United States Constitution, Article 1., Section:8  
“Congress shall have power: To lay and collect taxes, duties, imposts and excises.....”

“To exercise exclusive legislation in all cases whatever, over such district ( not exceeding 10 miles square .....)”

Section 9., Paragraph 4.: “No capitation, or other direct,

8.

tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."

Article XVI:" The Congress shall have the 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."

Title 26 U.S. Code § 3401: Definitions: (a) Wages, (c) Employee, (d) Employer.

§3121: Definitions: (a) Wages, (b) Employment, (c) United States, (h) American Employer.

Section after section of definitions have the same effect on how Title 26, U.S. Code is applied and who and what is subject to taxation.

## **STATEMENT OF THE CASE**

This petition is being filed to address the problems with the application of the "income tax". The Internal Revenue Service, the Tax Court and The Fourth Circuit Court of

9.

Appeals have a misunderstanding of the application of the income tax. It is apparent they think “all that comes in” is income. That is not, however, correct.

“We must reject .....The broad contention submitted on behalf of the government that all receipts..... everything that comes in..... are income”

*United States Supreme Court, So. Pacific v. Lowe, 247 U.S, 330 (1918)*

“The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax”.

*“F. Morse Hubbard, Treasury Department Legislative draftsman. House Congressional Record March 27<sup>th</sup>, 1943, page 2580*

“When a Court refers to an income tax as being in the nature of an excise, it is merely stating that the tax is not

10.

on the property itself, but rather it is a fee for the privilege of receiving gain from the property. The tax is based upon the amount of gain, not the value of the property.

*“John R. Luckey, Legislative Attorney with the Library of Congress, Frequently Asked Questions Concerning The Federal Income Tax”. (C.R.S. Report for Congress 92-303 A (1992) F. Supp.*

Focusing the principles of the lawful limitations upon federal taxation on the “income” tax which we are about to particularly explore, we can perceive that unprivileged, outside of Federal Geographical Jurisdiction work cannot be taxed indirectly by the Federal Government.

As the U.S. Supreme Court says in *Butcher’s Union Co. V. Crescent City Co.*, 111 U.S. 746 (1883):

*“The Right to follow any of thee common occupations of life is an inalienable right, ....”*

And,

*“It has been well said that the property which every man*

11.

*has in his own, as it is the original foundation of all other property, so it is the most sacred and inviolable*

*The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor is a plain violation of this most sacred property.”*

*“Included in the right of personal liberty and the right of private property, partaking of the nature of each, is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property”.*

Coppage v. Kansas, 236 U.S. 1 (1915)

*Other Courts have expressed this principle as well:*

*“Since the right to receive income or earnings is a right*

12.

*belonging to every person, this right cannot be taxed as privilege.”*

Jack Cole Company v. Alfred T. MacFarland,  
Commissioner, 206 Tenn. 694, 337S.W. 2<sup>nd</sup> 453 Supreme  
Court of Tennessee (1960)

*An income tax is neither a property tax nor a tax on occupations of right, but it has no power to declare as “privilege” and tax for revenue purposes, occupations that are of common right.*

Simms v. Aherns, 271 SW 720 (1925)

#### **REASONS FOR GRANTING THE WRIT**

The Law, Title 26, U.S. Code and some Court decisions have been, and continue to be, used to strike fear in the people's hearts, take property unlawfully, take Freedom from some unlawfully and violate Rights. This has to stop. Following the Law is one thing but when “The Law” is

13.

written in such a manner as to confuse and cause a person to chase their tail in an effort to understand the Law it should not be a Law. The Law requires that a common person should easily know and understand their obligations, but when it is so obscure that a person of average intelligence cannot make heads nor tails of it the law should be rewritten with clarity. The average person, if asked, would tell you that they DO NOT KNOW what is in the Tax Code and that is the reason help is sought in filling out the tax forms. The petitioner and "We The People" are asking for and need the help educating not only ourselves but also educating the I.R.S. personnel to eliminate the misunderstandings which continually arise. If my arguments are wrong I'll accept that but in all reality I know I'm correct and this Court knows it too. I have read too many U.S. Supreme Court decisions on this subject to believe my position is not correct.

-

14.

## CONCLUSION

For the reasons stated, case law cited, the forms I have filed and this petitioner's god faith reliance on the decisions of the United States Supreme Court, the Petitioner is requesting the Court to grant this petition for certiorari.