

AFFIDAVIT OF DOREEN HENDRICKSON

1. I affirm these matters to be true of my personal knowledge and, if called to do so, could and would competently testify thereto.

2. I do not believe that *“only federal, state or local government workers are liable for the payment of federal income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws”*.

3. I have never based the content I provided on any tax-related instrument or the conclusions reflected therein on the notion that *“only federal, state or local government workers are liable for the payment of federal income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws*.

4. The content to which I attested as being what I know and believe to be true, complete and correct on the tax-related documents I freely signed concerning 2002, 2003 and 2008, and the conclusions reflected therein, are informed by my awareness that the United States Constitution prohibits the imposition of federal capitations and other direct taxes other than by the mechanism of apportionment at Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4.

5. That content and those conclusions are further informed by my awareness that the United States Supreme Court and other authorities have repeatedly and consistently declared that the rules laid down in Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 are unaffected, unrevoked and unrepealed by the 16th Amendment to the US Constitution or any other, as in the following instances:

“We are of opinion, however, that the confusion is not inherent, but rather arises from the [erroneous assumption] that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes.” [an error which is obvious, since it would cause] “...one provision of the Constitution [to] destroy another; that is, [it] would result in bringing the provisions of the Amendment [supposedly] exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned.”

Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916)

“[T]he amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or

”
ary Department legislative draftsman F. Morse Hubbard summarizing the ruling for
ess in testimony in 1943 (House Congressional Record, March 27, 1943, p. 2580);

**DEFENDANT'S
EXHIBIT**

CASE
NO. 13-cr-20371

EXHIBIT
NO. 1

"The Amendment, the [Supreme] court said [in its unanimous ruling in Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916)], judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong."

Cornell Law Quarterly, 1 Cornell L. Q. 298 (1915-16);

"The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment..."

Legislative Attorney of the American Law Division of the Library of Congress Howard M. Zaritsky in his 1979 Report No. 80-19A, entitled 'Some Constitutional Questions Regarding the Federal Income Tax Laws'.

"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects..."

Peck v. Lowe, 247 U.S. 165 (1918);

"[T]he settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income."

Taft v. Bowers, 278 US 470, 481 (1929).

"[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable. 45 Cong. Rec. 2245-2246 (1910); id. at 2539; see also Brushaber v. Union Pacific R. Co., 240 U. S. 1, 240 U. S. 17-18 (1916)"

So. Carolina v. Baker, 485 U.S. 505 (1988).

6. That content and those conclusions are further informed by my awareness that Constitutional "capitations", which remain imposable only by the mechanism of apportionment, have been acknowledged by the United States Supreme Court to be what Adam Smith described as such in his 1776 treatise, 'An Inquiry into the Nature and Causes of the Wealth of Nations':

"...[Secretary of the Treasury] Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...'

*...
"He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptation of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue;...'"*

Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895).

7. That content and those conclusions are further informed by my awareness that Adam Smith's definition of capitations includes, among other things:

"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"... "Capitation taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at."... "Capitation taxes, so far as they are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes."... "In the capitation which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people, according to what is supposed to be their fortune, by an assessment which varies from year to year."

Adam Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', Book V, Ch. II, Art. IV (1776)

8. That content and those conclusions are further informed by my awareness that Adam Smith used the common word 'wages' in his work, not the custom-defined term of the same spelling found in the modern revenue laws, thus declaring that among other things, a tax upon common pay-for-labor is a capitation; and also that Smith includes elsewhere in his definition of "capitations" a version imposed under the label "poll taxes," described as taxes assessed as (or on) a portion of an individual's annual gains.

9. That content and those conclusions are further informed by my awareness that Bouvier's Law Dictionary, 6th Ed. (1856), the official law dictionary of Congress in the middle of the 19th century when the income tax was first enacted, and which, in harmony and concert with Adam Smith's definitions, illuminates Congressional intentions as to what their newly-enacted unapportioned "income tax" of 1862 is, and can be, and isn't, and cannot be, contains the following definition:

"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."

10. The content to which I attested as being what I know and believe to be true, complete and correct on the tax-related documents I freely signed concerning 2002, 2003 and 2008, and the conclusions reflected therein, are informed by my belief that in light of the foregoing, however much it may have been carefully crafted to appear otherwise, the unapportioned income tax cannot and does not fall on:

- "all that comes in";
- "every different species of revenue";
- "the fortune or revenue of each contributor";
- "the [common-meaning] wages of labour";
- "what is supposed to be one's fortune [per] an assessment which varies from year to year"; or
- "[an assessed percentage] of [one's] annual gains;

and it is therefore axiomatic that what qualifies as "income" subject to the tax must be only a specialized and distinguished subclass of gains.

11. That content and those conclusions are further informed by my awareness that the United States Supreme Court and other authorities, including Congress and the United States Department of Treasury, have repeatedly and consistently declared the "income tax" to be an excise tax, as in the following:

"I hereby certify that the following is a true and faithful statement of the gains, profits, or income of _____, of the _____ of _____, in the county of _____, and State of _____, whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the 1st day of January to the 31st day of December, 1862, both days inclusive, and subject to an income tax under the excise laws of the United States:"

(from the first income tax return form) (emphasis added);

"The income tax is, therefore, not a tax on income [earnings] 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. "

F. Morse Hubbard, Treasury Department legislative draftsman. House Congressional Record, March 27, 1943, page 2580 (emphasis added);

"...in Springer v. U. S., 102 U.S. 586, it was held that a tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional."

Pollock v. Farmer's Loan & Trust, 158 U.S. 601, 1895 (emphasis added);

"...taxation on income was in its nature an excise entitled to be enforced as such,"

Brushaber v. Union Pacific RR. Co., 240 U.S. 1 (1916), quoting and reiterating language used in its ruling in Pollock v. Farmer's Loan and Trust (emphasis added).

"So the [16th] amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income."

F. Morse Hubbard, Treasury Department legislative draftsman. House Congressional Record, March 27, 1943, page 2580 (emphasis added).

12. That content and those conclusions are further informed by my awareness that the United States Supreme Court and other authorities have consistently and repeatedly declared "excise taxes" to be taxes on the exercise of privileges, as in the following:

"...the requirement to pay [excise] taxes involves the exercise of privilege."

Flint v. Stone Tracy Co., 220 U.S. 107 (1911);

"The terms 'excise tax' and 'privilege tax' are synonymous. The two are often used interchangeably."

American Airways v. Wallace, 57 F.2d 877, 880 (Dist. Ct., M.D. Tenn., 1932);

"The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..."

United States v. County of Allegheny, 322 US 174 (1944).

"The income tax... ..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 tax."

Former Treasury Department legislative draftsman F. Morse Hubbard in testimony before Congress in 1943

*"The obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking. * * * The term "excise tax" is synonymous with "privilege tax" and the two are used interchangeably. Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax."*

71 Am. Jur.2d Sec. 24, pp. 319-320

13. That content and those conclusions are further informed by my awareness that "privilege" is defined as:

"PRIVILEGE: A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of others citizens. An exceptional or extraordinary power of exemption. A particular right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others."

Black's Law Dictionary, 6th edition;

PRIVILEGE. A right peculiar to an individual or body. Ripley v Knight, 123 Mass 519. An advantage held by way of license, franchise, grant, or permission, not possessed by others. Special enjoyment of a good, or exemption from an evil or burden. Wisener v Burrell, 28 Okla 546, 118 P 999. An immunity existing under the law. For tax purposes, any occupation or business which the legislature may declare to be a privilege and tax as such. Seven Springs Water Co. v Kennedy, 156 Tenn 1, 299 SW 792 56 ALR 496. (Civil law.) A tacit hypothecation of a thing without any transfer of the possession of it or of the right to possession. The Glide, 167 US 606, 42 L Ed 296, 17 S Ct 930.

Ballentine's Law Dictionary, 3rd Edition

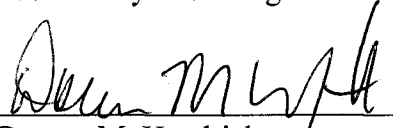
PRIVILEGE, rights. This word, taken its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right. In its passive sense, it is the same prerogative granted by the same particular law. Bouvier's Law Dictionary, 6th Ed. (1856).

13. The content to which I attested as being what I know and believe to be true, complete and correct on the tax-related documents I freely signed concerning 2002, 2003 and 2008, and the conclusions reflected therein, are informed by my belief that my economic activities are not extraordinary, not of any special

character, and not distinguished or distinguishable in any way as being within the power of the state to make subject to a charge for the enjoyment thereof, and that in light of the foregoing evidence and authorities nothing I have earned and nothing I have done can properly and honestly be reported on forms intended for the reporting of taxable things other than as I have so reported.

I swear that the foregoing is true and correct to the best of my knowledge.

Executed on June 27, 2013.



Doreen M. Hendrickson

Subscribed and sworn to or

affirmed before me this date: 6/27/2013

[seal]

My Commission Expires: 07/23/2017



ANNETTE M RHODES
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission Expires: July 23, 2017
Acting in the County of OAKLAND