



Respond within 30 days to:
David P. Fontaine

May 01, 2004

IRS Office of the Commissioner
C/o Commissioner Mark W. Everson
1111 Constitution Ave., N.W.
Washington, DC 20224
(5)

Dennis L. Parizek
Manager, Examination Operations
Internal Revenue Service Center
1973 North Rulon White Blvd.
Ogden, UT 84404
(10)

Via Certified Mail (2)

Reference 1: Letter 1862 from Dennis Parizek, IRS – Ogden, UT dated 4/09/2004 for tax year 1999

Reference 2: Letter 1862 from Dennis Parizek, IRS – Ogden, UT dated 4/09/2004 for tax year 2001

Reference 3: Federal Court Case # 04-30080-MAP, filed 4/26/2004 in Springfield, MA

NOTICE - YOUR DOCUMENTS (references 1 and 2 above) ARE IN GROSS ERROR.

In response to your letters concerning tax year 1999 and 2001 (references 1 and 2 above), I am not the IRS "taxpayer" you claim. My legal basis is these Court citations.

1. There are only 2 classes of taxes, direct and indirect.

"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." *Brushaber v. Union Pac. R. R. Co.*, 240 U.S. 1, 13, 36 S. Ct. 236, 60 L. Ed. 493 (1916).

2. As a result of the 16th Amendment, the Income Tax is definitely an indirect tax.

"The 16th Amendment conferred no new power of taxation but simply prohibited the income tax from being taken out of the category of indirect taxation to which it inherently belonged..." *Stanton v. Baltic Mining Co.*, 240 U.S. 103.

"One adverse criticism upon [Cook's claim] is that it is clearly established that since the adoption of the Sixteenth Amendment, an income tax is never a direct tax. The effect of that change in the Constitution was to take a tax upon income derived from sources which had therefore made it a direct tax, out of that category, and put it in the class of excises, duties, and imposts." *Cook v. Tait, Collector of Internal Revenue*, 286 Fed. 409, at 412 (D.C. Md. 1923) (citations omitted), *aff'd* 265 U.S. 47, 44 S. Ct. 444, 68 L. Ed. 895 (1924)

"Income taxes are classified as duties, imposts and excises or, in other words, indirect taxes and, therefore, must be uniform." *Apache Bend Apts. Ltd., v. United States*, 709 F. Supp. 1285, 295 (n.D. Tex. 1988).

Without Prejudice, UCC 1-207

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3. Thus being classified as indirect, the income tax is an excise tax.

"The tax is, of course, an excise tax, as are all taxes on income, but it is not rendered void on that account" *White Packing Company v. Robertson*, 89 F.2d 775, 779 (4th Cir. 1937).

"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 which they produce. The income is not the subject of the tax, it is the basis for determining the amount of the tax." *Congressional Record*, Volume 89, Part 2, page 2580 (78th Congress, First Session, March 27, 1943).

"Brushaber and the *Congressional Record* excerpt do indeed state that for constitutional purposes, the income tax is an excise tax. This statement is reiterated in *Stanton*, and *Flint* discusses the scope of the term 'excise tax'" *United States v. Gaumer*, 972 F.2d 723, 725 (6th Cir. 1992).

"Therefore it can be clearly determined from the decisions of the United States Supreme Court that the income tax is an indirect tax, in the nature of an excise tax." *American Law Division of the Congressional Research Service, Library of Congress, Report No. 80-19A* (1980).

4. Indirect taxes (which include excises) cannot be laid upon property.

"A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax" *Tyler v. United States*, 281 U.S. 497, 502, 50 S.Ct. 356, 74 L.Ed. 991 (1930)

5. An Individual's own labor is his property.

"The property which every man has is his own labor, as it is the original foundation of all other property" *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 757, 4 S.Ct. 652, 28 L.Ed. 585 (1884).

6. The income from an Individual's own labor is also his 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, 14, 35 S.Ct. 240, 59 L.Ed. 441 (1915).

7. An excise tax is a privilege tax.

"The terms excise tax and privilege tax are synonymous." *American Airways v. Wallace*, 57 F.2d 877, 880 (D.C. Tenn. 1932), *aff'd* 287 U.S. 565, 53 S.Ct. 15, 77 L.Ed. 498 (1932).

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"The terms 'excise tax', 'license tax', and 'privilege tax' are synonymous and are used interchangeably to the extent that they are all 'indirect taxes' which are imposed upon the acts of persons, whereas a 'direct tax' is one which is imposed upon persons themselves or upon property owned by them." Roberts v. City of Baton rouge, 108 So.2d 111, 236 La. 521 (1958), r'hg denied.

8. Privilege tax (excise) is unlawful upon the right to exist (one's own labor).

"[E]very man has a natural right to the fruits of his own labour" In re Antelope, 23 U.S. 66, 120, 6 L.Ed. 268 (1825).

"Since the right to receive income or earnings is a right belonging to every [natural] person, this right cannot be taxed as a privilege." Jack Cole Company v. MacFarland, 337 S.W. 2d 453, 456 (Tenn. 1960).

"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 individual's 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, 819 (Ore. 1930) (citations omitted), cert. Denied, 284 U.S. 617, 52 S. Ct. 6, 76 L.Ed. 526 (1931).

INCOME TAX IS NOT A TAX ON INCOME. It is an indirect, excise (privilege) tax on the happening of an event, a taxable activity, and the measure of tax being derived from the income that the privileged activity produces. The previous cites are crystal clear. The RIGHT TO LABOR is a person's FUNDAMENTAL PROPERTY, and the fruit of his labor, his INCOME, IS ALSO HIS PROPERTY. IT CANNOT BE TAXED AS A PRIVILEGE.

Per the Court citations above, the fact that an employer sends the IRS a wage statement about my income does not make me a taxpayer. I have made repeated requests to the IRS for the identification of an applicable lawful authority (law that specifies a privileged taxable activity I could have engaged). The IRS has not produced any. Since all I've ever engaged in is my Right to labor for existence, I could not knowingly have been engaged in any privileged taxable activity, therefore my income (wages) could only be my Rightful property, which cannot be taxed as a privilege (excise) tax.

As stated in the next 2 cites, no amount of legislation can change my Sovereign status to 2nd class corporate status (taxpayer status), unless and only while I am knowingly engaged in a privileged (avoidable) taxable activity. The IRS' failure to provide any information defining privileged taxable activities in which I could have engaged (basis for "income tax"), guarantees that I could not have avoided those types of activities. I could not unknowingly engage in privileged (avoidable) taxable activities. I have not knowingly engaged in privileged (avoidable) taxable activities. You have no legal basis to arbitrarily reduce my Rights.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda v Arizona, 384 U.S. 436 p 491

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"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose; since its unconstitutionality dates from the time of its enactment... In legal contemplation, it is as inoperative as if it had never been passed... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it... A void act cannot be legally consistent with a valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superceded thereby. No one is bound to obey an unconstitutional law and no courts are bound to enforce it." 16 Am Jur 2d S177, late Am Jur 2d S256

Both of your letters (references 1 and 2 above):

1. State that the IRS has previously corresponded with me concerning tax years 1999 and 2001. This is false. Prior to your 2 letters (references 1 and 2 above), I have never received any correspondence from any agent or office of the IRS for these specific years.
2. State "your legal right to ask is Internal Revenue code 6001,6011, and 6012(a) and their regulations". Your legal right to ask, as stated therein, is only of a taxpayer. I am not a "taxpayer", but that appears to not matter to you or your processes. You have never identified or sought the single, only pertinent piece of information that is required to engage income taxation, the identification of taxable activities, which would then make those activities' income(s) the measure of an "income tax".
3. Contain fraudulent tax assessments, since your basis is my income, my Rightful Fruits derived from my Right to Labor. Your smokescreen pile of paperwork calculating an amount of tax is irrelevant to me, or my income. You are computing the amount of Fraud, whether you know you are or not. Your penalties and interest are computing the amount of Extortion pressure.

As you have documented in reference 1, the IRS is holding \$4,739.00 of my property. Since I was not engaged in any privileged taxable activity, my income from privileged taxable activities was \$0.00 for tax year 1999. I was not a taxpayer. I had no income tax liability. This property is rightfully mine. I require its immediate return.

As you have documented in reference 2, my Right to Labor in day-trading may have produced stock sales as you show. Income from my Right to Labor is the fruit of my Labor, and is not subject to income tax. Since I was only engaged in my Right to Labor, I was not engaged in any privileged taxable activity. My income from privileged taxable activities was \$0.00 for tax year 2001. I was not a taxpayer. I had no income tax liability.

As you have also documented in reference 2, your negligence and/or bias stemming from our dispute in reference 3 is evident in your failure to show any cost of sales. If this activity were privileged, stock sales alone would be no measure of income. Not that my personal matters are for public debate, my wife has been battling cancer and I attempted day-trading from home to enable me to be with her as much as possible. As it

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so happened, I lost all of our savings and declared Bankruptcy that year (Reference Case # 01-47162 HJB United States Bankruptcy Court – District of Worcester, MA), filed 10/2001 and discharged 3/21/02. Income (or loss) from my Right to Labor in day-trading is the fruit of my Labor, and is not subject to income tax.

I did not file a return because I was not a taxpayer for those 1999 and 2001 years – person liable for a tax – since my income was derived solely from the fruits of my Right to Labor. Now that you are directly informed, continuing your, or any IRS wrongful actions will be continuation of the charges contained in reference 3, a copy of which you should have received, or shortly will.

As you have fraudulently represented the taxing authority of the Government in your letters (ref 1 and 2 above) and included penalty and interest action, please provide an immediate written retraction to me within 30 days, the same time frame you gave me to respond, to relieve the undue stress to which you, personally, have subjected my family and me. As you have \$4,739.00 of my property (reference 1), I require its immediate return.

As I sit here and write this letter to you, I am crushed by my disappointment in what I have learned about Government's morally reprehensible execution of their duty to protect Freedom. The IRS has a difficult task to secure funds for the Government's necessary functions, but "the end does not justify the means". Budget pressure, the single, most corrosive pressure in Government, can never override Fundamental Rights secured by the U.S. Constitution. I can only hope you personally are unaware of your role in this. To think you actually knew what you were doing would be a vicious cruelty I cannot comprehend.

The Government mechanism is just a collection of people who perform their normal everyday duties. Their individual roles (carried out by their understanding of what they are supposed to do) collectively secure the Freedom of "We, the People". The appearance of doing that is not good enough. I ask that you reexamine what you do, the forms you employ, the beliefs that back your actions, and the rules, regulations and/or law you think you are executing. Compare it to our highest standard, "Morality and Reason". Reread the Court cites. These Judges' choice of words have painted a masterpiece, explicitly depicting just one Fundamental Right, the Right to Labor and the Right to enjoy the fruits thereof. Reexamine your actions. You execute your function by your interpretation of that function, based on the IRS instructions supplied to you. There is something seriously wrong with the IRS' procedures. Your conscience should be your most accurate guide. The stakes for being Right are always high, but the consequences of willful blindness are even higher. I cannot begin to imagine what unchecked government abuse of power will do to my grandchildren's Freedom in another 20 to 30 years. That is your ultimate responsibility.



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| <p>1. Article Addressed to: Dennis Parizek Operations Mgr., Exam SC Supp. Internal Revenue Service 1973 North Rulon White Blvd. Ogden, UT 84404 RE: Fed Court Case # 04-30080-MAP (10)</p> | <p>B. Received by (Printed Name) C. Date of Delivery</p> <hr/> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | | | | | | |
| <p>2. Article Number (Transfer from service label)</p> | <p>3. Service Type</p> <table style="width: 100%;"> <tr> <td><input checked="" type="checkbox"/> Certified Mail</td> <td><input type="checkbox"/> Express Mail</td> </tr> <tr> <td><input type="checkbox"/> Registered</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td><input type="checkbox"/> C.O.D.</td> </tr> </table> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> | <input checked="" type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail | <input type="checkbox"/> Registered | <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> Insured Mail | <input type="checkbox"/> C.O.D. |
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| <p>1. Article Addressed to: IRS Office of the Commissioner c/o Commissioner Mark W. Everson 1111 Constitution Ave N.W. Washington, DC 20224 RE: Fed Court Case # 04-30080-MAP (5)</p> | <p>B. Received by (Printed Name) C. Date of Delivery</p> <hr/> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> | | | | | | |
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