Mr. Richard M. Creamer June 01, 2003
Director of Compliance Services
Internal Revenue Service
Department of the Treasury
Ogden, Utah 84201

Pamela F. Olsen
Assistant Secretary for Tax Policy
1500 Pennsylvania Ave. NW, Room 1334
Washington, DC 20224

RE: Form 907, Request for extension of time to bring suit, file # 0469104150

Dear Mr. Creamer,

Pursuant to Section 6532 (a) (2) of the Internal Revenue Code, we respectfully request an extension of time to file our suit for refund. Due to the conflict in Iraq and the financial impact those expenses will have on the current budget we feel that the timing of our suit may be inappropriate. Besides, we do not object to the taxation of income, for it is understood that such must be in an organized society. We do, however, strongly object to the inclusion of our living expenses in taxable income, as those expenses are not "taxable" income under the Sixteenth Amendment any more than the "reasonable and necessary expenses" of business are.

As you know the ratification of the Sixteenth Amendment was for the specific purpose of making the accumulated wealth of our country contribute to the support of government, not to enslave the working class. The entire American history of taxation, at least until 1940, shows this to be true. It was the taxation of income, not people, that drove the demand for a correction of the error made by the Supreme Court in the Pollock Cases of 1895. Congress, realizing that the decision in Pollock forever barred it from assessing a tax upon the accumulated wealth derived from capital, sought the approval of the people to rectify that inequity. In the debates over the wording of that amendment Congress made it very clear that the income tax was not to be a "capitation" tax, or a direct tax upon capital. Instead, the purpose of the 16th Amendment was to allow Congress the ability to treat the net income, or profits, derived from capital in the same manner they had always treated the net income, or profits, derived from business and professional labor. The Secretary of the Treasury made that position clear under Article 21 of Regulation 45 (1918) when he defined "net-income" as being "commercial net income". The Regulations remained that way up until 1954 when Congress revised the Tax Code. It was the personal exemption allowance that, throughout the 52 years proceeding the amendment and the 27 years that followed, insulated the people from the excise tax levied upon commercial net income from being a tax upon them personally.

It was well recognized by the framers of our Constitution and those who followed the framers, that a tax levied upon the basic necessities life was, in essence, a capitation

tax requiring apportionment. The framers recognized that a tax upon the fruits of labor was also a capitation tax, for those fruits were necessary in order to purchase the necessities of life. Where were they to draw the line between the fruits of personal labor necessarily expended to support the worker and his family, and a gain or profit derived from that personal labor?

The question was easy to answer in the case of capital, for capital has a defined cost or value when it is acquired (also referred to as its "tax basis"). This is not true with personal labor, except for the personal labor purchased by employers for use in making capital productive. Congress, rather than deal with that issue instead chose to set the "personal exemption" at a relatively high amount in order to avoid the question of constitutionality being raised. That all changed in 1940, not in an effort to enslave the common worker through an excise tax on income, but to ensure that those who operated upon the basis of commercial net income paid the tax imposed upon them. However, when faced with an overwhelming need for revenue due to the war effort, and finding that the common worker was willing to contribute, Congress abandoned the prior principles upon which the Sixteenth Amendment was found acceptable to the people.

We do not protest the taxation of our wages, except for the fact that it is those wages which provide the means for the support ourselves and family. The current proposal to lower taxes is welcomed, however, shouldn't Congress be looking at the impact upon the living expenses of the worker, rather than the bottom line profits of corporations and business? When was the last time Congress paid attention to the needs of the working class, instead of the grumbling of business and wealth? When do we get to satisfy our needs and acquire the ability to accumulate a wealth of our own, before we are forced to pay a tax based upon that implied accumulation of wealth to our government?

We believe Congress should be promoting the accumulation of wealth by the working class, in order to relieve government of the obligation to provide for those who now refuse to work or who are now unable to provide for themselves after retirement. This can only be accomplished by allowing the working class the ability to keep the fruits of their labors. By putting the money back into the laborer's pocket, Congress will accomplish the President's goal; not by lower taxes, but by increasing the profits of business from which more tax dollars will be generated.

It is our position that the personal exemption is not a gesture of generosity on behalf of the government. It was constructed specifically to avoid the unconstitutional direct taxation of people, without apportionment. History and the Congressional Record show this to be true. The personal exemption is itself a Constitutional imperative in relation to a Federal income tax. How could the amount of the exemption be determined arbitrarily, without subjecting the tax to Constitutional objection as being repugnant to Article 1, Section 9, clause 4?

It is not our desire to file a lawsuit, as legal battles rarely accomplish anything. The solution, to us anyway, seems relatively simple. Congress has at times indicated a

desire to sunset the Internal Revenue Code, why? Other than the tumult the Tax Code has created, its basic concept is correct. They have now acknowledged the practicality of lowering taxes, albeit at the wrong end of the scale. Return the tax to its Sixteenth Amendment meaning by increasing the personal exemption to an amount that actually reflects reality for the majority of American citizens, and the objection to its imposition goes away; both in the moral as well as the legal aspects. The personal exemption for a single person in 1913 was $3,000, the same as it is today, 90 years later. However, inflation has taken its toll and $3,000 no longer satisfies the constitutional purpose for which the personal exemption was made part of the statute.

We believe that this inequity should be changed over a period of years, not as a result of an adverse ruling by the court. We have provided the outline of our legal argument for your review and consideration and it is our hope that a reasonable and timely solution can be found. We are asking for this extension in order for our concerns to be addressed in an appropriate manner by Congress, not the court system.

Sincerely

(www.taxhistory.com)

cc. Joint Committee on Taxation
Mary M. Schmitt, Acting Chief of Staff
1015 Longworth House Office Bldg.
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Congressman William Thomas
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RE: Form 907, Request for extension of time to bring suit, file # 0469104150

We would like you to be aware that we have been pursuing our concerns through correspondence with members of congress and the Joint Committee on Taxation, and that we set forth our grievance and concerns in a document now contained in the Congressional Records of 2-13-01 [2]. We are doing everything we can to comply with the law; what else must we do to be heard?

We do not protest the legitimate taxation of income, as that issue was settled by the Sixteenth Amendment. Nor do we protest the inclusion of our wages in a report of gross income, for including them appears to satisfy the intent of taxing "all income, from whatever *source* derived" [3]. Our concern is that although the Sixteenth Amendment provides that the tax may be levied upon the income "derived from" a particular *source*, without apportionment, it does not provide for the taxation of the *source* itself, without apportionment. *Sources* of income, and the income "derived from" them are separate and distinct subjects under the Sixteenth Amendment. Our question is now, and always has been: in the taxation of employee wages as "taxable income" (when those wages represent the entire annual receipts of the employee receiving them), *where is the line drawn between those wages as annual receipts, and the* source (labor) *from which they are produced,* so that both the letter and the spirit of the Constitution are maintained? [4]

The Sixteenth Amendment, as Chief Justice White in the Brushaber Case pointed out, did not do away with "the two great classes of direct and indirect taxes", nor did it abandon the "two rules by which their imposition must be governed". Both the class within which the tax falls and the method by which it must be implemented are still a valid part of our Constitution [5]. Where, then, is the line between direct and indirect taxation drawn separating a valid indirect tax levied upon income, from a "capitation, or other direct, tax" levied upon people; for either one of those taxes must be paid out of one's yearly receipts, or income [6]?

When the income tax code was drafted in 1913, Congress decided to confine the application of the tax to yearly net income, not gross income or annual receipts. [7] We believe Congress knowingly confined the income tax to yearly net income specifically to avoid running afoul of the constitutional requirement that all taxes levied directly on property or people must be apportioned [8]. We say this because it appears Congress maintained those principles throughout the years of 1862 to 1940. It has only been since 1940 that the personal exemption allowance has been reduced to below the average cost of living for the majority of citizens throughout the United States [see graphs, attached]. By taking a tax previously confined to commercial net income and reducing the personal exemption to below a reasonable allowance, then applying that tax to the gross receipts of common labor for hire employee, Congress, it appears to us, ventured into tax territory reserved by the Constitution for "capitation" taxes.

It was recognized by the Court in Pollock that some determination must be made that would settle the question as to what constituted a "direct tax" under the requirements of Article 1, Section 2, clause 3, and Article 1, Section 9, clause 4 of the Federal

Constitution. [9] The Pollock Court accepted that challenge and defined the Constitutional concept of "direct tax" to mean: "a tax upon one's whole income, is a tax upon the annual receipts from his whole property, and as such falls within the same class as a tax upon that property" [158 US 601, 625]. The Court made no distinction between the receipts of capital and the receipts of labor, for both capital and labor fall within the legal definition of property. The Court, again, when asked to define income, came to the same conclusion by defining the term income, under the Sixteenth Amendment, to mean "the gain derived from capital, from labor, or from both combined". The court did not define income as the gross receipts derived from capital or labor, as such would cause the tax to be in conflict with the Constitutional requirement of apportionment for all direct taxes.

The Sixteenth Amendment recognized that a person possesses only two *sources* from which they may derive income, although those *sources* may be used in many different ways. The definition of "direct tax", as expressed in Pollock, rests upon the meaning of the term "income" being the receipts "derived from" property [10], while the definition of the term "income" under the Sixteenth Amendment rests upon the meaning of income being the "gain," or profit derived from those receipts. The line separating a direct income tax from an indirect income tax being established by which of the two definitions of income, the tax, in substance, operated upon. A tax upon gross receipts being a "capitation, or other direct, Tax" requiring apportionment, while a tax upon the gain (income), or profit, "derived from" those receipts, is a Sixteenth Amendment income tax not requiring apportionment.

The courts have held many times that "it is the substance, not the form" which separates valid taxation from arbitrary confiscation. They also have held that "what cannot be done directly because of constitutional restrictions cannot be accomplished indirectly by legislation which accomplishes the same result." [11] Congress avoided invalid taxation, either by accident or knowledge, through every US Revenue Act implemented up until 1940. In all of those acts, the amount allowed as a deduction for "personal, living and family expenses" either at least met or exceeded the basic cost of living for the majority of people within the United States.

Where is the line drawn between a tax upon the person (capitation tax), which would be paid out of the receipts or income from his labor, and an indirect tax upon that labor? The two taxes, according to the Constitution, do not operate the same, because everyone must labor, in one way or another, in order to support themselves and family [12].

The Sixteenth Amendment provided for the taxation of income, which was derived from capital and or labor, it did not provide for the taxation of the capital or labor itself. This follows from the definition of *source* in its common speech usage and the fact that the tax is personal [13]. It stands, therefore, that in order for income (gain) to be "derived" from a source there must be something from which it can be separated or drawn. The term *source,* by practical operation, must be in reference to receipts, and the "gain" derived determined by the accounting method employed [26 USC 441-475]. Keeping that distinction in mind, Chief Justice White explained in 240 U.S.1, 19 [Brushaber] the

difference between a tax levied upon the constitutional *source*, and one levied upon the income derived from it.

"a condition which clearly demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended; that is, the prevention of the resort to the source from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself, and thereby to take an income tax out of the class of excise, duties and imposts, and place it in the class of direct taxes."

This brings us to our last point: the application of these concepts to the determination of "taxable" income as reflected on the modern day 1040 tax return form. This is critical to understand, for the entire basis of the Sixteenth Amendment income tax rest upon whether or not the tax is imposed upon the receipts as income, or the gain "derived from" those receipts. The case at hand is Alexander v. I.R.S., First Circuit No. 95-1451 and deals with the specific point of "above the line" versus "below the line" deductions. Certain deductions, called expenses of producing income (business and financial expenses), are deducted above the line, while other "miscellaneous itemized deductions"(including employee "business" expenses, if there are such things) and the personal exemption, are deducted below the line. What does "the line" represent in relation to the Sixteenth Amendment income tax imposed by the tax code? The Joint Committee on Taxation provided a somewhat confusing answer:

> JCS-3-01 "Volume II: Recommendations of the Staff of the Joint Committee on Taxation to Simplify the Federal Tax System", page 30, #6 "Above –the-line deductions and itemized deductions. Reference: http://waysandmeans.house.gov/hearings.asp?formmode=archive&hearing=101
>
> "Present law does not reflect a coherent theory for treating some deductions as above-the-line and some deductions as itemized deductions. Although above-the-line deductions are frequently thought of as deductions related to the production of income and itemized deductions are frequently thought of as reflecting ability to pay or encouraging certain behavior, not all deduction can be accounted for under these principles."

According to Justice Stewart, in Commissioner v. Tellier, 383 U.S. 687 (1966), the Federal Income Tax is a tax upon "net income", not upon gross income or annual receipts. It is that way because Congress chose to make it that way in 1913 [14]. If Congress chooses to tax gross income, then they must tax the gross income of all those within the class being taxed. If, on the other hand, they choose to tax commercial net income, then they must limit the tax to those within the class who operate upon the basis of "commercial net-income", they cannot mix the two distinct measurements without trespassing upon the due process clause of the Federal Constitution [15].

The term "taxable income" was in use long before Congress implemented 26 USC 63 in 1954 [16]. The term was used to identify that portion of the receipts Congress intended

to levy their tax upon; the courts then referring to this as "exerting the full measure of the taxing power". The term, by definition, means "that which is taxable" under the statute, and in reality has nothing to do with the amount of "taxable income" Congress actually makes subject to the tax [17]. Under the Revenue Acts implemented prior to 1954, the tax was levied upon the person's *entire net income*, then a credit was allowed against that net income for certain itemized deductions and the personal exemption, before the tax was payable [18]. Today line 22, of the 1040 Tax Return, represents this same taxable income, i.e. "commercial net income" as evidenced by the separate schedules; and Congress may diminish it if they choose. The point being is that in the case of sole-proprietors, business professions or occupations, and other entities deriving gains and profits from the "use" or "employment" of capital and or labor, the amount shown on line 22 of the 1040 tax return represents "commercial net income" [See 26 CFR 301.7701-1,-2,-3]. Whereas, for the common labor for hire employee the amount shown on line 22 quite often represents their entire annual receipts, leaving the personal exemption, allowed by 26USC151, as their only relief from what otherwise could be a financial disaster.

The Courts have said many times, and in many various ways, that "the power to tax is the power to destroy". Their meaning has always been clear, that the "power to tax", once confirmed, is unrestricted, that it is indeed "the power to destroy", for what entitles them to take 1% by taxation also allows them to take 100%. Whether or not that action would be politically acceptable is of no concern to the court [19]. By legal definition then, the income tax operates upon line 22 of the current 1040 tax return (the line separating gain from receipts), not line 39; thereby maintaining the separation between a direct tax measured by receipts, and an indirect excise tax levied upon the gain derived from those receipts. (Except in the case of the common labor for hire employee having no other income).

To this end it has been said by many courts that "exemptions and deductions are a matter of legislative grace" and therefore may be discarded at will. [20] However, the court in Tellier, held that that was not necessarily so, for those expenses necessary for arriving at net-income under the statute must be allowed, or:

"we would come close to making this type of business taxable on the basis of its gross receipts, while other business would be taxable on the basis of net income. If that choice is to be made, Congress should do it."

Congress apparently did make that choice in relation to the common labor for hire employee when they implemented section 22 (n) under the 1944 Revenue Act. What basis did they have and what did they mean by the term "adjusted gross income", in a commercial net income tax system? Can the two measurements of "taxable income" be justified? Or, can the same code section of the statute levy both a net income and a gross receipts tax upon two separate members of the same class, without being discriminatory?

The question of the validity of an indirect income tax, in relation to common labor for hire employment, has never been addressed. All such taxes, whether levied as license

taxes, special taxed, or income taxes, have been sustained upon the basis of the privilege of doing business, and that has not changed. [21] The Court in Pollock specifically avoided the question by stating that such taxes, measured by "gains and profits", in the past had been upheld as excises, but as to being an "income tax" they made no comment [158 U.S. 601, 635]. The taxes at issue in Pollock can be found not only in the 1894 Statue, but in the Civil War Statutes as "license taxes," "special taxes," or "income duties" as well; none of which attached to the common labor for hire employee, nor were they based upon wages [22]. To date, the question has not been raised as to why Congress felt it necessary to create "adjusted gross income" in the first place. [23] If section 22(a) (Gross Income Defined) of the 1939 Code was sufficient to include such common labor for hire employment wages in gross income; what was the point of adding subsection (n), the sections requiring the report of gross income and permitting the deduction of business expenses already existed? [24]

We do not protest the taxation of income, nor even suggest that common labor for hire employees be categorically exempted from the operation of the tax. Our objection is that all persons subject to the tax must be treated upon like principles, or the tax is arbitrarily applied and void for want of due process. A tax imposed upon the annual receipts of common labor for hire employment is not the same, in substance, as a tax laid upon the "gain", "profit", or "income" derived from their labors, accruing to their employer. The two subjects of the intended tax are entirely distinct from one another. If the Amendment's purpose is to tax yearly gains, from whatever *source* derived, then a tax upon annual receipts, no matter how they are acquired, is void for lack of apportionment, unless the personal exemption, in fact, does fulfill its statutory purpose. To hold otherwise would destroy the line between direct and indirect taxation established by Article 1, Section 8 and Article 1, Section 9, clause 4.

FOOTNOTES

[1] Letter to Richard M. Creamer, Director, Compliance Section, Ogden, UT

[2] http://waysandmeans.house.gov/legacy.asp?file=legacy/fullcomm\107cong\2-13-01\record\given.htm

[3] Congressional Record of October 16, 1913, page 5679:
"The statutory exemption of $3,000 is allowed for personal living and family expenses; however, this and other gross income for which special deductions are allowed by the law must be embraced in the return of gross income"

[4] Fairbank v. U.S., 181 U.S. 283, 290:
"It is a restriction on the power of Congress; and as, in accordance with the rules heretofore noticed, the grants of powers should be so construed as to give full efficacy to those powers and enable Congress to use such means as it deems necessary to carry them into effect, so in like manner a restriction should be enforced in accordance with its letter and spirit, and no legislation can be tolerated which, although it may not conflict with the letter, destroys the spirit and purpose of the restriction imposed." See also Gulf v. Ellis, 165 U.S. 150, 160

[5] Eisner v. Macomber, 252 U.S. 189, 206:
"A proper regard for its genesis, as well as its very clear language, requires also that this Amendment shall not be extended by loose construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal." See also Brushaber v. U.P. 240 U.S. 1, 17, 18, 19

[6] Taxing The Exercise of Natural Rights, John MacArthur Maguire (1934), p.286:
"If the Legislature were to attempt, by taxing all occupations, practically, to annul the prohibition against a poll tax, the question might arise. But there is a clear distinction between a tax upon certain specified businesses, *where the skill of the operator is a source of profit*, or where the public are appealed to for patronage and protection of a fixed and regular business, and a tax covering all persons, whatever may be their occupation." (Burch v. Mayor of Savannah, 42 GA. 596, 600-601 (1871))

[7] Congressional Record of August 28, 1913, page 3844, statement of Senator Cummins:
"Why, Mr. President, should Congress attempt to do more that is declared in the first section of the proposed bill? It is right; it is comprehensible; it embraces everything—no, I will withdraw that; it does not embrace the full power of Congress, because Congress can levy a tax upon gross incomes if it likes; it may diminish the extent of its taxing power or not exercise it at all; it may exclude certain things from the taxing power that it might include; but it can not change the character of the taxation; and when it is declared in the first lines of this bill that a tax is levied upon the entire net-income of all the citizens of this country, we have exercised all the power we have."
See also Treasury Regulation 118, section 39.21-1 (b) (Art. 21 of Treasury Regulation 45 (1918)):

"Although taxable net income is a statutory conception, it follows, subject to certain modifications as to exemptions and as to deductions for partial losses in some cases, the lines of commercial usage. Subject to these modifications, statutory net income is commercial net income."

[8] Congressional Record of July 5, 1909, pages 4109 to 4120, S.J.R. 40. Senator McLauren:

"Amend the joint resolution by striking out all after line 7 and inserting the following to wit; The words 'and direct taxes' in clause 3, section 2, Article 1, and the words 'or other direct,' in clause 4, section 9, Article 1, of the Constitution of the United States are hereby stricken out." This amendment to S.J.R. 40 was rejected, page 4120.

[9] Brushaber v. U.P., 240 U.S. 1, 16:

"It was held that the duty existed to fix what was a direct tax in the constitutional sense so as to accomplish this purpose contemplated by the Constitution."

[10] Pollock v. Farmers, 158 U.S. 601, 618, Chief Justice Fuller:

"That is a tax upon the reality and a tax upon the receipts therefrom were alike direct;"

[11] Fairbank v. U.S., 181 U.S. 283, 296, citing 157 U.S. 429, 581:

"If it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution, or of the rule of taxation and representation.… But constitutional provisions cannot be thus evaded. It is the substance, and not the form, which controls, as has indeed been established by repeated decisions of this court." See also: City of Detroit v. Murray Corp., 355 U.S. 489, 492:

"we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it" … Consequently in determining whether these taxes violate the Government's constitutional immunity we must look through from and behind labels to substance." See also: Educational Films Corp. v. Ward, 282 U.S. 379.

[12] U.S. v. Gilmore, 372 U.S. 39, 44 (1963):

"For income tax purposes Congress has seen fit to regard an individual as having two personalities: "one is [as] a seeker after profit who can deduct the expenses incurred in that search; the other is [as] a creature satisfying his needs as a human being and those of his family but who cannot deduct such consumption and related expenditures." See also: Federal Income Taxation *Cases and Materials*, Surrey and Warren (1953) page 217. Ditto Volume 1 1972 Edition, page 496

[13] Graves v. People of State of New York, 306 U.S. 466, 480, 481:

"It is measured by income which becomes the property of the taxpayer when received as compensation for his services; and the tax laid upon the privilege of receiving it is paid from his private funds …" See also: Federal Tax Procedure and Appeals by James Conlon (1936), page 61: "The commonly accepted definition of the term 'source' is 'that from which anything comes forth, regarded as its cause or origin, the first cause,' Webster's New International Dictionary". [There must be labor, before there can be compensation; labor is the origin, or first cause, not the employer]

[14] Mcdonald v. C. I. R., 323 U.S. 57, 67:

"Taxation on net, not on gross, income has always been the broad basic policy of our income tax laws. Net income may be defined as what remains out of the gross income after subtracting the ordinary and necessary expenses incurred in efforts to obtain and keep it."

[15] Mills v. State of Maine, First Circuit, No. 96-1973:

"Instead, in the subset of concerns, the Equal Protection Clause requires 'that cities, states and the Federal Government must exercise their powers so as not to discriminate between their inhabitants except upon some reasonable differentiation fairly related to the object of regulation…. View against this backdrop, '[e]qual protection of the laws means that 'no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place under like circumstances." See also: Gulf v. Ellis, 165 U.S. 150; Reagan v. Taxation, 461 U.S. 540; Schweiker v. Wilson, 450 U.S. 221; Colgate v. Harvey, 296 U.S. 404; Louisville Gas & Electric V. Coleman, 277 U.S. 32; Royster Guano Co. v. Com. Of Virginia, 253 U.S. 412; Tanner v. Little, 240 U.S. 369; Billings v. People Of Illinois, 188 U.S. 97; Home Insurance v. State of New York, 134 U.S. 594; Barbier v. Connolly, 113 U.S. 27.

[16] Taxable Income by Roswell Magill, 1936, Chapter 9 "Gross income, Gross Receipts, or Net Income"; New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934); See also [18] below.

[17] Congressional Record of August 28, 1913, page 3846, Senator Cummins:

"Congress can deduct from an income, in order to reach a taxable part of the income, anything it pleases. It can deduct a quarter of it, or it can deduct a half of it, or it can deduct all of it. This, therefore, does not relate to the constitutional authority of Congress. See [7] above.

[18] A Treatise on the Federal Income Tax Law of 1913 by Thomas Gold Frost (1913). Section 37, page 28:

"The purpose of the framers of the Act in only permitting deductions for the expenses actually incurred in carrying on any business, and excluding personal, living and family expenses, was for the reason that the specific exemption of $4,000 from *taxable income* was supposed to be sufficient to provide personal, living and family expenses."

[19] MCCray v. U.S., 195 U.S. 27, 55-64, page 60:

"This principle is pertinent only when there is no power to tax a particular subject, and has no relation to the case where such right exists. In other words, the power to destroy, which may be the consequence of taxation, is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope." See also: South Carolina v. Baker, 485 U.S. 505, 516:

"The United States cannot convert an unconstitutional tax into a constitutional one simply by making the tax conditional. Whether Congress could have imposed the condition by direct regulation is irrelevant. Congress cannot employ unconstitutional means to reach a constitutional end." See also: Mobile v. Turnipseed, 219 U.S. 35, 43; Stebbins v. Riley, 268 U.S. 137, 141, 143; Heiner v. Donnan, 285 U.S. 312, 325-330.

[20] New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440:

"The power to tax income like that of the new corporation is plain and extends to the gross income. Whether and to what extent deductions shall be allowed depends upon legislative grace." Commissioner v. Soliman, 506 U.S. 168, 179: "A deduction from gross income is a matter of grace, not right, Com. V. Sullivan, 326 U.S. 27, 28; Com. V. Tellier, 383 U.S. 687, 693. However, look at both Sullivan and Tellier, for the Court seems to qualify their remarks by adding. "If we enforced as federal policy the rule espoused by the Commissioner in this case, we would come close to making this type of business taxable on the basis of its gross receipts, while all other business would be taxable on the basis of net income. If that choice is to be made, Congress should do it.

[21] Hill v. C.I.R., 181 F2d 906 (1950) School teacher is "in the business" of being a teacher. Trent v. C.I.R., 291 F2d 669 (1961) trade or business includes all means of gaining a livelihood by work. Noland v. C.I.R., 269 F2d 108 [2,3] We start with the assumption that every person who works for compensation is engaged in the business of earning his pay. Kowalski v. C.I.R., 65 TC 44 (1975) "Over the years we have held on more than one occasion that a taxpayer may be in the trade or business of being an employee"

[22] Library of Congress web site:
http://memory.loc.gov/ammem/amlaw/lwsllink.html
http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=012/llsl012.db&recNum=463
http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=013/llsl013.db&recNum=252

[23] Shepards; 26USC22(n) 1944 to 1954, 26USC62 1954-1996

[24] Pedone v. United States, 151 F.Supp. 288, 291:

"The common understanding of the word income is the amount which one has gained by his transaction or activity. His gains, not his gross receipts, are his constitutionally taxable income." @294 "While, over the years, there has been some dispute as to whether the term "income" contained therein means "gross income" or "net income" the cases are quite settled on the point that it does not mean "gross receipts."
C.I.R. v. Weisman, 197 F2d 221, 225:
"In this view, a tax by Congress on the merchant's gross receipts, as such, would not be a tax on income, sustainable under the Sixteenth Amendment. The question then would be whether such tax fell within the general taxing power of Congress conferred by Article 1, Section 8 of the Constitution, or whether it would be deemed a "direct" tax which had to be laid in proportion to the population, as provided in Article 1, Section 9," [Would not a tax upon the gross receipts of the common law employee fall within this same rule? If not, why not?]