

Lavin v. Marsh, 644 F.2d 1378, 9th Cir., (1981)

"Persons dealing with government are charged with knowing government statutes and regulations, and they assume the risk that government agents may exceed their authority and provide misinformation"

Bollow v. Federal Reserve Bank of San Francisco, 650 F.2d 1093, 9th Cir., (1981)

"All persons in the United States are chargeable with knowledge of the Statutes-at-Large.. It is well established that anyone who deals with the government assumes the risk that the agent acting in the government's behalf has exceeded the bounds of his authority"

Internal Revenue Code:

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter A > PART I > § 1

§ 1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the **taxable income** of ...

(b) Heads of households

There is hereby imposed on the **taxable income** of ...

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the **taxable income** of ...

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter A > PART I > § 2

§ 2. Definitions and special rules

(e) For definition of **taxable income** see section 63.

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter A > PART I > § 63

§63. **Taxable income** defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term "**taxable income**" **means** **gross income** minus ...

(b) Individuals who do not itemize their deductions

In the case of an individual who does not elect to itemize their deductions for the taxable year, for purposes of this subtitle, the term "**taxable income**" **means** **adjusted gross income**, minus...

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART I > § 62

§62. **Adjusted gross income** defined

(a) General rule

For purposes of this subtitle, the term "**adjusted gross income**" **means**, in the case of an individual, **gross income** minus ...

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART I > § 64

§64. **Ordinary income** defined

For purposes of this subtitle, the term "**ordinary income**" **includes** any **gain** from the sale or exchange of property ...

TITLE 26 > Subtitle A > CHAPTER 1 > Subchapter B > PART I > § 61

(a) General definition

Except as otherwise provided in this subtitle, *gross income* means all *income* from whatever source derived...

In review:

§63a - "*taxable income*" means "*gross income*" minus...

§62a - "*adjusted gross income*" means, in the case of an individual, "*gross income*" minus...

§64 - "*ordinary income*" includes any gain ... (watch for the word gain in the following Supreme Court decisions).

§61a - "*gross income*" means all "*income*" from whatever source derived... (Note the Edwards vs. Keith Decision below)

§??? - "*income*" means ?????? *Nowhere to be found in The Internal Revenue Code!!!*

These are the only definitions in Title 26, the Internal Revenue Code, that include the word "income" yet none of them actually define the word "income". The definition of the word "income" does not exist in Title 26. How do we really know this? The Supreme Court tells us so:

U.S. v. Ballard, 535 F.2d 400, cert denied, 429 U.S. 918, 50 L.Ed.2d 283, 97 S.Ct. 310 (1976)

"...the general term 'income' is not defined in the Internal Revenue Code..."

Note that in section 61a the term "income" is claimed by IRS "agents acting in the governments behalf" (see the 2 decisions at the top of this page) to be defined by saying "from whatever source derived". Can "rain" be defined by saying "it comes from clouds"? Can "electricity" be defined by saying "it comes from dams"?

Exactly what is this thing, this "*income*" that is taxed? Where can we find the legal definition as used in Title 26? Let's ask the Supreme Court.

Butchers' Union Co. v. Crescent City Co., 111 U.S. 746.(1883)

"Among these unalienable rights, as proclaimed in the Declaration of Independence is the right of men to pursue their happiness, by which is meant, the right of any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment... It has been well said that, the property which every man has is his own labor, as it is the original foundation of all other property so it is the most sacred and inviolable..."

Redfield v. Fisher, 292 P. 813, 135 Or. 180, 294 P.461, 73 A.L.R. 721 (1931)

"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 individuals' rights to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."

Edwards v. Keith, 231 F110, 113 (1916)

"The phraseology of form 1040 is somewhat obscure But it matters little what it does mean; 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... IRS cannot enlarge the scope of the statute.**"

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 which produce the gain is without support, either in the language of the Act or in the decisions of the courts construing it... It is 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 gains, profits, and income derived from salaries, wages, or compensation for personal services.**"

Conner v. U.S., 303 F Supp. 1187 (1969)

"... 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 Eisner v. Macomber Supra, it was true under Section 22(a) of the Internal Revenue Code of 1938, and it is likewise true under Section 61(a) of the I.R.S. Code of 1954. **If there is not gain, there is not income ... Congress has taxed income not compensation.**"

"There is a clear distinction between 'profit' and 'wages', or a compensation for labor. Compensation for labor (wages) cannot be regarded as profit within the meaning of the law. The word 'profit', as ordinarily used, means the **gain** made upon any business or investment- - a different thing altogether from the mere compensation for labor."

Emanuel J. Doyle v. Mitchell Brothers Company 247 US 179 (1918)

"Yet it is plain, we think, that by the true intent and meaning of the Act the entire proceeds of a mere conversion of capital assets were not to be treated as income. **Whatever difficulty there may be about a precise and scientific definition of 'income' it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of gain or increase arising from corporate activities.** As was said in Stratton's Independence vs. Howbert, 231 U.S. 399, 415: 'Income may be defined as the gain derived from capital, from labor, or from both combined.'"

Merchant's Loan & Trust Company v. Smietanka 255 US 509 (1921)

"It is obvious that these decisions in principle rule the case at bar if the word 'income' has the same meaning as the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in Southern Pacific Co. v. Lowe, 247 U.S. 330, 335, where it was assumed for the purposes of decision that there was no difference in its meaning as used in the Act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the Act of 1913. When to this we add that in Eisner v. Macomber, Supra, arising under the Corporation Excise Tax Act of 1909, with the addition that it should include 'profit gained through a sale or conversion of capital assets,' there would seem to be no room to doubt that **the word must be given the same meaning in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act and that what that meaning is has now become definitely settled by decisions of this court.**"

Stanton v. Baltic Mining, 240 U.S. 103 (1916)

"... by the previous ruling it was settled that the provisions of **the Sixteenth Amendment conferred no new power of taxation** but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived, that is by testing the tax not by what it was -- a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed. "

Burnet v. Harmel 287 US 103 (1932)

"before the 1921 Act this Court had indicated (see Eisner v. Macomber, 252 U.S. 189, 207, 64 L.ed 521, 9 A.L.R. 1570, 40 S. Ct. 189), what it later held, that *'income,' as used in the revenue acts taxing income, adopted since the 16th Amendment, has the same meaning that it had in the Act of 1909.* Merchants; Loan & T. Co. v. Smietanka, 255 U.S. 509, 519, 65 L.ed. 751, 755, 15 A.L.R. 1305, 41 S. Ct. 386; see Southern Pacific Co. v. Lowe. 247 U.S. 330, 335, 62 L.ed. 114, 1147, 38 S. Ct. 540."

Staples v. U.S., 21 F Supp 737 U.S. Dist. Ct. ED PA, (1937)

"*Income within the meaning of the 16th Amendment and the Revenue Act means, gain ... 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."

Oliver v. Halstead, 196 VA 992; 86 S.E. Rep 2nd 85e9 (1955)

"There is a clear distinction between `profit' and `wages', or a compensation for labor. *Compensation for labor (wages) cannot be regarded as profit within the meaning of the law.* The word `profit', as ordinarily used, means the gain made upon any business or investment -- a different thing altogether from the mere compensation for labor."

Central Illinois Public Service Co. v. United States, 435 U.S. 21 (1978)

"*Decided cases have made the distinction between wages and income and have refused to equate the two* in withholding or similar controversies."

Peoples Life Ins. Co. v. United States, 179 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967);

Humble Pipe Line Co. v. United States, 194 Ct. Cl. 944, 950, 442 F.2d 1353, 1356 (1971);

Humble Oil & Refining Co. v. United States, 194 Ct. Cl. 920, 442 F.2d 1362 (1971);

Stubbs, Overbeck & Associates v. United States, 445 F.2d 1142 (CA5 1971);

Royster Co. v. United States, 479 F.2d, at 390; Acacia:

Mutual Life Ins. Co. v. United States, 272 F. Supp. 188 (Md. 1967).

Some other interesting decisions:

Hale v. Henkel, 201 U.S. 43 (1906)

"...we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the state. *The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to incriminate him.* He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.

Upon the other hand, the corporation is a creature of the state. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to [201 U.S. 43, 75] act as a corporation are only preserved to it so long as it obeys the laws of its creation.

There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a state, having chartered a corporation to make use of certain franchises, could not, in the exercise of its sovereignty, inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges."

U.S. v. Tweel, 550 F.2d 297, 299 (1977)

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . We cannot condone this shocking behavior by the IRS. Our revenue system is based on the good faith of the taxpayer and the taxpayers should be able to expect the same from the government in its enforcement and collection activities."

Hassett v. Welch, 303 U.S. 303 (1938)

"In view of other settled rules of statutory construction, which teach that... if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer..."

Spreckles Sugar Refining Co. vs. McLain: 192 US 397

"Keeping in mind the well settled rule, that the citizen is exempt from taxation, unless the same is imposed by clear and unequivocal language, and that where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid."

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