

STEP 4: Taxable or Exempt?

(some income is still exempt)

Larken Rose

This is the fourth in a series of messages written especially for people new to the "861 evidence." This follows [Step 3: The Unknown Exclusion](#) (about Constitutional exemptions). The various documents referred to in the discussions are hyperlinked (**blue letters**) to the Internet so that you can see the words for yourself. Where the law is quoted, all emphasis has been added.

- The **BLUE** links take you to the documents on the **Internet**; when finished reading, hit the "**back**" button to return to the discussion.
- **ALL** the messages in this series can be found linked through the following website: <http://www.861.info/pgs/861course.php>.

In the last message, we looked at what some older income tax regulations said. You may be wondering (and some of you said you were) what relevance those older regulations have to determining one's tax liability today. Here are a few points to consider:

1. The current regulations defining "gross income" ([26 CFR § 1.61-1](#)) still speak of some income being "*excluded by law*," but do **NOT** specify that that means statutory law (sections of the tax code) **OR** "fundamental law" (the Constitution). Since there have been no Constitutional amendments since 1956 concerning the taxing power, what was "*not taxable by the federal government*" back then is **STILL NOT TAXABLE** today.
2. Another current regulation ([26 CFR § 1.265-1](#)) explains that exempt income means income "*excluded from gross income under any provision of Subtitle A*" (the income tax code), as well as income "*exempt from the taxes imposed by Subtitle A under the provisions of **ANY OTHER LAW***," but doesn't specify **WHAT** "*other law*," and doesn't mention the Constitution by name.
3. Another current regulation ([26 CFR § 1.312-6](#)), however, still speaks of three kinds of income (in discussing income of corporations): "*income exempted by statute*," "***income not taxable by the Federal Government under the Constitution***," and income which is "*includible in gross income under section 61*" (the section which generally defines "gross income").

So, it was not that the Constitutional limits ceased to exist; just that the regulations **stopped specifically saying** that the Constitution itself is part of the law that exempts some income.

4. If something was constitutionally exempt in 1956 and before, **but isn't now**, the government could certainly **SAY THAT** in response to the question. But they **refuse to answer at all**.
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So now it's time to look at more of the **current regulations** and see what they show. Again, as Chuck saw a couple of messages back, there is a section of the tax code that *very generally* defines "gross income." Here is that section again:

"Sec. 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; ... [the list goes on]." [26 USC § 61]*

But as we saw with Chuck's income from 2003, **not all income is taxable**. In fact, the related income tax regulations for **26 USC 61** specifically point out that **EVERY** other section of the tax code "outranks" this **general** definition of "gross income".

*"To the extent that another section of the Code or of the regulations thereunder, provides specific treatment for any item of income, such other provision shall apply **NOTWITHSTANDING SECTION 61** and the regulations thereunder." [26 CFR § 1.61-1]*

So obviously the general definition alone is **not enough**. For anyone to accurately determine his "taxable" income, he must **FIRST** determine what is excluded by statute and what is excluded by the Constitution.

"It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach." [McCullough v. Virginia, 172 U.S. 102 (1898); quote]

Those who want to see the text of the entire case, go here:

[McCullough v. Virginia, 172 U.S. 102 \(1898\)](#)

But since the current regulations defining gross income and taxable income don't specifically mention Constitutional limits (like the old ones did), does that mean that **EVERYTHING** is taxable now, unless some section of the tax code specifically exempts it? Let's see what the law books say.

*"For purposes of this section, the gross income to which a specific deduction is definitely related is referred to as a '**CLASS OF GROSS INCOME**' and may consist of one or more items (or subdivisions of these items) of gross income enumerated in **SECTION 61**, namely:*

- (i) ***Compensation for services***, including fees, commissions, and similar items;
- (ii) *Gross income derived from business*;
- (iii) *Gains derived from dealings in property*;
- (iv) ***Interest***;
- (v) *Rents*;
- (vi) *Royalties*;
- (vii) *Dividends; ... [other items listed]*" [[26 CFR § 1.861-8\(a\)\(3\)](#)]

So those common "items" of income listed in the general definition of "gross income" (which we saw above) make up "classes of gross income." So what?

"[P]aragraph (d)(2) of this section... provides that a **CLASS OF GROSS INCOME** may include **EXCLUDED** income." [[26 CFR § 1.861-8\(b\)\(1\)](#)]

Here we go again. Even those "items" of income listed in that general definition are sometimes **EXEMPT**. (Because of the Constitution, perhaps?) But we still need to know **WHEN** they are exempt, or we can't possibly determine what we owe.

Sorry to interrupt to do this again, but have you read anything in this series yet that looks like an attempt to "cheat"? A "protest" of the law? A "scam," "scheme," or anything frivolous or unreasonable? I haven't.

It is **THE WRITTEN LAW ITSELF** that keeps bringing up the point that **NOT** all income is taxable. Naturally, before you file that return, you **NEED TO KNOW** whether some (or all) of your income is exempt from the tax, or you will **FAIL TO PROPERLY COMPLY WITH THE LAW**. As you can see for yourself, the specifics (regulations) **govern** the general (statutes); a basic principle of statutory law.

Though the government obviously won't harass you for accidentally **OVER**-paying your taxes, it's still a **LEGAL ERROR** to report exempt income as if it's taxable. If you want to pay thousands of dollars whether you owe it or not, be my guest. But if you want to know what you actually **OWE** and **ONLY** what you owe, **according to the law itself**, keep reading.

Next, we will finally get around to approaching an **ANSWER** to the question of when income is taxable and when it isn't.

Sincerely,

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<http://www.861.info>

<http://www.theft-by-deception.com>

NEXT: [Step 5: Foreign Commerce](#)