U.S. Supreme Court challenge question as to "what is income"
Case # No. 12-6169 - IRS & 9 other courts also ignored this evidence.

Question 2 discussion: Over the decades, since the early 1900s, the definition for what is called "income" has been distorted from original intent, and what was well known by the Courts, Congress and the People. Respondent has consistently claimed that "income" includes wages, salaries and compensation for services. However, this "interpretive regulation" is trying to "make income of that which is not income," according to the 16th Amendment (Helvering [1]).

When challenged with this question, Respondent has provided nothing in response but hearsay and presumption, which is not evidence (A.C. Aukerman [2] ; Del Vecchio [3] ; New York [4]). Presumption is not "a means of escape from constitutional restrictions" (Heiner [5]). "Presumption" does not replace the burden of proof or rebuttal.

Respondent claims that "all that comes in" as wages, salary or compensation for service is "income according to the proper definition" of what it classifies as "gross income" and is subject to its taxation scheme, contrary to Doyle ([6]) in defining "income." Originally, "income" was classified as "gains and profits" from "corporate activity" (Merchants [7]), unearned wealth or assets arising from the "source" of the lawful "income" (45 Congressional Record. 4420-4423, [8]).

Precedent shows that lawful "income" is "the gain derived from or through the sale or conversion of capital assets: from labor or from both combined" (Taft [9]). What defines income "must have the essential feature of gain to the recipient" (Conner, [10]; U.S.C.A. [11]).

For Respondent to consider wages as all "gain" or "profit" is to distort the definition of income. This Court stated it did not accept the idea of a tax on occupations and labor (Pollock [12]).

Income was clearly classified as "gains and profits," which "limit the meaning of" income. Income was not "everything that comes in" (Southern Pacific [13]). It was understood to be a "tax on the yearly profits arising from property, professions, trades, and offices" (Black's Law [14]). Respondent claims that wages are "income" and that "deriving" income as the 16th Amendment states equals the wages one receives from work, yet the Courts have clearly stated that one does not "derive" income through work (Edwards [15]).

In matter of fact, there is "no material difference" between Petitioner's, or any American's, labor and what he receives as wages. Thus, there is no lawful "income"

(profit). (Material difference is discussed thoroughly in Cottage [16]) People's labor is merely "exchanged" for money (Coppage [17]).

Labor is property (Butchers' Union Co.[18] ; Slaughter House [19]) and is like "a tree; income is the fruit; labour is a tree; income the fruit; capital, the tree; income the fruit" (Waring [20]). Selling labor is no different from selling goods (Adkins [21]). Wages and salaries for labor represent the conversion of property but realize no gain in that mere conversion. Labor, being "property," is the tree from which "income" or "gain" can be "derived," if it is used for that purpose, but for Respondent to claim it can tax the whole "tree" (wages) as "profit" is tantamount to claiming limbs of the tree are always "profit" and removing them, limiting any hope of fruit—true "income," or "gain," from those limbs—or more lawful income to government, and not impoverish citizens.

Recognition of the inherent elements of wages and personal costs to produce labor is vital. It is patently unjust, unconscionable and unfair to force people to offer up all their wages as pure "profit" when there are ample "costs" related to the production of labor. "The freedom and right to earn a living through any lawful occupation is exempt from taxation by the federal government." (Grosjean [22]; Coppage (17).

In 1939, "only 3.9% of the population" of the United States were covered by the income tax . . . only a small portion of the population" (Treasury Department's Division of Tax Research [23]).

How can that be when far more than 3.9% of Americans in 1939 provided labor or services for wages? That is because wages were not then, and are not today, lawful "income," and only 3.9% of the population in 1939 were wealthy enough to actually have true "income" (unearned wealth, or a corporate profit) or income "derived from" their principal, or savings).

The term "income" was never meant to include principal, or what are wages, as there was a clear "distinction between income and principal" (1913 Congressional Record [24]). This Court has also always made a clear distinction between "profit" and "wages." Wages were not "profit" and could not be taxed (U.S. v. Balard [25]).

Income is "not a wage or compensation for any type of labor" (Staples [26]). "Reasonable compensation for labor or services rendered is not profit" (Laureldale Cemetery [27]).

People of the early 1900s understood that the "new system" of taxation would not involve wages or salaries as "an income" (Gov. A.E. Wilson on the Income Tax [28]).

The right to work and receive wages for labor "cannot be taxed as privilege" (Jack Cole [29]; Coppage (17).

Respondent's own code (1939) stated in Section 22 GROSS INCOME:

(a) "Gross income includes gains, profits, and income derived from salaries, wages, or compensation for personal service . . ."

Gains, profit and income are redundant terms and confuse the lawful definition of what a "profit" is because it is the same thing as "gain," or "income." They all mean the same thing. Defining it in 1939, Section 22 shows there was a clear difference between "profits" and "wages."

If "gains, profit and income" are synonymous with "salaries, wages, or compensation," why state "derived from"? One does not "derive" income "from" a wage if they lawfully mean the same thing. If wages are income already, why use the term "derived from"?

Gross "income" includes gains, profits and income "derived from" salaries, wages or compensation for personal services, and "salaries, wages or compensation for personal service are not to be taxed as an entirety unless in their entirety they are gains, profits and income" (Lucas [30]). It should also be noted that "gross income" also includes that which is derived from a corporate profit, or unearned wealth, as elsewhere argued, but something conspicuously missing from the definition.

The wages Petitioner or any American makes cannot be counted in their entirety as a "profit," for this makes labor worth nothing (zero basis for labor costs to wage earned), which is nothing more than slavery.

A direct tax on wages is a tax that diminishes the source of potential "income" and has been declared unconstitutional. An indirect tax on wages is unconstitutional because an indirect tax is a tax on privilege; i.e., wealth-producing unearned income, or in making a corporate profit, neither of which Petitioner (or most Americans receiving wages) is involved with. Lawful taxation leaves the source (wealth, property or limbs growing from the tree) producing the "income" undiminished, and taps the true income "derived from" the source—the actual fruit coming off the "tree."

Twice during the debates on the 16th Amendment, Congress rejected the idea of bringing direct taxes within the authority of the 16th Amendment. Then twice more, on July 5, 1909, Congress rejected the idea by direct vote of the Senate (S.J.R. No. 25 and S.J.R. No. 39).

This argument by Respondent was in response to the question put to the Court by Peck [31]) as to whether the 16th Amendment created any new taxing power, which the Court stated clearly it did not. Thus, Respondent has clearly distorted and obfuscated the original intended definition of "income."

Petitioner cannot declare he has "income" when he does not have any, in violation of his conscience and to not present false testimony via the 1040 form under penalty of perjury.

Who is Petitioner to believe and how does he act when confronted with this Court's and other Courts' long-standing decisions? (A 64-page brief on "income" is in previously named Court documents for more detail.)

Finally, it must be noted that the law provides for protection from taxes upon income "excluded by law" (Treas. Reg. §1.61-1 [32]) and income "not taxable by the Federal Government under the Constitution" (Treas. Reg. §1.312-6[b] [33]). It is Petitioner's contention that these exclusions have not been lawfully determined as yet, and the issue of "income" may fall under these regulations.

End Notes

1. Helvering v. Edison Bros. Stores, 133 F2d 575. (1943) "The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment."

2. A.C. Aukerman Co. v. R.L. Chaides Const. Co., 960 F.2d 1020, 1037 (Fed. Cir. 1992) "This court has never treated a presumption as any form of evidence."

3. Del Vecchio v. Bowers, 296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935 . "[A] presumption is not evidence."

4. New York Life Ins. Co. v. Gamer, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) "[A presumption] cannot acquire the attribute of evidence . . ."

5. Heiner v. Donnan, 285, US 312 (1932) and New York Times v. Sullivan, 376 US 254 (1964) "The power to create [false] presumptions is not a means of escape from constitutional restrictions."

6. Doyle v. Mitchell Brother, Co., 247 US 179 (1918)
"We must reject in this case . . . the broad contention submitted in behalf of the Government that all receipts—everything that comes in—are income within the proper definition of the term 'income' . . ."

7. Merchants Loan & Trust Co. v. Smietanka, 225 U.S. 509, 518, 519. (1923)
"Income, as defined by the Supreme Court means, 'gains and profits' as a result of corporate activity and 'profit gained through the sale or conversion of capital assets.' " (Also see 399. Doyle v. Mitchell Bros. Co. 247 U.S. 179, Eisner v. Macomber 252 U.S. 189, Evans v. Gore 253 U.S. 245, Summers v. Earth Island Institute, No. 07-463 [U.S., March 3, 2009] [citing Bender v. Williamsport Area School Dist., 475 U. S. 534, 541 {1986}]).

8. 45 Congressional Record, 4420 (1909)
"Mr. Heflin. 'An income tax seeks to reach the unearned wealth of the country and to make it pay its share.' 4423 Mr. Heflin. 'But sir, when you tax a man on his income, it is because his property is productive. He pays out of his abundance because he has got the abundance.' "

9. Taft v. Bowers, N.Y. 1929, 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460
"The meaning of 'income' in this amendment is the gain derived from or through the sale or conversion of capital assets: from labor or from both combined; not a gain accruing to capital or growth or increment of value in the investment, but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital however employed and coming in or being 'derived,' that is, received or drawn by the recipient for his separate use, benefit, and disposal."

10. Conner v. United States, 303 F. Supp. 1187 (1969) p. 1191: 47 C.J.S. Internal Revenue 98, p. 226
"[2] Whatever may constitute income, therefore, must have the essential feature of gain to the recipient. This was true when the 16th amendment became effective, it was true at the time of the decision in Eisner v. Macomber, it was true under section 22(a) of the Internal Revenue Code of 1939, and it is true under section 61(a) of the Internal Revenue Code of 1954. If there is no gain, there is no income."
"[1] . . . It [income] is not synonymous with receipts. Simply put, pay from a job is a 'wage,' and wages are not taxable. Congress has taxed income, not compensation."

11. U.S.C.A. Const. Am 16
"There must be gain before there is 'income' within the 16th Amendment."

12. Pollock, 158 U.S. at 635-637
"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such. It is evident that the income from realty formed a vital part of the scheme for taxation embodied therein. If that be stricken out, and also the income from all investments of all kinds, it is

obvious that by far the largest part of the anticipated revenue would be eliminated, and this would leave the burden of the tax to be borne by professionals, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance as a tax on occupations and labor. We cannot believe that such was the intention of Congress. We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not lay excise taxes on business, privileges, employments and vocations. But this is not such an act; and the scheme must be considered as a whole."

13. Southern Pacific v. Lowe, U.S. 247 F. 330. (1918)
". . . [I]ncome; as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words 'gains' and 'profits' is to limit the meaning of the word 'income.' "

14. Black's Law Dictionary, 2nd Edition, "Income Tax"
" 'A tax on the yearly profits arising from property, professions, trades and offices.' See also 2 Steph. Comm 573. Levi v. Louisville, 97 Ky. 394,

15. Edwards v. Keith, 231 F. 110 (2nd Cir. 1916)
"The statute and the statute alone determines what is income to be taxed. It taxes only income 'derived' from many different sources; one does not 'derive income' by rendering services and charging for them."

16. Cottage Savings Assn. v. Commissioner, 499 U.S. 554 (1991)

17. Coppage v. Kansas, 236 U.S. 1, at 14, 23, 24 (1915)
"Included in the right of personal liberty and the right of private property are taking of the nature of each is the right to make contracts for the acquisition of property. The chief among such contracts instead of personal employment, by which in labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other artists away to begin to acquire property, save by working for money... The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates."

18. Butchers' Union Co. v. Crescent City, Colorado, 111 U.S. 746, 757 (1883)
"It has been well said that, the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable . . ."

19. Slaughter House, 83 U.S. 36, at 127 (1873)
"Property is everything which has an exchangeable value, in the right of property includes the power to dispose of that according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lives to a large extend the foundation of most other forms of property, and of all solid individual and national prosperity."

20. Waring v. City of Savannah, 60 Ga. 93, 100 (1878)
"So that, perhaps, the true question is this: is income property, in the sense of the constitution, and must it be taxed at the same rate as other property? The fact is, property is a tree; income is the fruit; labour is a tree; income the fruit; capital, the tree; income the fruit. The fruit, if not consumed (severed) as fast as it ripens, will germinate from the seed . . . and will produce other trees and grow into more property; but so long as it is fruit merely, and plucked (severed) to eat . . . it is no tree, and will produce itself no fruit."

21. Adkins v. Children's Hospital, 261 U.S. at 558
"In principle, there can be no difference between the case of selling labor and the case of selling goods."

22. Grosjean v. American Press Co., 297 U.S. 233 (1936); Jones v. Opelika, 316 U.S. 584, 56 S.Ct. 444 (1943). (See also Follett v. McCormick, 321 U.S. 573 64 S.Ct. 717 [1944]; Harper v. Virginia Bd. of Elections, 383 U.S. 663, 86 S.Ct. 1079 [1966])
"The freedom and right to earn a living through any lawful occupation is exempt from taxation by the federal government!" (emphasis added).

23. Treasury Department's Division of Tax Research publication, "Collection at Source of the Individual Normal Income Tax," 1941
"For 1936, taxable income tax returns filed represented only 3.9% of the population . . . [O]nly a small proportion of the population of the United States is covered by the income tax."

24. 1913 Congressional Record, p. 3843, 3844; Senator
Albert B. Cummins "The word 'income' has a well defined meaning before the amendment of the Constitution was adopted. It has been defined in all of the courts of this country . . . If we could call anything that we pleased income, we could obliterate all the distinction between income and principal. The Congress can not affect the meaning of the word 'income' by any legislation whatsoever . . .

Obviously the people of this country did not intend to give to Congress the power to levy a direct tax upon all the property of this country without apportionment."

25. U.S. v. Balard, 535, 575 F. 2D 400 (1976); (see also Oliver v. Halstead, 196 VA 992; 86 S.E. Rep. 2D 858)
"Gross income and not 'gross receipts' is the foundation of income tax liability . . . The general term 'income' is not defined in the Internal Revenue Code . . . 'gross income' means the total sales, less the cost of goods sold, plus any income from investments and from incidental or outside operations or sources. 575 There is a clear distinction between 'profit' and 'wages' or 'compensation for labor.' Compensation for labor cannot be regarded as profit within the meaning of the law . . . The word profit is a different thing altogether from mere compensation for labor . . . The claim that salaries, wages and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who performed the services . . . is without support either in the language of the Act or in the decisions of the courts construing it and is directly opposed to provisions of the Act and to Regulations of the Treasury Department . . ."

26. Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, 1937]
"Income within the meaning of the Sixteenth Amendment and Revenue Act, means 'gains' . . . and in such connection 'gain' means profit . . . proceeding from property, severed from capital, however invested or employed and coming in, received or drawn by the taxpayer, for his separate use, benefit and disposal . . . Income is not a wage or compensation for any type of labor."

27. Laureldale Cemetery Assn. v. Matthews, 47 Atlantic 2d. 277 (1946)
". . . Reasonable compensation for labor or services rendered is not profit . . ."

28. Gov. A.E. Wilson on the Income Tax (16) Amendment, New York Times, Part 5, p. 13, February 26, 1911
"The poor man or the man in moderate circumstances does not regard his wages or salary as an income that would have to pay its proportionate tax under this new system."

29. Jack Cole Company v. Alfred T, MacFarland, Commissioner, 206 Tenn. 694, 337 S.W.2d 453 Sup. Court of Tennessee (1960)
"Since the right to receive income or earnings is a right belonging to every persons, this right cannot be taxed as privilege." (See also Jerome H. Sheip Co. v. Amos, 100 Fla. 863, 130 So. 699, 705 [1930]; Redfield v. Fisher, 135 Or. 180, 292 P. 813, 819 [Ore. 1930]; Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720, 733 [1925]; O'Keefe v. City of Somerville, 190 Mass. 110, 76 N.E. 457, 458 [1906]).

30. Lucas v. Earl, 281 U.S. 111 (1930)
"The claim that salaries, wages, and compensation for personal services are to be taxed as an entirety and therefore must be returned by the individual who has performed the services . . . is without support, either in the language of the Act or in the decisions of the courts construing it. Not only this, but it is directly opposed to provisions of the Act and to regulations of the U.S. Treasury Department, which either prescribed or permits that compensations for personal services not be taxed as a entirety and not be returned by the individual performing the services. It has to be noted that, by the language of the Act, it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits, and income derived from salaries, wages, or compensation for personal services."

31. Peck & Co. v. Lowe, 247 U.S. 165 (1917) Brief for the Appellant at 11, 14-15
"The Sixteenth Amendment to the Constitution has not enlarged the taxing power of Congress or affected the prohibition against its burdening exports. (11) This is brought out clearly by this court in Brushaber v. Union Pacific Railroad Co., 240 U.S. 1, and Stanton v. Baltic Mining Co., 240 U.S. 103. In the former case it was pointed out that the all-embracing power of taxation conferred upon Congress by the Constitution included two great classes, one indirect taxes or excises, and the other direct taxes, and that of apportionment with regard to direct taxes. It was held that the income tax in its nature is an excise; that is, it is a tax upon a person measured by his income . . . It was further held that the effect of the Sixteenth Amendment was not to change the nature of this tax or to take it out of the class of excises to which it belonged, but merely to make it impossible by any sort of reasoning thereafter to treat it as a direct tax because of the sources from which the income was derived. ([14-15] Peck & Co. v. Lowe, 247 U.S. 165 [1917]. Not in the ruling itself)."

32. Treas. Reg. §1.61-1
"Gross income means all income from whatever source derived, unless excluded by law."

33. Treas. Reg. §1.312-6(b)
"Among the items entering into the computation of corporate earnings and profits for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well as all items includable in gross income under section 61 or corresponding provisions of prior revenue acts."