MEMORANDUM OF LAW REGARDING THE MEANING OF "INCOME" AND "INCLUDES" IN THE INCOME TAX-RELATED STATUTES, AND THE PARTICULARS OF "WAGE" WITHHOLDING AND FICA TAXES

PART I- THE MEANING OF "INCOME"

There is a persistent misunderstanding in America about the meaning of one of the key terms in our own federal Constitution. That term is "capitation", and it is the sole specifically listed type of direct tax in the Constitution.

It's a funny thing that this term should be so poorly understood, and has seen little effort in the past to discern its meaning. Under the utterly explicit and still-controlling prescription of the Constitution, anything which qualifies as a capitation is subject to the rule of apportionment (by which the total to be collected with each imposition of the tax is divided among the states in proportion to their shares of the national population, and is then collected and remitted by the state governments). The reciprocal of this, of course, is that in order for the income tax we know and love (or any other tax, for that matter) to be administered WITHOUT apportionment, and yet still be valid, it CANNOT be a capitation. Before we discuss what the tax IS then, let's have a close look at what it CANNOT be...

> *"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability. 2. The Constitution of the United States provides that "no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, therein before directed to be taken." Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat. 317."* Bouvier's Law Dictionary, 6th Edition (1856).

In a way, this simple definition from what was, in its time, the Congressional law dictionary of record more-or-less tells us all that we need to know. A capitation is an annual imposition on each person measured by his estate and ability. Some may split hairs on the meaning of "estate", but "ability" pretty clearly refers to ability to pay, and that pretty clearly

means “revenue”. On the other hand, the reference to a “poll tax” leads to some confusion as well, especially when more modern references are relied upon.

For instance, the entire definition of “capitation” offered by Black’s Law Dictionary (fifth edition) is as follows:

> *“A poll tax (q.v.). A tax or imposition upon the person. It is a very ancient kind of tribute, and answers to what the Latins called “tributum”, by which taxes on persons are distinguished from taxes on merchandise, called “vectigalia”.”*

Not very illuminating.

Turning to the definition of "poll tax" in the same collection, we find:

> *“A capitation tax; a tax of a specific sum levied upon each person within the jurisdiction of the taxing power and within a certain class (as, all males of a certain age, etc.) without reference to his property or lack of it.*
>
> *Poll taxes as a prerequisite to voting in federal elections are prohibited by the 24th Amendment and as to state elections such were held to be unconstitutional in Harper v. Virginia Bd. of Elections, 383 U.S. 663, 86 S. Ct. 1079, 16 L.Ed2d 169.”*

If one makes no further study of this subject, and relies on Black's for one's sense of it, one might conclude that a "capitation" means a fixed, class-based levy, and might even imagine it to be a "voting tax"-- that is, a tax taken at the polling place before the right to vote can be exercised.

However, a capitation is NOT simply a "poll tax" (in fact, it would be proper to say that a "poll tax" is merely a variety of capitation), and a "poll tax" is not a "voting tax". Nonetheless, since most (including many legal professionals) have never made a study of this subject, sloppy presentations in prominent sources such as the one we have just examined have muddied the subject enough to make "capitation" a cognitive 'hiccup' term. Far too many who encounter the term, even while poring over the language of our fundamental law, simply skim past with no registration of its meaning or import.

So, just to clear up or forestall such confusion, let's examine the relevant observations of a couple of fellows who were pretty inarguably in a position to know what they were talking about. We'll start with Alexander Hamilton, one of the chief authors of the Constitution itself, from his argument in the first tax case argued before the United States Supreme Court:

> *"The following are presumed to be the only direct taxes. Capitation or poll taxes. Taxes on lands and buildings. General assessments, whether on the whole property of individuals, or on their whole real or personal estate; all else must of necessity be considered as indirect taxes."* (In addition to his inclusion of general assessments on personal estates as being in the class of direct taxes, note also that Hamilton does NOT characterize "Poll tax" as just an alternative name for "capitation"; more important still, as will become clearer in a moment, he specifically declares "poll taxes" to also be among the direct taxes subject to the apportionment rule.)

Now let's turn to the singular expert on this subject, and the one whose work guided the framers in their use of terms in the taxing clauses, Adam Smith, author of 'On The Wealth Of Nations', perhaps the most important work ever written about economics and taxation:

> *"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."*
> (Bear in mind that Smith is using the common word 'wages', not the custom-defined legal term of the same spelling found in the modern revenue laws.)

Smith goes on to discuss the version of capitations imposed under the name of "poll taxes", as well, observing that in the first poll tax, for instance, many were taxed according to their supposed fortune, being "*assessed at three shillings in the pound of their supposed income"*.

Clearly, a general, indiscriminate tax on income read as "all that comes in", or on "every species of revenue", qualifies as either a "capitation" or a "poll tax" (or both) as each term is

properly understood. Consequently, we know that any such tax must, under the provisions of the Constitution, be administered exclusively by the rule of apportionment.

I'll close this introductory discussion of "capitations" with the acknowledgment by the United States Supreme Court, in the second hearing of the case of Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895), that the understanding of that term that I have presented here is precisely the one which informed the Framers of the Constitution when choosing the wording "capitations and other direct taxes" in laying down the rule of apportionment. Declaring the meaning of the phrase "capitations and other direct taxes" in its ruling in the case, the court resorts to the authority of Albert Gallatin, Pennsylvania congressman, United States Senator and Representative, United States Minister to England and France, respectively, and the longest serving Secretary of the Treasury in American History, and says:

> *"...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;..."*

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The Lincoln administration was aware of all that we have just discussed when, in 1862, it instituted the income tax we've since come to know so poorly, but loathe so well. The Lincoln administration knew the Constitution prohibits capitations and other direct taxes unless apportioned; it knew a tax that actually touched upon the "all species of revenue" which constitute the broad class of receipts known as "income" in the common usage of that word WOULD be a capitation, and had under various names always been recognized and designated

as a direct tax throughout history; and it also knew that apportioned direct taxes were really only suited to one-time debt-retirements and had traditionally been used exclusively for that purpose.

One-time debt-retirement was not what the Lincoln administration needed or wanted. Lincoln was looking to finance an ongoing war effort, and he needed the kind of tax that, once instituted, keeps on giving and giving without the inconveniences of repeated legislation and voting. In short, he wanted an excise, and that's what he imposed-- an excise on certain activities, measured by (and typically paid out of) the revenue they produced.

> *"...in Springer v. U. S., 102 U.S. 586 (1880), it was held that [the] 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."*
> United States Supreme Court, Pollock v. Farmer's Loan & Trust, 158 U.S. 601, 1895;

> *"…taxation on income was in its nature an excise entitled to be enforced as such,"*
> United States Supreme Court, Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916), quoting and reiterating language used in its ruling in Pollock v. Farmer's Loan and Trust.

> *"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).

As F. Morse Hubbard, legislative draftsman for the United States Treasury Department put it in testimony before Congress in 1943,

> *"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."*
> House Congressional Record, March 27, 1943, page 2580

Perhaps because of the appearance of the tax as falling on the revenue itself, the name "income tax" recommended itself; nonetheless, the tax is not, for reasons we have observed, any kind of general tax on income. Instead, it amounts, in its actual application, to a tax on only a specialized subset of the larger class of income, consisting exclusively of revenues attributable to

the voluntary, profitable use of federal privilege, property or powers-- that is, revenues in which the federal government has a direct ownership interest, and to which it can therefore exercise a direct claim as a matter of right. The language of the original enactment is helpfully illuminating:

> *'An Act to provide Internal Revenue to support the Government and to pay interest on the Public Debt'*
> *Sec. 86. And be it further enacted, That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties;…*
> ("Income" derived from less formalized federally-connected activities, such as investment in, or contracts with, federal entities is also taxed under other provisions in the act.)

It is thus, and only thus, NOT a tax attempting to burden any exercise of individual rights, a transgression which would drop it squarely into the category of a direct tax. As the Supreme Court observes in the case of Knowlton v. Moore, 178 U.S. 41 (1900), quoting the long-standing official French tax law definition as being illustrative of the distinctions drawn in the U. S. Constitution:

> *"Direct taxes bear immediately upon persons, upon the possession and enjoyments of rights;"*

Many other rulings make the same, utterly fundamental point, which is self-evident, in any case. For a government to tax revenue simply as an exercise of power is for it to tax a person's exercise of the fundamental individual right to work or trade.

> *"The right to follow any of the common occupations of life is an inalienable right…*
> *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. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property'."*
> United States Supreme Court, Butcher's Union Co. v. Crescent City Co., 111 U.S. 746 (1883);
>
> *"Included in the right of personal liberty and the right of private property- partaking of the nature of each- is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property"*
> United States Supreme Court, Coppage v. Kansas, 236 U.S. 1 (1915).

On the other hand, to tax revenue proceeding from the voluntary, profitable exercise of the government's own property or powers (whether directly or by proxy through investment) is an indirect tax having nothing to do with the taxpayer's rights. Instead, such a tax merely involves an ownership claim to a piece of the privileged "action".

> *"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 Supreme Court, United States v. County of Allegheny, 322 US 174 (1944)
>
> *"The terms "excise tax" and "privilege tax" are synonymous. The two are often used interchangeably."*
> American Airways v. Wallace 57 F.2d 877, 880;
>
> *...the requirement to pay such* [excise] *taxes involves the exercise of privilege."*
> United States Supreme Court, Flint vs. Stone Tracy Co. 220 U.S. 107 (1911);
>
> *"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.

(I realize that working in the Post Office might not seem like the exercise of a "privilege" as we are accustomed to think of that word, but in a legal context, it is. Legally speaking, even

something as mundane as being allowed to borrow my lawnmower for use in your landscaping business is a privilege-- something to which you have no inherent right and which I can withhold from you-- or tax-- at my pleasure. Besides, try going into competition with the Post Office delivering first-class mail on your own and see what happens...)

So, it is by confining itself exclusively to receipts proceeding from voluntary activities in combination with the federal government, either as a worker, investor, office-holder or relief beneficiary, that the "income tax" as practiced in America does not cross the line from an indirect tax to what would otherwise inescapably be a direct tax, and one which would require the mechanism of apportionment in its administration.

It is true that the external appearance of many of these activities is indistinguishable from those conducted as matters of private right. A doctor working for the federal government practices medicine in the same manner as a doctor in private enterprise does. A plumber in the civil service uses the same tools and skills as the one that comes to your home. An investor buying stock in a national bank or railroad, or other federal corporation or instrumentality, places those orders with his broker at the same time that he buys stock in Sears, and his dividend check may even combine the profits from all of these investments.

But beneath the superficial similarity of all of these common income-producing activities, those in the subset to which the tax applies share the distinction of being made possible only due to the existence, and with the cooperation, of the federal government. In a very real and explicit sense, the aptly-named "income" tax in this country is, in fact, a "FEDERAL income tax". A detailed, accurate and comprehensive study of the income tax law (such as that presented exclusively in 'Cracking the Code- The Fascinating Truth About Taxation In America') makes clear that this distinction is thoroughly embedded in that law. In no respect whatsoever does the

federal income tax purport to be anything but the limited, specialized tax that it must be, or to touch upon any revenue not distinguished as noted here-- decades of diligent efforts to obscure that fact in the public mind notwithstanding.

For instance, a close examination of the current statutory structure defining "wages"-- a term central to the measurement and reporting of "income"-taxable activities by paid-performers-of-services-- illustrates that the tax remains scrupulously adherent to its proper Constitutional limits. The term confines itself to remuneration paid to,

> *"...an officer, employee, or elected official of the United States, a State*, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing."*

This definition also explicitly covers remuneration paid for service as officers of federal corporations, and implicitly covers other federal workers/office holders not listed, by virtue of the "includes" mechanism discussed briefly below and in detail in Part II of this document. [*"State", as used here, has its own custom definition in the law.]

(NOTE: The language presented above is from the general "wage withholding" section of the internal revenue laws. The more narrowly focused FICA "income" surtaxes are also measured and reported using the term "wages", but deploy a somewhat more elaborate structure to define the term, which is also discussed in detail in Part II.)

Similarly, the statutory definition of the conduct of a "trade or business", the receipts from which are to be reported and taxed as "income", is:

> *"...the performance of the functions of a public office."*

By virtue of the statutory definition of "includes"-- another custom legal term deployed in the definitions of both of "wages" and "trade or business", both of these terms are amenable to

a narrowly limited potential expansion to cover other things of the same class (legal character) as those already listed, but nothing else. "Includes" is defined within the law as follows:

> *"Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined."* Rev. Act of 1938 §901(b) (Codified at 26 USC 7701(c)

The Department of the Treasury has helpfully clarified the meaning of this provision with the following regulatory language:

> *"The terms "includes and including" do not exclude things not enumerated which are in the same general class.*"

The principle involved in the "includes" mechanism is largely that described by the United States Supreme Court in Gustafson v. Alloyd Co. (93-404), 513 US 561 (1995):

> *"…a word is known by the company it keeps (the doctrine of noscitur a sociis). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." Jarecki v. G. D. Searle & Co., 367 US 303, 307 (1961),"*

clarified by the fact that:

> *"It is axiomatic that the statutory definition of the term excludes unstated meanings of that term."* U.S. Supreme Court, Meese v. Keene, 481 U.S. 465 (1987)

(As noted above, "Includes" and its nuances will be discussed in depth in Part II of this memorandum.)

It is clear that were the distinct, limited meaning of the "income" subject to the "income tax" to be eroded away, and the tax come to be applied to "all that comes in", it would have to be recognized as a direct tax. The United States Supreme Court explicitly declares in its 1916 ruling in Brushaber v. Union Pacific R. Co., 240 U.S. 1 (while specifically considering the limited meaning and effect of the 16th Amendment) that should the tax ever come to exceed its proper boundaries,

> *"the duty would arise to disregard form and consider substance alone, and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it."*

But, of course, the law behind the tax never has exceeded those boundaries, which is why it could be administered for decades-- just as it is today, on the same activities and without apportionment-- long before the 16th Amendment cluttered up the scenery, and yet be upheld by the United States Supreme Court at the same time (e.g. Gray v. Darlington, 82 U.S. 63 (1872); Springer v. U. S., 102 U.S. 586 (1880)).

This is also why the Supreme Court repeatedly declares over the years SINCE the 16th Amendment that the amendment did not create a new tax:

> *"The provisions of the Sixteenth Amendment conferred no new power of taxation...*
> Stanton v. Baltic Mining Co., 240 U.S. 103 (1916);

did not extend the tax to anything it had not embraced before:

> *"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);

did not create authority for some hybrid tax which could fall upon any traditional or inherent object of a direct tax (such as a general income tax) but which was now simply not subject to the rule of apportionment:

> *"We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion 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. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."*
> Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916),

and yet continues to uphold the tax as Constitutional, even while capitations and other direct taxes remain subject to the apportionment rule just as they always have been, as noted by the Brushaber Court quoted above, which goes on to observe that otherwise,.

> *"...one provision of the Constitution [would] destroy another; that is, [it] would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned."*
> Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916).

All these things are simultaneously true and in harmony with each other because the limited nature of the tax has never changed, the 16th Amendment notwithstanding; in fact, these things CAN ONLY be simultaneously true and in harmony with each other because the limited nature of the tax has never changed.

In 1988, in South Carolina v. Baker, 485 U.S. 505, the Supreme Court revisits the subject and observes that,

> *"The legislative history merely shows... ...that the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes <u>were otherwise taxable</u>."* (Emphasis added.)

The court is recognizing that the 16th Amendment operates only on those "incomes" which already were, and always have been, inherently taxable under the "income" excise, and which had been so taxed-- without apportionment-- BEFORE the 16th amendment, until the application of the tax in certain cases was briefly interrupted by the Pollock loophole in 1895. Howard M. Zaritsky, Legislative Attorney of the American Law Division of the Library of Congress, helpfully summarizes all of this in his 1979 Report N0. 80-19A entitled "Some Constitutional Questions Regarding The Federal Income Tax Laws" which I will slightly paraphrase here:

> *"The Supreme Court has 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. Direct taxes are, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment."*

So, what exactly DID the 16th Amendment do? It simply closed a "loophole" introduced into the administration of the federal income tax by the Supreme Court in its ruling in Pollock v. Farmer's Loan & Trust, a case that had challenged the Constitutionality of an aspect of the 1894 revival of the briefly dormant tax.

The Pollock ruling held that the application of the tax to the proceeds of investments functioned as a property tax rather than a federal income tax, under the reasoning that to tax the gains derived from stock-- even federally-connected stock, as was involved here-- is to effectively tax the stock itself, and since stock is personal property, such a tax was really a property tax and not, in this respect, an excise which could be applied without apportionment. With this ruling the court struck down ten sections of the recently reactivated federal income tax, which had been dormant since its last two-year implementation had expired in 1873.

The effect of this reasoning was to relieve the Robber-Baron class, which was heavily invested in money-making federal instrumentalities such as national banks and railroads, from the burden of the tax. This didn't sit well with the growing and reactionary populist movement, which had little patience with the idea that a cadre of coupon-clipping fat cats-- widely, and accurately, perceived as pulling Washington's strings and benefiting handsomely thereby-- should escape the tax, while revenue tariffs, by which even the poorest Americans were affected, stood relatively high in order to make up the loss.

The populists demanded an amendment to the Constitution to close the loophole, and eventually succeeded with the 16th Amendment, which declares that what is otherwise inherently taxable under the federal income tax cannot be shielded therefrom by a resort to the source of the revenue involved. Treasury Department legislative draftsman F. Morse Hubbard

usefully summarizes this sole and exclusive effect of the amendment in his 1943 testimony, saying,

> *"[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 duty with respect to the privilege of carrying on any activity or owning any property which produces income."* (that is, "income otherwise taxable", as the Supreme Court reminds us some four-and-a-half decades later in the South Carolina v. Baker decision...)

Remember, as soon as Lincoln's 1862 act was passed, "income" acquired a fixed, limited and specialized definition for purposes of federal tax law (without which it would have been ruled unconstitutional in at least Gray v. Darlington, 82 U.S. 63 (1872) and Springer v. U. S., 102 U.S. 586 (1880) for lack of apportionment). Thus:

- The 1894 act that Pollock challenged only sought to tax "income" so defined.
- The Supreme Court ruling in that case only addressed the application of the tax to "income" so defined.
- The 16th Amendment only removed the apportionment requirement that the Pollock court had applied to "income" so defined.

That is why the court can say that direct taxes remain subject to the rule of apportionment even after the amendment; that the provisions of the amendment conferred no new power of taxation; that the amendment does not extend the taxing power to new or excepted subjects; and that the sole purpose of the amendment was to remove the apportionment requirement for whichever "incomes" were otherwise taxable.

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So how did all of this slip away from the American consciousness? Slowly, for one thing. At no time prior to 1942, eight decades after the federal income tax was first introduced,

did more than 8% of American households ever file federal income tax returns in any given year. In most of those years, the percentage was far lower than even that small figure. As recently as 1936, only 3.9% of the entire American population filed returns, according to the Treasury Department's Division of Tax Research (Division Staff Memo: "Collection at Source of the Individual Normal Income Tax", 9 January, 1941).

Nonetheless, by 1943, thanks to the distractions of a world war, the exhortations of Donald Duck (how many MANDATORY obligations must be sold to the public by cartoon animals?), and the adoption of a vague and confusingly-worded temporary measure called "The Victory Tax", the percentage of households sending in payments declared to be of "income" taxes rose to 38. That same year, the Treasury Department introduced its masterwork: 'The Current Tax Payment Act of 1943', by which the practice of withholding tax deposits from "wages", which had been a feature of the very first federal income tax acts but had been abandoned early in the 20th Century, was re-introduced. The new version was a rare work of lawyerly art, and contributed enormously to general misunderstanding of the nature of the tax--already a fragile thing at that point, thanks to the extended passage of time since the initial adoption of the vast bulk of the relevant law. In short, the understanding of the limits of the federal income tax also slipped away from American consciousness organically.

We have suffered heavily for our carelessness ever since, to the tune of trillions of dollars of wealth improperly extracted from us over the years. The fact that the tax is limited as it is, and doesn't actually apply to most receipts, doesn't mean that it does not, or cannot, affect most Americans. In fact, there is an elaborate bureaucratic and legal structure in place which inadvertently leads to the application of the tax outside its proper scope, by encouraging

everyone making payments to others to substantively allege that the payments were connected with the conduct of a taxable activity, whether this is actually true or not.

By way of this structure, most UN-taxable receipts become presumptively taxable in the eyes of the law, and the recipients become presumptively required to file a tax return and pay a resulting tax. Of course, false presumptions can be corrected, and in this case, a quirky idiosyncrasy of the relevant law provides that the means by which an inaccurate presumptive transformation of untaxable receipts into taxable receipts is corrected itself involves the filing of a tax return.

Although this appears strange-- even contradictory-- at first glance, it really is not. Every legal action involves an allegation and an answer. The only way to prove that there is nothing to be answered for is by the making of the answer-- however much that dynamic has the character of a "Catch-22". There is simply no other way for the law to work, since to make no rebuttal in the face of an allegation is to admit to what is alleged, by default. So, Congress, recognizing the need, has specified that the making of the same type of tax return used to acknowledge the receipt of "income" when, and to the degree, that allegations to that effect are true is also the formal means of rebutting such allegations when they are not:

> *"And be it further enacted,…that any party, in his or her own behalf,…shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,… liable to be assessed,… and the same so declared shall be received as the sum upon which duties are to be assessed and collected."* Section 93 of The Revenue Act of 1862.

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PART II - THE MEANING AND EFFECT OF “INCLUDES”

"Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. ... This doctrine decrees that where law expressly describes [a] particular situation to which it shall apply, an irrefutable inference must be drawn that what is omitted or excluded was intended to be omitted or excluded."
Black's Law Dictionary, 6th edition.

"The [state supreme] court also considered that the word ‘including’ was used as a word of enlargement, the learned court being of the opinion that such was its ordinary sense. With this we cannot concur.”
U.S. Supreme Court, Montello Salt Co. v. Utah, 221 U.S. 452 (1911)

As noted in Part I of this memorandum, certain terms specially-defined for use in the “income” tax laws are further modified in their special meanings by the use of the term “includes”-- itself a custom-defined legal term, under the language reflected at 26 USC 7701(c):

> *“Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.”*

The effect of this term is to provide for a narrowly limited expansion of the custom meaning of the term in which it is deployed.

To begin with, we must recognize that if a word is meant to be understood as having its common meaning, there is no need to define it at all. It is axiomatic that if a word *is* explicitly defined, it has a restricted meaning. If language such as, *“For purposes of this paragraph, the term “Fruit” includes apples, pears, and oranges.”* is used, it can only be understood as restricting the definition to those things listed, or no definition would be required; undefined, the word *“fruit”* would be understood to include apples, pears and oranges, as well as all other fruits.

Second, note that the word *"common"* (or its equivalent) is left out of the definition of *"includes"* and *"including"*, creating a closed context in which it functions. The only *"other*

things otherwise within the meaning of the term defined" are those that are the same as those used to provide the definition. In other words, the *"things"* used in the definition are what establish the class to which the *"other things"* must belong in order to be included under the doctrine of 7701(c), and, as the word is being deliberately defined, the common meaning of the word must be excluded.

To see what I mean, insert the word *"common"* as follows: *"The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise with the common meaning of the term defined."*. Without the inclusion of "common", the statute is self-confining, as intended; and furthermore, note that the statute says, *"...the meaning of the **term** defined."*, rather than the **word** defined. If Congress had meant (and been Constitutionally able) to embrace within its definitions the *common* meaning of the words being made into legal terms it would have written 7701(c) in that way: *"The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the common meaning of the word defined."* The *word* isn't a *term* until the provided definition has been applied, at which point its common meaning has been stripped away.

Properly understood, 7701(c) declares that, *"Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term **as** defined."* Indeed, the Treasury Department has written a regulatory clarification of the 7701(c) definition of "includes" which clearly embraced this construction which appeared for a number of years in 26 CFR:

26 CFR 170.59- Meaning of Terms: The terms "includes and including" do not exclude things not enumerated which are in the same general class.

The accuracy of these points is established by more than simple logic and the forthrightness of the bureaucracy. After all, ask yourself this: If *"Fruit"* is defined as, *"When used in this paragraph, the term "Fruit" includes turnips, carrots and broccoli."*, is it to be presumed that the term also means apples? How about if in the next paragraph one finds, *"For purposes of this paragraph the term "Fruit" includes apples, turnips, carrots and broccoli."* Should it be presumed that apples was included by implication in the first definition and the writer was just lazy, or ran out of typewriter ribbon? Obviously not. (If the writer had, in the first instance, said, *"For purposes of this paragraph the term "Fruit", in addition to the commonly understood meaning of the word "fruit", includes..."* or, *"..."Fruit", in addition to all fruits, includes..."* or even simply, *"..."Fruit" also includes..."*, all is different. But he did not.) No less an authority than the United States Supreme Court reminds us to refrain from reading anything into a statute when Congress has left it out:

> *" '[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' "* Russello v. United States, 464 US 16, 23, 78 L Ed 2d 17, 104 S Ct. 296 (1983) (Quoting United States v. Wong Kim Bo, 472 F. 2d 720, 722 (CA 1972)).

As previously noted, some of the key definitions upon which the application of the law are based (regarding “wages”, in this example) involve the custom legal meaning of terms like “employee”, “employer” and “United States” as used in the law and reproduced in the code (all of which we will discuss in detail shortly). These sections read as follows:

> *3401(c) Employee*
> *For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.*

3401(d) Employer
For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee [as defined above -PH] *of such person…*

and:

3121(e)(2) United States
The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Now, keeping in mind the declaration by the Supreme Court in Russello (and our logical analysis), look at the following other definitions in the U.S code, which reveal that when Congress means to legislate broadly, it plainly says so:

Title 26, Subtitle D, Chapter 38, Subchapter A, Sec. 4612. [Petroleum Tax] *For purposes of this subchapter-*
(4) United States
In general
The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

and it fully understands the nuances of statutory construction discussed above:

Title 20, Chapter 69, Section 6103 (Education)
As used in this chapter:
(8) Employer- The term "employer" includes both public and private employers.

Clearly, even the limited-expansion effect of 7701(c) (also helpfully clarified until just recently, by the way, at 27 CFR 72.11):

Meaning of Terms: The terms "includes and including" do not exclude things not enumerated which are in the same general class,

does not bring non-federal persons and places into the ambit of the terms we are discussing. Instead, the most that could be said in that regard is that in addition to the listed varieties, "employee" in Section 3401 also refers to other federally-connected workers whose descriptions

are not specifically listed (and "employer" the agencies for which they work); and that "United States"-- as used in 3121-- can be similarly understood to include other federal territories and possessions left off the enumerated list.

In fact, this is the only construction consistent with the relevant doctrines expressed by the United States Supreme Court as:

> *"[W]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words"* Circuit City Stores v. Adams, 532 US 105, 114-115 (2001),
>
> *"Under the principle of ejusdem generis, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration."* Norfolk & Western R. Co. v. Train Dispatchers, 499 US 117 (1991),

and

> *"…a word is known by the company it keeps (the doctrine of noscitur a sociis). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." Jarecki v. G. D. Searle & Co., 367 US 303, 307 (1961)"* Gustafson v. Alloyd Co. (93-404), 513 US 561 (1995).

Applying these principles of statutory construction, we see that the language of 26 USC 7701(c) providing for the inclusion of "things otherwise within the meaning of the term defined" effectively constitutes the "general words", or "general term" referred to by the Supreme Court in the Circuit City and Norfolk & Western rulings, which are then followed by the specifically enumerated things listed in the given definition. Look again the definition of "employee" at 26 USC 3401(c):

> *For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes a [paid] officer of a corporation.*

It is clear that the common characteristic of those in the enumerated list of “employees” in this special definition is that of being someone paid by the federal government (or an entity created and/or controlled by the federal government) for services rendered.

When we proceed to incorporate the provisions of 7701(c) (as properly illuminated by the doctrines outlined above) we get:

> *For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation. The term "employee" also includes "things not enumerated which are in this same general class" (that is, "other things otherwise within the meaning of the term as defined").*

No further expansion can be admitted:

> *"It is axiomatic that the statutory definition of the term excludes unstated meanings of that term."* U.S. Supreme Court, Meese v. Keene, 481 U.S. 465 (1987)

Finally, though it is irrelevant to the logical analysis of section 7701(c) (other than to underscore its relevant limits), it’s worth observing that a declaration that SOME thing(s) shall not be deemed to be *excluded* does not mean that any particular thing must or should be deemed to be *included*-- especially when what we are encouraged to ASSUME is meant to be included could easily have been explicitly provided for. After all, what 7701(c) DOESN'T say is, *“Includes and including: The terms "includes" and "including" when used in a definition contained in this title shall be construed as expanding the class represented by the common meaning of the word defined with the addition of the explicitly listed items.”*-- language by which Congress could have avoided a lot of confusion if this is what it actually meant.

For that matter, Congress could have simply defined “includes” and “including” in the tax law as expressly non-limiting, as it has done elsewhere:

28 USC 3003- Rules of Construction
(a) For purposes of this chapter
(1) the terms "includes" and "including" are not limiting;

and,

11 USC 102- Rules of Construction
In this title-
...
(3) "includes" and "including" are not limiting.

That it did not must be given proper significance. As the United States Supreme Court observes,

> *"The construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction, and such deference is particularly appropriate where an agency's interpretation involves issues of considerable public controversy and Congress has not acted to correct any misperception of its statutory objectives."* CBS, INC. v FCC, 453 US 367 (1981)

The existing language has been on the books unchanged for decades during which Congress has revised other parts of the law, the code, and the related regulations many, many times.

Amusingly, the IRS has long floated a ridiculous contention that the use of *"includes"* in key places in the code is because of doubts at one time as to whether public-sector entities were covered by the IRC. That is, the agency means to suggest that at one time everyone imagined NON-federally-connected receipts were all taxed under the law, but had doubts about the federally-connected variety being subject to the tax! This proposition might have a little hang time if the relevant references were found in an addendum or supplement (and if it could be credibly asserted that anyone would otherwise have doubted that, for instance, the guy sorting mail at the Senate Office Building is an employee within the common meaning of the word), but not when they constitute the sole definition of the term. There IS no other list to which the public-sector references can be added; they ARE the list, and they have been, in some cases, since 1862. (The IRS doesn't attempt to explain why, if what it suggests is true, Congress didn't

simply add one little section applying to the whole code saying, *"Public sector workers, officials and organizations are to be considered subject to the requirements of this title in the same fashion as are private citizens and organizations."*.)

For example, although originally introduced in section 86 of the Revenue Act of 1862, the "wage" withholding specified in that section was abandoned early in the 20th century. The practice was re-introduced by way of the Current Tax Payment Act of 1943 on June 9, 1943. The definition of "employee" which we have been discussing on the preceding pages is taken from that act. The act provided for an addition to chapter 9 of the IRC of 1939 code of what later became codified as subchapter 24 of the current IRC, with the "employee" definition denominated as subparagraph (c) of section 1641.

Material related to the new act was promptly published in the Federal Register, as is the case with all such enactments. Here is how the "employee" definition is described in the register edition of Tuesday, September 7, 1943 (page 12267):

> *SUBCHAPTER D-- COLLECTION OF INCOME TAX AT SOURCE OF WAGES*
> *SEC. 1621. DEFINITIONS*
> *As used in this subchapter--*
>
> * * * * *
>
> *(c) Employee. The term "employee includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.*
>
> * * * * *
>
> *§ 404.104 Employee. The term "employee" includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term specifically includes officers and employees whether elected or appointed, of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.*

Plainly, this definition has always covered federal workers as discussed above, and only such workers. Plainly, not only is "includes" NOT deployed in this definition in order to ADD

federal workers to anything, but there WAS no previously operating definition or withholding protocol of this kind to which they could be added.

*****

> *"When the words of a statute are unambiguous, the first canon of statutory construction [that courts must presume that a legislature says in a statute what it means and means in a statute what it says there] is also the last, and judicial inquiry is complete."* United States Supreme Court, Connecticut National Bank v. Germain, 503 US 249 (1992)

(For that matter, even when the words of a tax-related statute DO happen to be ambiguous:

> *"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen."* United States Supreme Court, Gould v. Gould, 245 US 151 (1917)...)

*****

PART III- THE PARTICULARS OF "WAGE" WITHHOLDING AND FICA TAXES

By the time the Current Tax Payment Act of 1943 reiterated the withholding-from-pay provisions first spelled out in the Act of 1862 (and expanded their application to "State" workers, per the Public Salary Tax Act), the people writing these acts had become very accustomed to living large, and had a good handle on how their bread was being buttered. They had learned that ambiguities in the language of tax statutes combined productively (from their viewpoint) with a general weakness in legal literacy among the lay population.

It had also not escaped their attention that the lawyers and other specialists upon whom most of that lay population, business owners included, relied for expertise were making good livings dishing it out solely due to the complexity of the code. They were generally happy enough to go along and get along, if provided at least a fig-leaf of semantic cover with which to shield themselves from malpractice risks.

Furthermore, and in, I suppose, their defense, the legislative draftsmen charged with the modern tax code were cognizant that:

> *"'All legislation is prima facie territorial.' Ex parte Blain, L. R. 12 Ch. Div. 522, 528; State v. Carter, 27 N. J. L. 499; People v. Merrill, 2 Park. Crim. Rep. 590, 596. Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch."* United States Supreme Court, American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909)

It is to their credit that these bureaucrats and staffers did not take full advantage of the latitude to which they were technically entitled by virtue of rulings such as this, and in many instances spelled out the limitations of their product for the truly diligent researcher to uncover. Nonetheless, in crafting the new wording of the same old provisions for withholding from the pay of federal-connected workers, they tried to make it tough, particularly by use of the term "includes".

Here is the original language again:

> *"and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties;… Section 86, Revenue Act of 1862*

Here is what appears to be the current version:

> *Sec. 3402. - Income tax collected at source*
> *(a) Requirement of withholding*
> *(1) In general*
> *Except as otherwise provided in this section, every employer making payment of* ***wages*** *shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall-…*

At first glance, that sounds as though it covers everybody, doesn't it? After all, 'wages' is widely used as a generic word for 'pay', (much like the way 'income' is widely used for 'all that comes in'). However, looking a little deeper into the bowels of this subchapter, we find:

> *Sec. 3401. - Definitions*
> *(a)* ***Wages***
> *For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an* ***employee*** *for his employer,…*
>
> *c)* ***Employee***
> ***For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation****.* [A "United States Corporation", defined in Sec. 207 of the Public Salary Tax Act as, *"a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States…"*. However, we are instructed by the IRS in Pub. 15A that such officers are only to be considered "employees" if they are paid as a consequence of their positions.]
> *(d) Employer*
> *For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the* ***employee*** *of such person…*

So, actually, this kind of withholding only applies to the pay of federal government workers, exactly as it always has (plus "State" government workers, since 1939, and those of the District of Columbia since 1921). Remember the inclusion - exclusion rule: Where the remuneration (compensation) of one group is explicitly identified as an object of the law-- whether for withholding or as "income", or in any other respect-- the remuneration of an omitted group is explicitly excluded as an object of that law. Think of it this way: The Selective Service Act says (more or less), *"All male citizens of the United States, upon reaching the age of eighteen, shall register…"*. Has your Aunt Sophie ever queued up? Would she if the law were re-constructed as follows?

(a) Draft Registration Required:
All citizens shall register for the draft upon reaching eighteen years of age.
(b) Definitions:
As used in paragraph (a), the term "citizens" includes male citizens of the United States.

How about if it were like this?

(a) Draft Registration Required:
All citizens shall register for the draft.
(b) Definitions:
As used in paragraph (a), the term "citizens" includes male citizens of the United States having reached the age of eighteen.

Of course not.

Let's look at the more trickily constructed, but, at bottom, similarly restricted application of FICA (Federal Insurance Contributions Act-- Social Security and Medicaid) taxes:

Sec. 3101. - Rate of tax
(a) Old-age, survivors, and disability insurance
In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the ***wages*** *(as defined in section 3121(a)) received by him with respect to* ***employment*** *(as defined in section 3121(b))…*

Sec. 3121. - Definitions
(a) ***Wages***
For purposes of this chapter, the term "wages" means all remuneration for ***employment****, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include* - … [various pre-tax deductions]
(b) ***Employment***
For purposes of this chapter, the term "employment" means any ***service****, of whatever nature, performed*
(A) by an employee for the person employing him, irrespective of the citizenship or residence of either,
(i) ***within the United States****, or*
(ii) on or in connection with an American vessel or American aircraft… or
(B) outside the United States by a ***citizen or resident of the United States*** *as an employee for an* ***American employer*** *(as defined in subsection (h)),…*
(e) State, United States, and [Puerto Rican] *citizen*
For purposes of this chapter -
(1) State
The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.
(2) United States

*The term "United States" **when used in a geographical sense** includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.*
...
*h) **American employer***
For purposes of this chapter, the term "American employer" means an employer which is -
(1) the United States or any instrumentality thereof,
*(2) an individual who is a **resident** of the United States,*
*(3) a partnership, if two-thirds or more of the partners are **residents** of the United States,*
*(4) a trust, if all of the trustees are **residents** of the United States, or*
(5) a corporation organized under the laws of the United States or of any State.

So, though more complicated than the withholding provisions in 3401, when read carefully it is clear that FICA is an “income” tax on "wages" paid for "employment", which is “service” performed within the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa; or outside of those places if by a citizen or resident thereof, and for the United States, a U.S. possession government, or a company either owned by residents of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, or incorporated under their laws or those of the District of Columbia. (Bear in mind that *"within"* and *"resident of"* are terms *"used in a geographical sense"*.)

The taxes known as Federal Unemployment Taxes, or FUTA taxes, are similarly circumscribed:

Sec. 3301. - Rate of tax
*There is hereby imposed on every **employer (as defined in section 3306(a))** for each calendar year an excise tax, with respect to having individuals in his employ, equal to -* [rate of tax]
Sec. 3306. - Definitions
*(a) **Employer***
For purposes of this chapter -
(1) In general
The term "employer" means, with respect to any calendar year, any person who -
(A)
*during any calendar quarter in the calendar year or the preceding calendar year paid **wages** of $1,500 or more, or*
(B)

On each of some 20 during the calendar year or during the preceding calendar year, each day being in a different calendar week, ***employed at least one individual in employment*** *for some portion of the day.*
(b) ***Wages***
For purposes of this chapter, the term "wages" means all ***remuneration for employment****, including the cash value of all remuneration (including benefits) paid in any medium other than cash;*
(c) ***Employment***
For purposes of this chapter, the term "employment" means any ***service*** *performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and*
(A)
any service, of whatever nature, performed after 1954 *by an employee for the person employing him, irrespective of the citizenship or residence of either,*
(i)
within the United States*, or*
…

The definitions go on to duplicate-- for all practical purposes-- those previously enjoyed in our exploration of section 3121.

We must all be appreciative of the drafter's weakness of craft in this portion of the code. *"...employed at least one individual in employment..."*. This construction is revealingly clumsy and ridiculous. It was critical to work the term *"employment"* into this portion of the statute, because it is by means of the definition of that term, confining affected parties to "service"-related government workers and those of U.S. possession-based companies, that the law remains Constitutional. It could not simply say, *"...employed at least one individual for some portion of the day."* as it would if the tax legally applied to every worker or business.

By the way, despite decades of relentless and shameless lies to the contrary by anyone with a stake in the deception unlikely to be sued over them, all of these Social Security taxes are nothing but "income" taxes like any other-- they have no relationship to any "trust accounts". It's possible that "trust accounts" may have been part of an original accounting structure.

Certainly, rhetoric to that effect was deployed in the introduction of the scheme, serving as a legal and political fig-leaf behind which it obscured itself long enough for the formation of a cadre of constituents sure to defend the program at the ballot box. (The initial ranks of that cadre paid virtually nothing in FICA taxes themselves while receiving full benefits-- for instance, the very first beneficiary, Ida May Fuller, paid a total of only $24.75 in taxes but collected $22,888.92 in benefits.) But even if "trust accounts" were really intended to be a formal part of the scheme, they were dropped early.

Here is the portion of "Subtitle C- Employment Taxes" in which the true disposition of these taxes is revealed:

> *Sec. 3501. - Collection and payment of taxes*
> *(a) General rule*
> *The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.*

This language was added to the code after an appellate court ruled, in a suit brought by a stockholder trying to stop a railroad from paying the tax, that no group (current workers) could be taxed to provide benefits (trust account financing) to any other group (retirees). In the subsequent Supreme Court hearing, in which that issue and a challenge of the program's taxes as direct yet unapportioned were considered, the government declined to defend the "trust account" concept. Instead, it argued that the "accounts" were a fiction; and pointed out that the taxes were excises. (No effort was made to suggest that the 'direct tax' challenge was moot due to the Sixteenth Amendment-- the government knew better.) The court agreed that the act only involved indirect taxes, and thus abided by the Constitution's requirements in that respect; but made clear that it felt the same as the lower court about the "trust account" thing. So, Congress quietly added section 3501 to the law. The marketing of the scheme, however, never changed.

Finally,

complete your introduction to the truth about the “income” tax by viewing this short film:

'It's Time To Learn The Truth About The Income Tax'
(www.losthorizons.com/It’sTimeToLearnTheTruth.wmv)

"Although all men are born free, slavery has been the general lot of the human race. Ignorant--they have been cheated; asleep--they have been surprised; divided--the yoke has been forced upon them. But what is the lesson?…the people ought to be enlightened, to be awakened, to be united, that after establishing a government they should watch over it....It is universally admitted that a well-instructed people alone can be permanently free."
-James Madison