

Why the Citizens of the Several States  
Are Not Generally Liable  
for the  
Federal Income Tax

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## Contents

The Income Tax .....	1
Federal Income Tax Not Pursuant to Article 1, Section 8. ....	1
Lawrence v. Wardell .....	2
U.S. Government Largest Landowner in the United States.....	3
Legislative Jurisdiction Over Federal Areas Within the States .....	3
Special Maritime and Territorial Jurisdiction .....	10
A Giant Federal State .....	12
The citizen of the United States. ....	13
A Dr. Jekyll and Mr. Hyde.....	20
The 16 <sup>th</sup> Amendment and Article 1, Section 9, Clause 4.....	20
Article 1, Section 8, Clause 18.....	23
Internal Revenue Districts.....	26
All Needful Rules and Regulations.....	28
IRS: Government Corporation by Statute a “Federal Agency” .....	29
The Fraud on the Citizens of the Several States .....	33
Federal Income Tax and the Several States .....	39
A Few Thoughts .....	42
The Federal Courts.....	48
Lower Federal Courts.....	48
Inferior Courts .....	49
Legislative Courts .....	54
Courts With Dual Natures - Article 1 & 3 .....	64
Appendix .....	69
Lawrence v. Wardell Case .....	70
Reorganization Plan No. 1 of 1952.....	75

# THE INCOME TAX

The Citizens of the several States are not generally liable for the Federal income tax. The reason becomes quite clear when the correct facts are known.

## Federal Income Tax Not Pursuant to Article 1, Section 8.

Those individuals who address the issue of the Federal income tax generally quote Article 1 § 8(1), the constitutional clause that delegates to Congress the authority to lay and collect taxes. It reads:

U.S. Constitution, Article I § 8 (1).

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States [\*\*\*]

Those individuals go on to point out the laying of direct taxes is further regulated by two more clauses within the Constitution. However, where the Federal income tax is concerned, they commit a serious error by stopping with those three constitutional clauses. That serious error arises because Congress' authority for the present Federal income tax does not derive from Article 1 § 8(1). Few Americans realize the Constitution provides Congress another authority to lay and collect taxes. This other constitutional authority is Article 4 § 3(2), which reads:

U.S. Constitution, Article IV § 3 (2).

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States [\*\*\*]

The following excerpt from a Federal case points out this second authority Congress can rely upon to lay and collect taxes.

Lawrence v. Wardell, Collector. 273 F. 405 (1921). Ninth Circuit Court of Appeals.

[1] The power of Congress, in the imposition of taxes and providing for the collection thereof in the possessions of the United States, is not restricted by constitutional provision (section 8, article 1), which may limit its general power of taxation as to uniformity and apportionment when legislating for the mainland or United States proper, for it acts in the premises under the authority of clause 2, section 3, article 4, of the Constitution, which clothes Congress with power to make all needful rules and regulations respecting the territory or other property belonging to the United States. Binns v. United States, 194 U.S. 486, 24 Sup.Ct. 816, 48 L.Ed. 1087; Downes v. Bidwell, 182 U.S. 244, 21 Sup.Ct. 770, 45 L.Ed. 1088.

This work intends to show that the constitutional authority Congress relies upon for the Federal income tax is Article 4 § 3(2) because Congress is taxing the incomes of those persons within its territory and other property, as well as others who may be subject to the Article 4 § 3(2) legislative jurisdiction of the United States. Congress is the supreme legislative body over its territory and other property and acts not only as a national legislature but also in the capacity of a state legislature. The Federal income tax is not a national income tax, but is in the nature of a state income tax.

(The reader of this work must ever be mindful that Congress exercises its Article 4 § 3(2) legislative jurisdiction over a number of insular possessions, e.g., Puerto Rico, Guam, Virgin Islands, as well as U.S. consulates, and military bases, etc., throughout the world. There are, no doubt, in different parts of the world other installations maintained by the Government. There are numerous citizens of the United States who live and work in these areas and who are under the legislative jurisdiction of the United States. This work is not concerned with these areas or persons other than to acknowledge that Congress can lay and collect taxes on the incomes of persons who are subject to the United States' jurisdiction.)

## Lawrence v. Wardell

The previous Lawrence excerpt gives several interesting items of information. This case was eight years after the alleged ratification of the 16<sup>th</sup> amendment, but the court still recognized the necessity of “apportionment” for direct taxes laid pursuant to Article 1 § 8(1). A glossary of tax terms on the IRS website gives the following definition of “direct tax.” (See [www.irs.gov/app/understandingTaxes/jsp/s\\_tools\\_glossary.jsp](http://www.irs.gov/app/understandingTaxes/jsp/s_tools_glossary.jsp))

direct tax

A tax that cannot be shifted to others, such as the federal income tax.

While the Lawrence case concerned events in a U.S. insular possession, Article 4 § 3(2) “clothes Congress with power to make all needful rules and regulations respecting the ‘territory or other property’ belonging to the United States.” An understanding of the term “territory” becomes necessary to understand Congress’ ability to lay and collect taxes within its “territory or other property.” The term “territory”, as is used in Article 4 § 3(2), is synonymous with property or a given area of the earth’s surface, which is explained by the court in the following excerpt from a Supreme Court case.

53 S.Ct. 740, 289 U.S. 516, O'Donoghue v. U.S., (U.S. 1933)

In this connection, the peculiar language of the territorial clause, article 4, s 3, cl. 2, of the Constitution, should be noted. By that clause Congress is given power 'to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' Literally, the word 'territory,' as there used, signifies property, since the language is not

'territory or property,' but 'territory or other property.' There thus arises an evident difference between the words 'the territory' and 'a territory' of the United States. The former merely designates a particular part or parts of the earth's surface--the imperially extensive real estate holdings of the nation; the latter is a governmental subdivision which happened to be called a 'territory,' but which quite as well could have been called a 'colony' or a 'province.' 'The Territories,' it was said in *First National Bank v. County of Yankton*, 101 U.S. 129, 133, 25 L.Ed. 1046, 'are but political subdivisions of the outlying dominion of the United States.'

## U.S. Government Largest Landowner in the United States

The United States Government is the largest landowner within the 50 States. It owns numerous tracts of land within the territorial boundaries of the several States. Paragraphs from the 1956 Federal report "Jurisdiction Over Federal Areas Within the States" give some detail concerning the amount of land, or territory, the Federal government owned at that time:

### Chapter 1, Part 1

The land area of the United States is 1,903,824,640 acres. It was ascertained from available sources that of this area the Federal Government, as of a recent date, owned 405,088,566 acres, or more than 21 percent of the continental United States. It owns more than 87 percent of the land in the State of Nevada, over 50 percent of the land in several other States, and considerable land in every State of the Union. The Department of the Interior controls lands having a total area greater than that of all the six New England State and Texas combined. [\*\*\*]

### Chapter 1, Part 2

The Federal Government is the largest single owner of real property in the United States. Its total holdings exceed the combined areas of the six New England States plus Texas, and the value of these holdings is enormous. They consist of over 11,000 separate properties, ranging in size from few hundred square foot monument or post office sites to million acre military reservations, and ranging in value from nearly worthless desert lands to extremely valuable holdings in the hearts of large metropolitan centers.

The United States also owns a large percentage of the State of Alaska as well as land in the State of Hawaii. A recent query directed to the General Services Administration seeking the present amount of land owned by the United States received the reply that each United States' Department maintains its own property records.

## Legislative Jurisdiction Over Federal Areas Within the States

Another term that needs (an absolute necessity) to be understood is "legislative jurisdiction." This term basically means the right to govern, the right to make and enforce laws over a given area. Some of the territory or other property owned by the United States Government are under the legislative jurisdictions of the States where the properties are

located with the U.S. Government merely being the proprietary owner of said properties. But a significant number of these Federal areas or territories within the several States are under the exclusive legislative jurisdiction of Congress. Congress and the several States also share legislative authority over some areas through concurrent and various degrees of partial legislative jurisdictions. Whether or not Congress exercises exclusive, concurrent, and/or partial legislative jurisdictions over its properties depend on the uses for which the properties were acquired or cession agreements made with the respective States in which the properties exist.

The Constitution mandates that the United States exercise exclusive jurisdiction over its properties in certain instances. An excerpt from Part 1 of “Jurisdiction Over Federal Area Within the States” is quoted below. As the report points out, at the time of the writing of the report, the United States owned several thousand properties throughout the continental United States over which Congress exercised exclusive legislative jurisdiction, the same jurisdiction it exercises over the District of Columbia.

Jurisdiction Over Federal Area Within the States, excerpt from chapter 1 of Part 1.

Article I, section 8, clause 17, of the Constitution of the United States, the text of which is set out in appendix B to this report, provides in legal effect that the Federal Government shall have exclusive legislative jurisdiction over such area not exceeding 10 miles square as may become the seat of government of the United States, *and like authority over all places acquired by the Government, with the consent of the State involved, for Federal works.* It is the latter portion of this clause, the portion which has been emphasized, with which this report is primarily concerned.

The status of the District of Columbia, as the seat of government area referred to in the first part of the clause, is fairly well known. It is not nearly as well known that under the second part of the clause the Federal Government has acquired, to the exclusion of the states, jurisdiction such as it exercises with respect to the District of Columbia over several thousand areas scattered over the 48 States. Federal acquisition of legislative jurisdiction over such areas has made of them Federal islands within States, which the term "enclaves" is frequently used to describe.

While these enclaves, which are used for all the many Federal governmental purposes, such as post offices, arsenals, dams, roads, etc, usually are owned by the Government, the United States in many cases has received similar jurisdictional authority over privately owned properties which it leases, or privately owned and occupied properties which are located within the exterior boundaries of a large area (such as the District of Columbia and various national parks) as to which a State has ceded jurisdiction to the United States. On the other hand, the Federal Government has only a proprietorial interest within vast areas of lands which it owns, for Federal proprietorship over land and Federal exercise of legislative jurisdiction with respect to land are not interdependent. And, as the Committee will endeavor to make clear, the extent of jurisdictional control which the government may have over land can and does vary to an almost infinite number of degrees between exclusive legislative jurisdiction and a proprietorial interest only. [Emphasis added.]

The United States may also be ceded legislative jurisdiction over property by a State without the necessity of even purchasing the property.

Chapter 3 of Part 2. Jurisdiction Over Federal Areas Within the States.

Present view.--After the Fort Leavenworth R.R. case, it was held that either a purchase with the consent of the States or an express cession of jurisdiction could accomplish a transfer of legislative jurisdiction. *United States v. Tucker*, 122 Fed. 518 (W.D. Ky., 1903); *Commonwealth v. King*, 252 Ky. 699, 68 S.W.2d 45 (1934); *State ex rel. Jones v. Mack*, 23 Nev. 359, 47 Pac. 763 (1897); *Curry v. State*, 111 Tex.Cr.App. 264, 12 S.W.2d (1928); 9 Ops.A.G. 263 (1858); 13 Ops.A.g. 411 (1871); 15 Ops.A.G. 480 (1887); cf. *United States v. Andem*, 158 Fed. 996 (D.N.J., 1908).

By means of a cession of legislative jurisdiction by a State, the Federal Government may acquire legislative jurisdiction not only over areas which fall within the purview of article I, section 8, clause 17, of the Constitution, but also over areas not within the scope of that clause. While a State may cede to the Federal Government legislative jurisdiction over a "place" which was "purchased" by the Federal Government for the "Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings," it is not essential that an area be "purchased" by the Federal Government in order to be the subject of a State cession statute. Thus, the transfer of legislative jurisdiction pursuant to a State cession statute has been sustained with respect to areas which were part of the public domain and which have been reserved from sale or other disposition. *Fort Leavenworth R.R. v. Lowe*, supra; *Chicago, Rock Island & Pacific Railway v. McGlinn*, 114 U.S. 542 (1885); *Benson v. United States*, 146 U.S. 325 (1892). It is not even essential that the Federal Government own an area in order to exercise with respect to it legislative jurisdiction ceded by a State. [\*\*\*]

The original 13 States of the Union, at the time of the adoption of the Constitution and the creation of the United States Government, had complete control over the land within their territorial borders. Since that time, States have been created from territory over which the United States for the most part either purchased, conquered, or otherwise owned, and subsequently exercised its exclusive legislative jurisdiction over such areas. The Republic of Texas being the exception to this general path to statehood. In many instances, especially in the western States, the United States retained or reserved legislative jurisdiction over large tracts of land within States even after they were granted statehood, which reservation of jurisdiction continues to this day. Over such areas, no jurisdiction cessions by the States were necessary.

Over territory where Congress exercises legislative jurisdiction, Congress exercises a dual character or authority. Congress is empowered to act in the capacity of a state, as well as a national, legislature.

53 S.Ct. 740, 289 U.S. 516, *O'Donoghue v. U.S.*, (U.S. 1933)

[6] Over this District<sup>1</sup> Congress possesses 'the combined powers of a general and of a state government in all cases where legislation is possible.' *Stoutenburgh v. Hennick*, 129 U.S. 141, 147, 9 S.Ct. 256, 257, 32 L.Ed. 637. The power conferred by article 1, s 8, cl. 17, is plenary; but it does not exclude, in respect of the District, the exercise by Congress of other appropriate powers

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<sup>1</sup> District of Columbia

conferred upon that body by the Constitution, or authorize a denial to the inhabitants of any constitutional guaranty not plainly inapplicable. Circuit Judge Taft, afterwards Chief Justice of this Court, speaking for himself, Judge Lurton, afterwards an associate justice of this Court, and Judge Hammond, in *Grether v. Wright* (C.C.A.) 75 F. 742, 756, 757, after reciting the foregoing clause and the organization of the District under it, said:

'It was meet that so powerful a sovereignty should have a local habitation the character of which it might absolutely control, and the government of which it should not share with the states in whose territory it exercised but a limited sovereignty, supreme, it is true, in cases where it could be exercised at all, but much restricted in the field of its operation. [\*\*\*]

21 S.Ct. 770, 182 U.S. 244, *Downes v. Bidwell*, (U.S.N.Y. 1901)

That the power over the territories is vested in Congress [182 U.S. 268] without limitation, and that this power has been considered the foundation upon which the territorial governments rest, was also asserted by Chief Justice Marshall in *M'Culloch v. Maryland*, 4 Wheat. 316, 422, 4 L. ed. 579, 605, and in *United States v. Gratiot*, 14 Pet. 526, 10 L. ed. 573. So, too, in *Church of Jesus Christ of L. D. S. v. United States*, 136 U.S. 1, 34 L. ed. 478, 10 Sup. Ct. Rep. 792, in holding that Congress had power to repeal the charter of the church, Mr. Justice Bradley used the following forceful language: 'The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired. The power to acquire territory, other than the territory northwest of the Ohio river (which belonged to the United States at the adoption of the Constitution), is derived from the treaty-making power and the power to \*779 declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty, and by cession is an incident of national sovereignty. The territory of Louisiana, when acquired from France, and the territories \*780 west of the Rocky mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabiting those territories. Having rightfully acquired said territories, the United States government was the only one which could impose laws upon them, and its sovereignty over them was complete. . . . Doubtless Congress, in legislating for the territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments, but those limitations would exist rather by inference and the general spirit of the Constitution, from which Congress derives all its powers, than by any express and direct application of its provisions.' See also, to the same [182 U.S. 269] effect *First Nat. Bank v. Yankton County*, 101 U.S. 129, 25 L. ed. 1046; *Murphy v. Ramsey*, 114 U.S. 15, 29 L. ed. 47, 5 Sup. Ct. Rep. 747. [Emphasis added.]

Constitution of the United States, Analysis and Interpretation, 2002 Ed., pg. 933.

In the territories, Congress has the entire dominion and sovereignty, national and local, and has full legislative power over all subjects upon which a state legislature might act. Footnote references *Simms v. Simms*, 175 U.S. 162, 168 (1899).



Congress, where it exercises exclusive legislative jurisdiction in territory within States, is the supreme legislative authority over such territory. Any legal authorities of the States, except for some minor exceptions, are evicted. In areas where legislative jurisdictions are shared by the States and United States, what powers are shared depend upon the cession agreements by the States. The following discussion concerning various types of legislative jurisdiction is taken from Part 1 of "Jurisdiction Over Federal Areas Within the States."

### CHAPTER III. DEFINITIONS--CATEGORIES OF LEGISLATIVE JURISDICTION

*Exclusive legislative jurisdiction.*--The term "exclusive legislative jurisdiction" as used in this report refers to the power "to exercise exclusive legislation" granted to the Congress by article I, section 8, clause 17, of the Constitution, and to the like power which may be acquired by the United States through cession by a State, or by a reservation made by the United States through cession by a State, or by a reservation made by the United States in connection with the admission of a State into the Union. In the exercise of such power as to an area in a State the Federal Government theoretically displaces the State in which the area is contained of all its sovereign authority, executive and judicial as well as legislative. By State and Federal statutes and judicial decisions, however, it is accepted that a reservation by a State of only the right to serve criminal and civil process in an area, resulting from activities which occurred off the area, is not inconsistent with exclusive legislative jurisdiction. [Emphasis added.]

The existence of Federal retrocession statutes has had the effect of eliminating any possibility of the possession by the Federal Government at this time of full exclusive legislative jurisdiction, since all States may exercise jurisdiction in consonance with such statutes notwithstanding that they cede exclusive legislative jurisdiction. However, in view of a widespread use of the term "exclusive legislative jurisdiction" in this manner, the Committee for purposes of the instant study has applied the term to the situation wherein the Federal Government possess, by whichever method acquired, all the authority of the State, and in which the State concerned has not reserved to itself the right exercise any authority concurrently with the United States except the right to serve civil or criminal process in the area.

Because reservations made by the States in granting jurisdiction to the Federal Government have varied so greatly, and in order to describe situations in which the government has received or accepted no legislative jurisdiction over property which it owns, the Committee has found it desirable to adopt three other terms which are in general use in reference to jurisdictional status, and in an effort at precision has defined these terms. While these definitions are based on judicial decisions and similar authorities, and on usage in Government agencies, it is desired to emphasize that they are made here only for the purposes of this study, and that they are not purported as absolute criteria for interpreting legislation or judicial decisions, or for other purposes. By way of example the Assimilative Crimes Act, referred to at several point in this report, which by its terms is applicable to areas under exclusive or concurrent jurisdiction, in the usual case is applicable in areas here defined as under partial jurisdiction.

*Concurrent legislative jurisdiction.*--This term is applied in those instances wherein in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over area the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

*Partial legislative jurisdiction.*--This term is applied in those instances wherein the Federal

Government has been granted for exercise by it over an area in a State certain of the State's authority, but when the State concerned has reserved to itself the right to exercise, by itself or concurrently with United States, other authority constituting more than merely the right to serve civil or criminal process in the area (e.g., the right to tax private property).

*Proprietorial interest only.*--This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State's authority over the area. In applying this definition recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

The following explanation and definitions on legislative jurisdiction are quoted from a Government publication concerning an Army regulation.

Army Regulation 405-20, 21 February 1974 (in part)

Real Estate

Federal Legislative Jurisdiction

### 3. Definitions and Discussion of Terms

*a. Legislative Jurisdiction.* The term "legislative jurisdiction," when used in connection with a land area means the *authority* to legislate and to exercise executive and judicial powers within such area. When the Federal Government has legislative jurisdiction over a particular land area, it has the power and authority to enact, execute, and enforce general legislation within that area. This should be contrasted with other authority of the Federal Government, which is dependent, not upon area, but upon subject matter and purpose and which must be predicated upon some specific grant in the Constitution. Federal legislative jurisdiction is a sovereign power, whereas land ownership is in the nature of proprietorial action of the Government. The fact that the Federal Government has legislative jurisdiction over a particular land area does not establish that it has actually legislated with respect thereto. All that is meant is that the United States has the *authority* to do so. The Federal Government holds land under varying degrees of legislative jurisdiction. These fall into four distinct types. Each type indicates a different division of authority between the Federal Government and the State government and its political subdivisions to exercise the general municipal legislative and governmental power within that area. The types are defined below. The second and third definitions assume that all general municipal authority was originally vested in the State wherein the land is located.

*b. Exclusive legislative jurisdiction.* This term is applied when the Federal Government possesses, by whatever method acquired, all of the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States except the right to serve civil or criminal process in the area relative to activities which occurred outside the area. This term is applicable even though the State may exercise certain authority over the land pursuant to the authority granted by Congress in several Federal Statutes *permitting* the State to do so.

*c. Concurrent legislative jurisdiction.* This term is applied in those instances wherein, in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United

States, all of the same authority.

*d. Partial legislative jurisdiction.* This term is applied in those instances where the Federal Government has been granted, for exercise by it over an area in a State, certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil and criminal process in the area attributable to actions outside the area. For example, the United States is considered to have partial legislative jurisdiction where the State has reserved the additional right to tax private property.

*e. Proprietary interest only.* This term is applied to those instances wherein the Federal Government has acquired some degree of right or title to an area in a State, but has not obtained any measure of the State's authority over the area. In applying this, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landowners with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental capacity as distinguished from an action performed by a private owner or citizen.

#### 4. Basic characteristics of Federal legislative jurisdiction

*a. Characteristics of exclusive legislative jurisdiction.* Only Congress has the authority to legislate for areas held under exclusive legislative jurisdiction and the Federal Government has the responsibility for law enforcement. The State cannot enforce its laws and regulations in such areas, except as to the service of civil or criminal process pertaining to matters or actions outside the area or as permitted by Congress, and there is no obligation on the part of the State or any of its political subdivisions to provide governmental services such as disposal of sewage, trash and garbage removal, road maintenance and fire protection. In some States residents on areas under exclusive legislative jurisdiction may be denied many of the important rights and privileges of a citizen of the State concerned, such as the right to vote and to have access to State courts. The language of the State statutes generally governs the remaining degree of State obligation where exclusive Federal legislative jurisdiction exists over an area.

*b. Characteristics of concurrent legislative jurisdiction.* Both State and Federal laws are applicable in a concurrent legislative jurisdiction area. Most major crimes violate both Federal and State laws and both the Federal and State governments may punish an offender for an offense committed in the area. The State, subject to the exemption of the Federal Government, retains its right to tax. The regulatory powers of the State may be exercised in the area, but not in such a manner as to interfere with Federal functions. Persons residing on areas under concurrent legislative jurisdiction are not denied important rights and privileges of a citizenship such as the right to vote or access to the State courts.

*c. Characteristics of partial legislative jurisdiction.* As to the authority to legislate, execute and enforce municipal laws granted without reservation by the State to the Federal Government, administration of the Federal area is the same as if it were under exclusive Federal legislative jurisdiction. Such powers may be exercised only by the Federal Government. As to the authority to legislate, execute and enforce municipal laws reserved by the State, administration of the area is the same as though the United States had no legislative jurisdiction whatever. As to those powers granted to the Federal Government with a reservation by the State to exercise the same powers concurrently, administration of the area is as though it were under concurrent legislative jurisdiction.

In an area of partial legislative jurisdiction, the right most commonly reserved by the State is the right to tax.

*d. Characteristics of proprietary interest only.* The United States exercises no legislative jurisdiction. The Federal Government has only the same rights in the land as does any other landowner. However, there exists a right of the Federal Government to perform the functions delegated to it by the Constitution and directed by statutory enactment of Congress without interference from any source. Subject to these conditions, the State retains all the legislative jurisdiction over the area it would have if a private individual rather than the United States owned the land. However, the State may not impose its regulatory power directly upon the Federal Government nor may it tax the Federal land. It may tax a lessee's interest in the land, if State law permits. Neither may the State regulate the actions of residents of the land in any way which might directly interfere with the performance of a Federal function. Persons residing on the land remain residents of the State with all the rights, privileges, and obligations which attach to such residents.

## Special Maritime and Territorial Jurisdiction

The following information on territorial jurisdiction was obtained from the U.S. Attorneys' "Criminal Resource Manual" found on the U.S. Justice Department's website.

[http://www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam/title9/crm00664.htm](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00664.htm)

### 664 Territorial Jurisdiction

Of the several categories listed in 18 U.S.C. § 7, Section 7(3) is the most significant, and provides:

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes: . . .

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

As is readily apparent, this subsection, and particularly its second clause, bears a striking resemblance to the 17th Clause of Article I, Sec. 8 of the Constitution. This clause provides:

The Congress shall have power. . . *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, be Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.* (Emphasis added.)

The constitutional phrase "exclusive legislation" is the equivalent of the statutory expression "exclusive jurisdiction." See *James v. Dravo Contracting Co.*, 302 U.S. 134, 141 (1937), citing, *Surplus Trading Co. v. Cook*, 281 U.S. 647, 652 (1930).

Until the decision in *Dravo*, it had been generally accepted that when the United States acquired property with the consent of the state for any of the enumerated purposes, it acquired exclusive jurisdiction by operation of law, and any reservation of authority by the state, other than the right to

serve civil and criminal process, was inoperable. See *Surplus Trading Co. v. Cook*, 281 U.S. at 652-56. When *Dravo* held that a state might reserve legislative authority, e.g., the right to levy certain taxes, so long as that did not interfere with the United States' governmental functions, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," to restore criminal jurisdiction over those places previously believed to be under exclusive Federal legislative jurisdiction. See H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1 (1940).

*Dravo* also settled that the phrase "other needful building" was not to be strictly construed to include only military and naval structures, but was to be construed as "embracing whatever structures are found to be necessary in the performance of the function of the Federal Government." See *James v. Dravo Contracting Co.*, 302 U.S. at 142-43. It therefore properly embraces courthouses, customs houses, post offices and locks and dams for navigation purposes.

The "structures" limitation does not, however, prevent the United States from holding or acquiring and having jurisdiction over land acquired for other valid purposes, such as parks and irrigation projects since Clause 17 is not the exclusive method of obtaining jurisdiction. The United States may also obtain jurisdiction by reserving it when sovereign title is transferred to the state upon its entry into the Union or by cession of jurisdiction after the United States has otherwise acquired the property. See *Collins v. Yosemite Park Co.*, 304 U.S. 518, 529-30 (1938); *James v. Dravo Contracting Co.*, 302 U.S. at 142; *Surplus Trading Co. v. Cook*, 281 U.S. at 650-52; *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 526-27, 538, 539 (1885).

The United States may hold or acquire property within the borders of a state without acquiring jurisdiction. It may acquire title to land necessary for the performance of its functions by purchase or eminent domain without the state's consent. See *Kohl v. United States*, 91 U.S. 367, 371, 372 (1976). But it does not thereby acquire legislative jurisdiction by virtue of its proprietorship. The acquisition of jurisdiction is dependent on the consent of or cession of jurisdiction by the state. See *Mason Co. v. Tax Commission*, 302 U.S. 97 (1937); *James v. Dravo Contracting Co.*, 302 U.S. at 141-42.

State consent to the exercise of Federal jurisdiction may be evidenced by a specific enactment or by general constitutional or statutory provision. Cession of jurisdiction by the state also requires acceptance by the United States. See *Adams v. United States*, 319 U.S. 312 (1943); *Surplus Trading Co. v. Cook*, 281 U.S. at 651-52. Whether or not the United States has jurisdiction is a Federal question. See *Mason Co. v. Tax Commission*, 302 U.S. at 197.

Prior to February 1, 1940, it was presumed that the United States accepted jurisdiction whenever the state offered it because the donation was deemed a benefit. See *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. at 528. This presumption was reversed by enactment of the Act of February 1, 1940, codified at 40 U.S.C. § 255. This statute requires the head or authorized officer of the agency acquiring or holding property to file with the state a formal acceptance of such "jurisdiction, exclusive or partial as he may deem desirable," and further provides that in the absence of such filing "it shall be conclusively presumed that no such jurisdiction has been acquired." See *Adams v. United States*, 319 U.S. 312 (district court is without jurisdiction to prosecute soldiers for rape committed on an army base prior to filing of acceptance prescribed by statute). The requirement of 40 U.S.C. § 255 can also be fulfilled by any filing satisfying state law. *United States v. Johnson*, 994 F.2d 980, 984-86 (2d Cir. 1993). The enactment of 40 U.S.C. § 255 did not retroactively affect jurisdiction previously acquired. See *Markham v. United States*, 215 F.2d 56 (4th Cir.), cert. denied, 348 U.S. 939 (1954); *United States v. Heard*, 270 F. Supp. 198, 200 (W.D. Mo. 1967).

COMMENT: In summary, the United States may exercise plenary criminal jurisdiction over lands within state borders:

Where it reserved such jurisdiction upon entry of the state into the union;

Where, prior to February 1, 1940, it acquired property for a purpose enumerated in the Constitution with the consent of the state;

Where it acquired property whether by purchase, gift or eminent domain, and thereafter, but prior to February 1, 1940, received a cession of jurisdiction from the state; and

Where it acquired the property, and/or received the state's consent or cession of jurisdiction after February 1, 1940, and has filed the requisite acceptance.

## A Giant Federal State

As the foregoing sections have pointed out, the United States exercises legislative jurisdiction over numerous properties spread throughout the several States and, as the Government report stated, those properties over which Congress exercises exclusive legislative jurisdiction once numbered at least several thousand. To understand the Federal income tax, a person must look at those thousands of disconnected properties, which are spread throughout the 50 States, and elsewhere, and over which Congress exercises exclusive legislative jurisdiction, as being parts of a large state over which Congress is the supreme legislative body. Congress, pursuant to Article 4 § 3(2), can lay and collect taxes within these areas just as a legislature of one of the 50 States lays and collects taxes within its territorial borders and taxes its citizens who are subject to the State's jurisdiction. Within this large Federal state, numerous persons work, are resident, businesses conduct various operations, and numerous persons also receive income from within these areas. There are numerous citizens of the United States who maintain their domiciles, or permanent legal residences, within these areas, which makes them subject to Congress', or the United States', legislative jurisdiction.

### Chapter 1, Part 2, Jurisdiction Over Federal Areas Within the States

The activities conducted on these properties are as varied as the holdings are extensive. They include, at one extreme, the development of nuclear weapons, and at the other, the operation of soft drink stands. Some of the activities are conducted in utmost secrecy, with only Government personnel present, and others, such as those in national parks, are designed for the enjoyment of the public, and the presence of visitors is encouraged. In many instance, the performance of these activities requires large numbers of resident personnel, military or civilian, or both, and the presence of these personnel in turn necessitates additional functions which, while not normally a distinctively Federal operation (e.g., the maintenance of a school system for the children of resident personnel), are nevertheless essential to procuring the performance of the primary Federal function.

## The citizen of the United States.

Because the authority for the Federal income tax is pursuant to Congress' constitutional powers over its territory and other property, or Article 4 § 3(2), the Federal income tax is constitutional but is of limited jurisdiction. Many Americans are not legally liable for the tax, but then some are. Internal revenue regulations state "all citizens of the United States, wherever resident, ... are liable to the income taxes imposed by the Code." An understanding of the terms "citizen of the United States" and "United States" is necessary to determine to whom these regulations apply. Most Americans are unaware the term "United States" has several meanings. In the following case excerpt, three different meanings are given.

Hooven & Allison Co. v. Evatt, U.S. Ohio, 324 U.S. 652, 65 S.Ct. 870, 880, 89 L.Ed. 1252.

United States. This term has several meanings. [1] It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in family of nations, [2] it may designate territory over which sovereignty of United States extends, or [3] it may be collective name of the states which are united by and under the Constitution. [Emphasis added.]

The above definition of the "United States" is further supported by Section 7 of Title 18 of the U.S. Code, which is titled "Crimes and Criminal Procedure." In this section the territorial jurisdiction of the United States is defined for purposes of crimes against the United States. Subsection 3 of section 7 is given below.

18 USC Sec. 7. Special maritime and territorial jurisdiction of the United States defined.

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

[\*\*\*]

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building. [\*\*\*]

When reading the term "United States" in the law, care must be taken to discern which meaning is intended. Many of the laws of the United States do not extend into the legislative jurisdictions of the several States. Because Americans have not understood various legal and jurisdictional concepts, Congress and the legislatures of the several States have induced the citizens of the several States to pay taxes for which they were not liable. A proper understanding of legal definitions and the law is the only way to free oneself from the fraud.

Most Americans, when they read the following internal revenue regulations or statements based on these regulations, automatically assume that because they are deemed “citizens of the United States” that the laws concerning the Federal income tax apply to them and they are liable, or are subject to, the tax, i.e., they are taxpayers.

26 CFR § 1.1-1 Income tax on individuals.

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States [\*\*\*].

(b) Citizens or residents of the United States liable to tax. In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States. [\*\*\*]

However, we need to consider the term “citizen of the United States” in light of the definition of “United States” as given in the *Hooven* case, the territorial jurisdiction of the United States as given in 18 USC § 7, and a following subsection of an internal revenue regulation. The term “citizen of the United States” is more narrowly defined by that internal revenue regulation subsection.

26 CFR § 1.1-1 Income tax on individuals.

(c) Who is a citizen. Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. [\*\*\*]

Prior to the 14<sup>th</sup> amendment, a person had to be a Citizen of one of the States of the Union before he was called a citizen of the United States. Since the 14<sup>th</sup> amendment,<sup>2</sup> many persons have been made citizens of the United States by congressional fiat without ever having been a Citizen of one of the several States. One example is Congress’ actions

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<sup>2</sup> The term “citizen of the United States” was used in civil rights’ legislation within a few years prior to the adoption of the 14<sup>th</sup> amendment. One can see from the language of 42 USC Sec. 1982 that the term “citizen of the United States” has a different meaning than what most generally ascribe to it.

42 USC Sec. 1982 01/16/96

TITLE 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 21 - CIVIL RIGHTS

SUBCHAPTER I - GENERALLY

Sec. 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

(R.S. Sec. 1978.)

CODIFICATION

R.S. Sec. 1978 derived from act Apr. 9, 1866, ch. 31, Sec. 1, 14 Stat. 27.



concerning an insular possession of the United States, the Northern Mariana Islands. The statute approving the covenant to establish the Northern Mariana Islands as a Commonwealth is below. Following the statute is Article III of the Covenant, which declares who shall be citizens of the United States.

TITLE 48 - TERRITORIES AND INSULAR POSSESSIONS  
CHAPTER 17 - NORTHERN MARIANA ISLANDS  
SUBCHAPTER I - APPROVAL OF COVENANT AND SUPPLEMENTAL PROVISIONS  
Sec. 1801. Approval of Covenant to Establish a Commonwealth of the  
Northern Mariana Islands

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

"ARTICLE III  
"CITIZENSHIP AND NATIONALITY

"Section 301. The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who on that date do not owe allegiance to any foreign state, are declared to be citizens of the United States, except as otherwise provided in Section 302:

"(a) all persons born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

"(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Marianas Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975; and

"(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

"Section 302. Any person who becomes a citizen of the United States solely by virtue of the provisions of Section 301 may within six months after the effective date of that Section or within six months after reaching the age of 18 years, whichever date is the later, become a national but not a citizen of the United States by making a declaration under oath before any court established by the

Constitution or laws of the United States or any court of record in the Commonwealth in the form as follows:

"I \_\_\_\_\_ being duly sworn, hereby declare my intention to be a national but not a citizen of the United States.'

"Section 303. All persons born in the Commonwealth on or after the effective date of this Section and subject to the jurisdiction of the United States will be citizens of the United States at birth.

"Section 304. Citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several States of the United States.

The record of another law granting citizenship of the United States to persons born in Puerto Rico.

TITLE 48 - TERRITORIES AND INSULAR POSSESSIONS  
CHAPTER 4 - PUERTO RICO  
SUBCHAPTER I - GENERAL PROVISIONS

Sec. 733b. Omitted

CODIFICATION

Prior to the enactment of the Nationality Act of 1940, act Oct. 14, 1940, ch. 876, 54 Stat. 1137, this section, act Mar. 2, 1917, ch. 145, Sec. 5b, as added June 27, 1934, ch. 845, 48 Stat. 1245, provided as follows: "All persons born in Puerto Rico on or after April 11, 1899 (whether before or after June 27, 1934) and not citizens, subjects, or nationals of any foreign power, are hereby declared to be citizens of the United States: [\*\*\*]

There are also other such examples. Even though these insular possessions of the United States may have governments, they are not States of the Union and they are under the exclusive legislative jurisdiction of Congress. Article 4 § 3(2) delegates to Congress, acting in its capacity as a quasi-state legislature, the right to make laws for these areas along with other territory or property under its legislative jurisdiction. Those citizens of the United States who maintain their domiciles, or legal residences, within territory or other property over which Congress exercises its exclusive legislative jurisdiction are

subject to “its jurisdiction.”<sup>3</sup> Unless excepted by law, the incomes of these citizens of the United States are liable to the income tax even though such incomes may have been earned in areas outside Congress’ legislative jurisdiction. These citizens of the United States, “wherever resident,” are liable for the Federal income tax.

*United States of America v. William M. Slater*, (D. Delaware) 545 F.Supp 179, 182 (1982)

Slater's protestations to the effect that he derives no benefit from the United States government have no bearing on his legal obligation to pay income taxes. *Cook v. Tait*, 265 U.S. 47, 44 S.Ct. 444, 68 L.Ed. 895 (1924); *Benitez Rexach v. United States*, 390 F.2d 631, (1st Circ.), cert. denied 393 U.S. 833, 89 S.Ct. 103, 21 L.Ed.2d 103 (1968). Unless the defendant can establish that he is not a citizen of the United States, the IRS possesses authority to attempt to determine his federal tax liability.

*Milliken v. Meyer*, 311 U.S. 457, 463 (1940)

As in case of the authority of the United States over its absent citizens (*Blackmer v. United States*, [284 U. S. 421](#)), the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties. "Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable" from the various incidences of state citizenship. See *Lawrence v. State Tax Commission*, [286 U. S. 276](#), [286 U. S. 279](#); *New York ex rel. Cohn v. Graves*, [300 U. S. 308](#). The responsibilities \*\*464\*\* of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state.

*Blackmer v. United States*, 284 U.S. 421 (1932)

While it appears that the petitioner removed his residence to France in the year 1924, it is undisputed that he was, and continued to be, a citizen of the United States. He continued to owe allegiance to the United States. By virtue of the obligations of citizenship, the United States retained its authority over him, and he was bound by its laws made applicable to him in a foreign country. Thus, although resident abroad, the petitioner remained subject to the taxing power of the United States. *Cook v. Tait*, [265 U. S. 47](#), [265 U. S. 54-56](#).

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<sup>3</sup> *People v. De La Guerra*, 40 Cal. 311, 342 (1870). “I have no doubt that those born in the Territories, or in the District of Columbia, are so far citizens as to entitle them to the protection guaranteed to citizens of the United States in the Constitution, and to the shield of nationality abroad; but it is evident that they have not the political rights which are vested in citizens of the States. They are not constituents of any community in which is vested any sovereign power of government. Their position partakes more of the character of subjects than of citizens. They are subject to the laws of the United States, but have no voice in its management. If they are allowed to make laws, the validity of these laws is derived from the sanction of a Government in which they are not represented. Mere citizenship they may have, but the political rights of citizens they cannot enjoy until they are organized into a State, and admitted into the Union.” [As quoted.]

The terms “domicile” and “residence” as used herein are not synonymous terms. A person has only one domicile or legal residence but a person may have a number of residences. One’s domicile or legal residence is considered one’s permanent home and is where one exercises one’s civil and political rights such as voting and serving on juries.

“‘Residence’ and ‘domicile’ are not synonymous terms at common law.” *St. Joseph’s Hosp. and Medical Center v. Maricopa County*, 688 P.2d 986, 142 Ariz. 94.

The Constitution imposes limits on Congress’ ability to lay and collect direct taxes from the Citizens of the several States<sup>4</sup> who live and work within the legislative jurisdictions of the several States. The Federal income tax, being of limited jurisdiction, does not, as a general rule, make those Citizens liable. The Citizen can become liable for the tax by his

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<sup>4</sup> The following is as quoted from a filed legal document:

The first was “defendant believes himself not be a citizen of the United States or subject to U.S. Laws.” This statement is interesting in light of, *U.S. v. Cruikshank*, 92 U.S. 542 where the court stated; “We have in our political system a government of each of the several states and a government of the United States. Each is distinct from the other and each has citizens of it’s own”, again in *U.S. v. Anthony* 24 Fed Cas 829, 830 where the Court stated; “a citizen can be a citizen of one of the several states without being a citizen of the United States” and further *Cross v. Board of Supervisors* 221 A.2d 431, a 1966 case where the Court stated; “Both before and after the Fourteenth Amendment to the Federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state.”

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*United States v. Cruikshank*, 92 U.S. 542, 549 (1875); "Both before and after the Fourteenth Amendment to the federal Constitution, **it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state.**"

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*United States v. Anthony*, 24 Fed. Cas. 829 (1873); "The fourteenth amendment creates and defines citizenship of the United States. It has long been contended, and had been held by many learned authorities, and had never been judicially decided to the contrary, that there was no such thing as a citizen of the United States, except as that condition arose from citizenship of some state. No mode existed, it was said, of obtaining a citizenship of the United States, except by first becoming a citizen of some state. This question is now at rest. The fourteenth amendment defines and declares who shall be a citizen of the United States, to wit, "all persons born or naturalized in the United States, and subject to the jurisdiction thereof." The latter qualification was intended to exclude the children of foreign representatives and the like. With this qualification, every person born in the United States or naturalized is declared to be a citizen of the United States and of the state wherein he resides."

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*State v. Fowler*, 41 La. Ann. 380, 6 S. 602 (1889) ; “A person who is a citizen of the United States is necessarily a citizen of the particular state in which he resides. But a person may be a citizen of a particular state and not a citizen of the United States. To hold otherwise would be to deny to the state the highest exercise of its sovereignty, -- the right to declare who are its citizens.”

actions. There are no doubt a number of ways to become liable and this short work cannot explore each of those avenues. Suffice it to say that as long as a Citizen of one the several States works within his or another State's legislative jurisdiction, does not work for the Federal Government or any of its instrumentalities, and does not receive any income from areas under Congress' legislative jurisdiction, the Citizen of the State should not create any liability for himself where the Federal income tax is concerned.

In the recent trial of Sherry Peel Jackson for federal income tax offenses, it was reported by her that the court relied on her Social Security account and several other government documents that she had signed to raise the conclusive presumption that she was a "citizen of the United States," i.e., a U.S. person who is subject to its jurisdiction. A reading of the following subsection regulation for "Identifying Numbers" points out the significance of the SSN as to a person's citizenship status. The subsection also provides a person the legal basis to change the presumption of citizenship status as the result of having a SSN<sup>5</sup>.

26 CFR § 301.6109-1 Identifying numbers.

(g) Special rules for taxpayer identifying numbers issued to foreign persons--(1) General rule--(i) Social security number. A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

An arbitrary presumption of this short work has been that Congress can lay and collect taxes on incomes from those persons who are subject to United States' jurisdiction, and in Washington, D.C., and within those areas in the 50 States where it exercises exclusive legislative jurisdiction. Can Congress lay and collect income taxes where Congress exercises jurisdiction that is less than exclusive within the 50 States? Without an affirmation or denial concerning this possibility by a knowledgeable and responsible person with authority to speak for the Commissioner of Internal Revenue, Internal Revenue Service, and/or the receipt of other correct information, one must remain in the dark. If one is in doubt, one should ask the proper official(s). For instance, the Chief Counsel's web page at the Internal Revenue Service's website states the following:

The Chief Counsel is appointed by the President of the United States with the advice and consent of the U.S. Senate. As the chief legal advisor to the IRS Commissioner on all matters pertaining to the interpretation, administration and enforcement of the Internal Revenue Laws, as well as all other legal matters, the Chief Counsel provides legal guidance and interpretive advice to the IRS, Treasury and to taxpayers.

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<sup>5</sup> See also in subsection 26 CFR § 301.6109-1(g) for Employer Identification Number (EIN).

## A Dr. Jekyll and Mr. Hyde

The U.S. Constitution created the Federal Government with certain delegated powers. When legislating for the several States, Congress is a government of limited powers though its authority is supreme where the Constitution has delegated those powers. (See *Downes* and *O'Donoghue* cases cited earlier.) On the other hand, within its exclusive legislative jurisdiction, Congress, when acting in its capacity as a quasi-state legislature, has wide discretion to pass laws to accomplish its goals within its Article 4 § 3(2) jurisdiction. From subsection 3.a. of the previously quoted Army regulation:

When the Federal Government has legislative jurisdiction over a particular land area, it has the power and authority to enact, execute, and enforce general legislation within that area. This should be contrasted with other authority of the Federal Government, which is dependent, not upon area, but upon subject matter and purpose and which must be predicated upon some specific grant in the Constitution.

The Constitution prohibits Congress from doing certain things, e.g., ex post facto laws and bills of attainder, and our country's free institutions restrain Congress in various areas, but apart from these prohibitions and restraints, Congress is free to do whatever it desires within territory under its exclusive legislative jurisdiction.

## The 16<sup>th</sup> Amendment and Article 1, Section 9, Clause 4

Much has been written concerning the 16<sup>th</sup> amendment. A number of those who have studied the issue believe it was not ratified properly and have brought that argument up repeatedly with the IRS and the courts. Even though the allegation may be correct, it is a losing argument. The courts have addressed the issue on several occasions. They state that as a matter of constitutional law that respects the coordinate branches of government that the Supreme Court follows the enrolled bill rule, which requires when the appropriate official certifies that an amendment has been properly passed by the requisite number of States, then the Supreme Court will not question such certification and will accept the statement as made by the proper official. As the courts have stated, the alleged non-ratification of the 16<sup>th</sup> amendment is a political question, i.e., a question Congress must address. Following are several cites pointing out that the courts will not address this issue.

Sixteenth Amendment is effective legal document, even though only four states ratified its language exactly as Congress approved it--other versions containing errors of diction, capitalization, punctuation, and spelling--since, inter alia, in 1913 the Secretary of State declared it adopted, and Supreme Court follows "enrolled bill rule" providing that if legislative document is authenticated in regular form by appropriate officials, that document is treated as adopted. *United States v Thomas* (1986, CA7 Ill) 788 F2d 1250, 86-1 USTC ¶ 9354, 57 AFTR 2d 86-1215, cert den (US) 93 L Ed 2d 121, 107 S Ct 187.

Validity of process of ratification of Sixteenth Amendment and of resulting Constitutional

Amendment are no longer open questions, because political question doctrine holds nonjusticiable those questions relating to procedures employed in ratification of constitutional amendments, and enrolled bill rule states that if legislative document is authenticated in regular form by appropriate officials, courts must treat document as properly adopted; statute authorizing Secretary of State in 1913 to certify ratification of Sixteenth Amendment was neither unconstitutional delegation of legislative authority nor violation of constitutional separation of powers. *United States v Sitka* (1988, CA2 Conn) 845 F2d 43, 88-1 USTC ¶ 9308, 61 AFTR 2d 88-1117.

Since the issue of alleged improper ratification of the 16<sup>th</sup> amendment is closed to us, let us take another look at the amendment from a different perspective. A number of years ago there was a drawing that was used to point out how people look at things from different perspectives. You could look at the picture one way and see an old, stooped-over woman wearing a scarf. Then, if you stepped back for a moment and looked at it differently, you could see a young, attractive woman wearing a stylish hat. What one saw depended upon one's perspective.

The American people have been led to believe that the 16<sup>th</sup> amendment did away with the constitutional requirement that direct taxes on incomes by the Federal Government within the several States be apportioned among the several States. Is this a correct belief? (As previously pointed out by the definition from the IRS website, the income tax is stated as being a direct tax.) In the 1921 Lawrence case previously cited, the court several years after the adoption of the 16<sup>th</sup> amendment stated that apportionment was still necessary. Maybe we need to look at the 16<sup>th</sup> amendment from a different perspective. A reading of the 16<sup>th</sup> amendment and article 1, section 9, clause 4 of the Constitution may prove instructive.

Article XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

U.S. Constitution, Article I, Section 9, Clause 4

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

In the previous section it was discussed that where Congress exercises its Article 4 § 3(2) legislative jurisdiction, it can act in the capacity of a state legislature and, in this capacity, Congress can exercise wide discretion in passing laws. Also, Congress in this capacity can do most anything the Constitution does not forbid. **While the legislatures of the several States can pass direct taxes upon their Citizens, Congress, prior to the 16<sup>th</sup> amendment, was forbidden by the language of article 1, section 9, clause 4 from laying and collecting a direct tax for the benefit<sup>6</sup> of the United States even within the**

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<sup>6</sup> In *Binns v. U S*, 24 S.Ct. 816, 194 U.S. 486, (U.S.Alaska 1904), which is referred to in the *Lawrence* case,

**areas under its exclusive legislative jurisdiction.** What the 16<sup>th</sup> amendment accomplished was to allow Congress, when acting in its capacity as a quasi-state legislature, to lay and collect a direct tax on incomes from those persons within and/or otherwise subject to its Article 4 § 3(2) legislative jurisdiction. Congress by the 16<sup>th</sup> amendment was permitted to lay and collect a direct tax on those incomes WITHOUT apportioning this direct tax among the several States and WITHOUT regard to any census or enumeration. The Federal income tax is not a national income tax. It is a Federal state income tax.

It should be pointed out that there are many who rely upon the *Brushaber v. Union Pacific Railroad Co.* Supreme Court decision, and/or similar cases, to say that the income tax is an indirect tax. The income tax is a state tax and can be and is both a direct tax upon citizens and residents of the United States and an indirect tax upon nonresident aliens. United States' payors of incomes, which are earned within Congress' Art. 4 § 3(2) legislative jurisdiction, to nonresident aliens are the ones made liable for the proper amount of taxes required to be withheld. The payors are required to withhold such taxes and turn those taxes over to the IRS. The remainders of the incomes are only then forwarded to the "ultimate recipients," i.e., nonresident aliens. In the book quote below, the "recipients" would be citizens or residents of the United States.

In 1915 the book, *A Treatise on the Federal Income Tax Under the Act of 1913*, was written by Roger Foster of the New York Bar. On page 152 of that work, he writes the following:

**"§ 33. The nature of the tax.** The incidence of the tax is ordinarily upon the recipients of the income affected. In a large number of cases, however, it falls directly upon property by compelling the payment of the tax by debtors, collecting agents and persons acting in a fiduciary capacity, and authorizing their deduction of the same from the amount of income paid to its ultimate recipients."

The following paragraph is from page 166 of the Statutes at Large of the 1913 income tax act.

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the court discussed the fact that excises collected pursuant to U.S. Constitution Article I § 8 (1) were to "pay the Debts and provide for the common Defence and general Welfare of the United States" and were to be uniform throughout the United States, while in this particular case the excises being collected and covered into the Treasury of the United States were nonetheless for the territorial government. Congress' authority for laying and collecting the particular license or excise tax was Article IV § 3 (2). However, the court left the door open for Congress to tax its territories for the benefit of the nation pursuant to the latter mentioned authority. The court stated:

In order to avoid any misapprehension we may add that this opinion must not be extended to any case, if one should arise, in which it is apparent that Congress is, by some special system of license taxes, seeking to obtain from a territory of the United States revenue for the benefit of the nation, as distinguished from that necessary for the support of the territorial government.



A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

## Article 1, Section 8, Clause 18.

Article 1, section 8 delegated certain legislative powers, including taxation, to Congress. Clause 18 of section 8 delegates to Congress the authority to pass laws, and create departments and offices. Where Congress passes laws for the several States pursuant to article 1, section 8, the enforcement of those laws require the creation of departments and offices by Congress. Clause 18 states:

Article I § 8 (18).

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Revenue acts passed pursuant to Article 1 § 8(1) require Congress, pursuant to Article 1 § 8(18), to not only create a department but also to employ officers of the United States, whom the President is required to appoint with the advice and consent of the Senate, to oversee the collection of those taxes laid by those revenue acts. These officers of the United States are to be appointed to the office of collector, a public office<sup>7</sup>, with one collector appointed to each internal revenue district, which the President is authorized by law to create, within the States of the Union. (A public officer is one who exercises the sovereign authority of the government, which he represents, in enforcing the laws that his office is delegated the authority to enforce.) Alternatively, should Congress so choose, it also had the option of allowing officers of the States to collect some taxes. James Madison in “Federalist Papers” no. 45 discusses the necessity of collectors.

Federalist Papers, James Madison, Number 45, Pg.295 - Pg.296

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<sup>7</sup> To understand the term “public office,” one should read through the definition as given in American Jurisprudence 2<sup>nd</sup> ed. or other such legal work. AmJur 2<sup>nd</sup> basically points out that a public officer holds an office created by law and he is required to be elected or appointed. He also has a designation or title given to him by law and he exercises functions for the public. His powers and duties must be defined, either directly or impliedly, by a legislature or pursuant to legislative authority. His duties must be performed independently and without control of a superior officer. An inferior or subordinate public officer can be created or authorized by the legislature and can be placed under the general control of a superior officer or body.

The number of individuals employed under the Constitution of the United States will be much smaller than the number employed under the particular States. There will consequently be less of personal influence on the side of the former than of the latter. The members of the legislative, executive, and judiciary departments of thirteen and more States, the justices of peace, officers of militia, ministerial officers of justice, with all the county, corporation, and town officers, for three millions and more of people, intermixed and having particular acquaintance with every class and circle of people must exceed, beyond all proportion, both in number and influence, those of every description who will be employed in the administration of the federal system. [\*\*\*] If the federal government is to have collectors of revenue, the State governments will have theirs also. And as those of the former will be principally on the seacoast, and not very numerous, whilst those of the latter will be spread over the face of the country, and will be very numerous, the advantage in this view also lies on the same side. It is true that the Confederacy is to possess, and may exercise, the power of collecting internal as well as external taxes throughout the States; but it is probable that this power will not be resorted to, except for supplemental purposes of revenue; that an option will then be given to the States to supply their quotas by previous collections of their own; and that the eventual collection, under the immediate authority of the Union, will generally be made by the officers, and according to the rules, appointed by the several States. [\*\*\*] Should it happen, however, that separate collectors of internal revenue should be appointed under the federal government, the influence of the whole number would not bear a comparison with that of the multitude of State officers in the opposite scale. Within every district to which a federal collector would be allotted, there would not be less than thirty or forty, or even more, officers of different descriptions, and many of them persons of character and weight whose influence would lie on the side of the State.

These officers of the United States, whom the President is required to appoint with the advice and consent of the Senate, are political appointees and are a part of the system of checks and balances within our government. Those officers who do their jobs well and are honest reflect well upon the President and his party. Alternatively, those who do their jobs poorly and/or who are found to be dishonest and corrupt, reflect badly upon the President and his party. The President and legislators of his party would be careful to see that any corrupt or incompetent officer of the United States, who might cause the voters to vote against them, was disciplined or dismissed. Officers who were appointed to the office of collector were also required to live within the internal revenue districts to which they were appointed and were therefore amenable to the citizens within whose midst they lived. Collectors maintained offices within their internal revenue districts with deputy collectors and other employees working under their authority and they were also responsible for the acts of those working under them. Collectors or those employed under them could be complained of by citizens to the citizens' congressmen, senators, and the President. Should complaints be found valid, the President could fire those officers or Congress through the process of impeachment could remove them from office. The Secretary of the Treasury also possessed the authority to suspend collectors from their duties. Citizens could also file civil suits against collectors for redress of any perceived wrongs where the assessment and collection of taxes were concerned. Collectors were and still are a necessary part of the checks and balances between Citizens of the several States and the

Government of the United States where the collection of taxes is concerned.

In 1952 President Truman, calling the office of collector an “archaic statutory office,” abolished the office and reassigned the duties of the collectors to the Bureau of Internal Revenue, which was later renamed Internal Revenue Service. Truman’s Message of the President and acts are set out in Reorganization Plan No. 1 of 1952<sup>8</sup> and is found at 26 USC § 7804. An excerpt from his Message follows.

Paragraph from Reorganization Plan No. 1 of 1952.

The principal barrier to effective organization and administration of the Bureau of Internal Revenue which plan No. 1 removes is the archaic statutory office of collector of internal revenue. Since the collectors are not appointed and cannot be removed by the Commissioner of Internal Revenue or the Secretary of the Treasury and since the collectors must accommodate themselves to local political situations, they are not fully responsive to the control of their superiors in the Treasury Department. Residence requirements prevent moving a collector from one collection district to another, either to promote impartiality and fairness or to advance collectors to more important positions.

Uncertainties of tenure add to the difficulty of attracting to such offices persons who are well versed in the intricacies of the revenue laws and possessed of broadgaged administrative ability. [Emphasis added.]

While the phrase “archaic statutory office” may have been technically correct, the office of collector was created pursuant to constitutional mandate. Under what constitutional authority did the President abolish the office of collector and assign the duties of that office to the predecessor of the Internal Revenue Service, the Bureau of Internal Revenue? The use of collectors, who are officers of the United States, to oversee the collection of a direct tax that is pursuant to Article 1 § 8(1), and which is laid upon the Citizens of the several States, is not optional, it is an absolute necessity.

At Section 1001 of the IRS Restructuring and Reform Act of 1998 (see 112 Stat. 689), Congress still recognizes that the collector of internal revenue is the principal officer for the internal revenue district.

112 Stat. 689 (b) SAVINGS PROVISIONS.—

(1) PRESERVATION OF SPECIFIC TAX RIGHTS AND REMEDIES.—

Nothing in the plan developed and implemented under subsection (a) shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

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<sup>8</sup> Complete text is included in this book.

The United States without officers of the United States, who are appointed by the President, serving in the office of collector of internal revenue, with such office being created by Congress pursuant to Article 1 § 8(18), has forfeited its legal ability to collect a direct tax that is pursuant to Article 1 § 8(1).

## Internal Revenue Districts

The President is authorized, pursuant to the grant of authority of 26 U.S.C. § 7621, to create internal revenue districts within the several States.

26 U.S.C. Sec. 7621. Internal revenue districts

(a) Establishment and alteration

The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

(b) Boundaries

For the purpose mentioned in subsection (a), the President may subdivide any State, or the District of Columbia, or may unite into one district two or more States.

Pursuant to 3 USC § 301, the President is authorized to redelegate that authority to certain officers of the United States. By subsection 1(g) of Executive Order No. 10289, the President redelegated that authority to the Secretary of the Treasury.

Executive Order No. 10289 (See at 3 USC § 301 for complete text.)

1. The Secretary of the Treasury is hereby designated and empowered to perform the following-described functions of the President without the approval, ratification, or other action of the President:

(g) The authority vested in the President by section 3650 of the Internal Revenue Code (section 3650 of the Internal Revenue Code of 1939) (see 26 U.S.C. 7621), to establish convenient collection districts (for the purpose of assessing, levying, and collecting the taxes provided by the internal revenue laws), and from time to time to alter such districts.

Though authority was delegated to the President and redelegated to the Secretary of the Treasury to establish internal revenue districts, no document can be found that has established such revenue districts over any territory, which is under the exclusive legislative jurisdictions of the several States. As stated in section 7621 quoted above, the administration of internal revenue laws required internal revenue districts, which were established in compliance with requirements of 26 U.S.C. § 7621 and E.O. 10289. See 26 U.S.C. §§ 7601, et seq.;

26 USC Sec. 7601. Canvass of districts for taxable persons and objects

(a) General rule

The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

and 26 CFR § 601.101:

26 USC Sec. 601.101 Introduction.

(a) General. The Internal Revenue Service is a bureau of the Department of the Treasury under the immediate direction of the Commissioner of Internal Revenue. The Commissioner has general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue. The Internal Revenue Service is the agency by which these functions are performed. Within an internal revenue district the internal revenue laws are administered by a district director of internal revenue. \*\*\*

If there are no internal revenue districts created within territory under the exclusive legislative jurisdictions of the several States, where then is the Commissioner delegated authority to administer taxes? The Commissioner was delegated authority in Treasury Order (TO) 150-01 to administer the internal revenue laws within United States territories and insular possessions, and other areas of the world. These Treasury Orders state:

TO 150-01 dated February 27, 1986

6. U.S. Territories and Insular Possessions. The Commissioner shall, to the extent of authority otherwise vested in him, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other authorized areas of the world.

TO 150-01 dated September 28, 1995

3. U.S. Territories and Insular Possessions. The Commissioner of Internal Revenue shall, to the extent of authority vested in the Commissioner, provide for the administration of the United States internal revenue laws in the U.S. territories and insular possessions and other areas of the world.

Treasury Order 150-01, dated September 28, 1995, was cancelled by Treasury Order 150-02, dated March 9, 2001. However, Treasury Order 150-39, dated July 17, 2002, states:

2. DELEGATION. [\*\*\*] The authority of the Commissioner of Internal Revenue to provide for the administration of the United States internal revenue laws in the possessions of the United States (including administration of the aforesaid tax agreements) remains in effect.

Other than the above delegations of authority over Federal territory within the States and elsewhere, no other such language has been found granting authority to the Commissioner for the administration of internal revenue laws within the several States. The cancellation of the last TO 150-01 appears to have had the effect of doing away with internal revenue districts where the Commissioner and the federal income tax are concerned.

Territorial application is also set out in the Code of Federal Regulations. One should also note that the Territories of Alaska and Hawaii were removed from the definitions of “State” and “United States” when they became States of the Union.

26 CFR Ch. I (4-1-98 Edition)

§ 31.3121(e)-1 State, United States, and citizen.

(a) When used in the regulations in this subpart, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Territories of Alaska and Hawaii before their admission as States, and (when used with respect to services performed after 1960) Guam and American Samoa.

(b) When used in the regulations in this subpart, the term “United States”, when used in a geographical sense, means the several states (including the Territories of Alaska and Hawaii before their admission as States), the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. When used in the regulations in this subpart with respect to services performed after 1960, the term “United States” also includes Guam and American Samoa when the term is used in a geographical sense. The term “citizen of the United States” includes a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

[T.D. 6744, 29 FR 8314, July 2, 1964]

## All Needful Rules and Regulations<sup>9</sup>

The Secretary of the Treasury, a public officer<sup>10</sup>, is delegated by law the authority to administer and enforce Title 26.

26 USC Sec. 7801 Authority of Department of the Treasury 01/16/96

(a) Powers and duties of Secretary

Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

However, the Commissioner appears to be an inferior or subordinate public officer. While Congress authorized the office of Commissioner, with the Commissioner being appointed by the President, the Commissioner’s duties and powers are not established by the legislature but by the Secretary.

26 USC Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner 01/16/96

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<sup>9</sup> Several code sections (26 USC Sec. 7801 et seq.), which I have not updated, have changed since this book was first written. Under what constitutional authority is the Federal income tax being collected is the question with which this book is concerned.

<sup>10</sup> See previous footnote for attributes of “public office.”

(a) Commissioner of Internal Revenue

There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary of the Treasury.

Congress by Article 4 § 3(2) is delegated the authority to make “all needful rules and regulations” respecting its territory and other property. Within its territory, Congress has the authority to re-delegate that authority to a public officer. Where the administration of internal revenue taxes is concerned within Congress’ legislative jurisdiction, Congress has empowered the Secretary to “prescribe all needful rules and regulations for the enforcement” of Title 26.<sup>11</sup>

26 USC Sec. 7805. Rules and regulations 01/16/96

(a) Authorization

Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

It would appear from the foregoing that the Commissioner does not enforce Title 26 of the U.S. Code, but instead he is only empowered to enforce “all needful rules and regulations” that his superior officer, the Secretary of the Treasury, delegates to him or directs him to enforce. Again, the previously mentioned Treasury Order 150-01 only empowered the Commissioner to administer the internal revenue laws within U.S. territories, U.S. insular possessions, and other areas of the world, e.g., U.S. Consulates, military bases throughout the world, and other U.S. installations, etc.

## IRS: Government Corporation by Statute a “Federal Agency”

Several authors in the past who have written concerning the IRS have searched for language within the Statutes at Large seeking the law where Congress created the Bureau of Internal Revenue/Internal Revenue Service. They have pointed out that no such

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<sup>11</sup> The need for regulations as stated in California Bankers Ass’n. v. Schultz, 416 U.S. 21, 26, 94 S.Ct. 1494, 1500, 39 L.Ed.2d 812 (1974):

Because it has a bearing on our treatment of some of the issues raised by the parties, we think it important to note that the Act’s civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone ... The government argues that since only those who violate regulations may incur civil and criminal penalties it is the regulations issued by the Secretary of the Treasury and not the broad, authorizing language of the statute, which is to be tested against the standards of the 4<sup>th</sup> Amendment...

language can be found. They have also pointed out that several IRS publications have confirmed that Congress did not create the IRS pursuant to Article 1 § 8(18). Subchapter 1 of Chapter 3 of Title 31, Money and Finance, of the U.S. Code gives the organization of the United States Department of the Treasury and the Internal Revenue Service is not listed as being an agency thereof.

At the Commissioner's section<sup>12</sup> of the Internal Revenue Service website ([www.irs.gov](http://www.irs.gov)) the following is stated.

Mark W. Everson was confirmed by the U. S. Senate on May 1, 2003, to be Commissioner of Internal Revenue. Mr. Everson is the 46th commissioner since the agency was created in 1862. Mr. Everson was appointed by President Bush to a five-year term.

As IRS commissioner, Mr. Everson presides over the continued reorganization and modernization of the nation's tax administration agency. His priorities include strengthening enforcement of the tax laws and improving services for taxpayers. The agency has approximately 100,000 employees and a budget of over \$10 billion. The agency collects \$2 trillion in tax revenue, processes over 200 million tax returns and issues nearly \$300 billion in refunds.

Note that the preceding paragraphs state the "agency was created in 1862" and today the agency has approximately 100,000 employees. Also at the IRS website, the section "The Agency, its Mission and Statutory Authority" gives the following information.

#### The Agency

The IRS is a bureau of the Department of the Treasury and one of the world's most efficient tax administrators.

The United States Government Manual (can be found at <http://www.gpo.gov/>), which is printed and published under the authority of Congress and is made part of the Federal Register, and is due judicial notice, gives the following information on the Internal Revenue Service within the Department of the Treasury section. The information states that the "Office of the Commissioner of Internal Revenue" was established in 1862, not a bureau or agency.

#### Internal Revenue Service

The Office of the Commissioner of Internal Revenue was established by act of July 1, 1862 (26 U.S.C. 7802). The Internal Revenue Service (IRS) is responsible for administering and enforcing the internal revenue laws and related statutes....

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<sup>12</sup> See Appendix for copy of page. A new commissioner has been appointed since this book was first published.



As a matter of public record, in a 1993 civil case<sup>13</sup>, a United States Attorney and a Trial Attorney for the Tax Division of the U.S. Department of Justice denied that the IRS was an agency of the United States Government.

In a Treasury memorandum<sup>14</sup> commissioned for Secretary of the Treasury Vinson, dated Aug. 25, 1945, stamped “Confidential” and titled *Administrative History of the Bureau of Internal Revenue*, the following is stated in section VIII:

There has never been any statutory creation of the Bureau of Internal Revenue, although the Bureau is mentioned in several statutes, including statutes relating to the social security taxes (Internal Revenue Code, sections 1420, 1530, and 1605), ...

So where did the IRS come from? The IRS was created by the Secretary of the Treasury pursuant to statutory authority “to administer and enforce the Internal Revenue Code,” as the following Federal court case points out.

596 F.Supp. 141, *Young v. I.R.S.*, (D.C.Ind. 1984)

[11] Plaintiff attempts to circumvent this conclusion by arguing that the IRS is "a private corporation" because it was not created by "any positive law" (i.e., statute of Congress) but rather by fiat of the Secretary of the Treasury. Apparently, this argument is based on the fact that in 1953 the Secretary of the Treasury renamed the Bureau of Internal Revenue as the Internal Revenue Service. However, it is clear that the Secretary of the Treasury has full authority to administer and enforce the Internal Revenue Code, 26 U.S.C. Sec. 7801, and has the power to create an agency to administer and enforce the laws. See 26 U.S.C. Sec. 7803(a). Pursuant to this legislative grant of authority, the Secretary of the Treasury created the IRS. 26 C.F.R. Sec. 601.101. The end result is that the IRS is a creature of "positive law" because it was created through congressionally mandated power. By plaintiff's own "positive law" premise, then, the IRS is a validly created governmental agency and not a "private corporation."

Again at the IRS website, the section “The Agency, its Mission and Statutory Authority” gives the following information, which serves to confirm the information in the preceding Young case.

#### Statutory Authority

The IRS is organized to carry out the responsibilities of the secretary of the Treasury under section 7801 of the Internal Revenue Code. The secretary has full authority to administer and enforce the internal revenue laws and has the power to create an agency to enforce these laws. The IRS was created based on this legislative grant.

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<sup>13</sup> *Diversified Metal Products, Inc., v. T-Bow Company Trust & Internal Revenue Service*, Civ. #93-405-E-EJL. A certified copy of this case can be obtained from National Archives and Record Administration. See Appendix for a copy of selected pages of these pleadings.

<sup>14</sup> See Appendix for copy.

Despite contradictory statements on IRS web pages, it is apparent from the foregoing that the Internal Revenue Service or its predecessor, the Bureau of Internal Revenue, was not created by Congress in 1862 or at any time. The present IRS was created by the Secretary of the Treasury pursuant to statutory authority and “appears” to be a government corporation, which is defined by statute to be a Federal agency. See 5 USC § 103 and 26 USC § 6402(f) below:

5 USC Sec. 103. Government corporation

For the purpose of this title -

(1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

(2) "Government controlled corporation" does not include a corporation owned by the Government of the United States.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 1132f; title 26 section 6402; title 31 sections 1344, 3720A; title 42 section 12651.

26 USC Sec. 6402(f) Federal agency

For purposes of this section, the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

In Treasury Order 150-39, dated March 9, 2001, the Commissioner is called the “chief executive officer for the IRS,” which appears to confirm that the IRS is a government corporation.<sup>15</sup>

4. OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE. The Office of the Commissioner consists of the Commissioner; Deputy Commissioner; and Assistant Deputy Commissioner. The Commissioner is the chief executive officer for the IRS. The Commissioner is responsible for overall planning and for directing, controlling and evaluating IRS policies, programs, and performance.

The U.S. Government was delegated certain limited powers and is required to abide constitutional provisions when acting for the several States. However, when Congress acts in its capacity as a quasi-state legislature over United States’ territory and other property, Congress is not acting pursuant to those constitutionally limited provisions. Congress has the constitutional authority within its exclusive legislative jurisdiction to lay taxes and,

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<sup>15</sup> According to some information without legal citations, the term “chief executive officer” is a term also used for persons placed in charge over some government agencies, and not just corporations. To this date, I have been unable to find any such legal definition.

within that jurisdiction, Congress would find no constitutional prohibition in authorizing the creation of and/or using a corporate entity or quasi-state federal agency to collect those taxes. (The IRS is not an agency of the United States Government, as it was not created by Congress pursuant to Art. 1 § 8(18) or the Constitution, but it is a federal agency of the United States because Congress can and does wear two different hats or exercises legislative authorities in two different areas.) There would not even be any prohibition against using non-governmental collection agencies should Congress so choose. (For a greater understanding of legislative authority over taxation, see American Jurisprudence 2<sup>nd</sup>, vol. 71, State and Local Taxation sections 68, 71-73. Several points made by these sections are that legislatures, barring constitutional prohibitions or limitations, can choose those things they wish to tax and can also choose the organizations to use in collecting taxes. Arguments against those legislative preferences will therefore be rightly ruled by the courts to be frivolous. Taxation is a legislative or political question. The courts will not infringe upon those legislative prerogatives.)

A reading of the previously mentioned 1945 memorandum of the history of the Bureau points out that collectors of internal revenue were the fiscal agents of the United States. Theirs was the duty to collect internal revenue taxes. Not being created by Congress pursuant to U.S. Constitution Article 1 § 8(18) and without the services of the officers of the United States in the office of collector, the Internal Revenue Service is constitutionally incompetent to collect any tax laid by Congress pursuant to Article 1 § 8(1). It would appear, therefore, that all taxes being collected by the Internal Revenue Service at present would necessarily have to be pursuant to Congress' Article 4 § 3(2) constitutional authority.

A previous question can now be answered. "Under what constitutional authority did the President abolish the office of collector and assign the duties of that office to the Bureau of Internal Revenue/Internal Revenue Service?" If the Federal income tax is not pursuant to Article 1 § 8(1) and if there are no internal revenue districts within the several States to assign collectors, then there would be no constitutional requirement for collectors and the President would be acting properly in dismissing those officers of the United States from their duties.

## The Fraud on the Citizens of the Several States

This author grew up believing that for most Americans the requirement to file forms and pay income taxes arose with the passage of the 1939 Internal Revenue Code (IRC). It wasn't until sometime after the year 1994 that I finally learned that the 1939 IRC was but the codification of the then existing internal revenue laws. A reading of the Preface to the 1939 Internal Revenue Code points out that the 1939 codification only affected existing

laws and that no new laws were passed. A person who was not liable for a tax on his income prior to 1939 was still not liable after its passage.

1939 Internal Revenue Code, 53 Stat. Pt. 1 Preface

The internal revenue title, which comprises all of the Code except the preliminary sections relating to its enactment, is intended to contain all the United States statutes of a general and permanent nature relating exclusively to internal revenue, in force on January 2, 1939; also such of the temporary statutes of that description as relate to taxes the occasion of which may arise after the enactment of the Code. These statutes are codified without substantive change and with only such change of form as is required by arrangement and consolidation. The title contains no provision, except for effective date, not derived from a law approved prior to January 3, 1939.

**Taxes are not raised to carry on wars,  
Wars are raised to carry on taxes.  
Author Unknown.**

Prior to World War II, most Americans did not file tax forms or pay a tax on their incomes. However, after the beginning of WWII, that changed dramatically. It appears from the historical record that the Government used the patriotic fervor generated by the Japanese bombing of Pearl Harbor and the exigencies of the subsequent war to defraud the Citizens of the several States into paying a tax for which most were not liable. A paragraph from the Message of the President in Reorganization Plan No. 1 of 1952 states:

The task of collecting the internal revenue has expanded enormously within the past decade. This expansion has been occasioned by the necessary additional taxation brought on by World War II and essential post-war programs. In fiscal year 1940, tax collections made by the Bureau of Internal Revenue were slightly over 5 1/3 billions of dollars; in 1951, they totaled almost 50 1/2 billions. In 1940, 19 million tax returns were filed; in 1951, 82 million. In 1940, there were 22,000 employees working for the Bureau; in 1951, there were 57,000.

Several questions must be raised by the fact that there was such an enormous increase in tax returns filed and taxes collected during the period of time mentioned in the preceding paragraph. What persons were liable prior to WWII? What new revenue law was passed that made so many more persons liable? Where are the changes in definitions of "State" and "United States?"

In *Downes v. Bidwell* the court points out that Congress can tax both the several States and United States possessions and territories or can just tax the several States, or can tax any one or more of its possessions and/or territories without taxing the several States.

*Downes v. Bidwell*, 21 S.Ct. 770, 182 U.S. 244, (U.S.N.Y. 1901): The researches of counsel have collated a large number of other instances in which Congress has in its enactments recognized the fact that provisions intended for the states did not embrace the territories, unless specially mentioned. These are found in the laws prohibiting the slave trade with 'the United States or

territories thereof;' or equipping ships 'in any port or place within the *jurisdiction* of the United States;' in the internal revenue laws, in the early ones of which no provision was made for the collection of taxes in the territory not included within the boundaries of the existing states, and others of which extended them expressly to the territories, or 'within [182 U.S. 258] the exterior boundaries of the United States;' and in the acts extending the internal revenue laws to the territories of Alaska and Oklahoma. It would prolong this opinion unnecessarily to set forth the provisions of these acts in detail. It is sufficient to say that Congress has or has not applied the revenue laws to the territories, as the circumstances of each case seemed to require, and has specifically legislated for the territories whenever it was its intention to execute laws beyond the limits of the states. Indeed, whatever may have been \*775 the fluctuations of opinion in other bodies (and even this court has not been exempt from them), Congress has been consistent in recognizing \*776 the difference between the states and territories under the Constitution. [Emphasis added]

It is apparent from the preceding *Downes*' cite that Congress relies on a constitutional authority other than or in addition to Article 1 § 8(1). A study of the Constitution's taxing clauses leads one to the conclusion that it was one of the purposes of the designers of the Constitution to prevent any number of legislators from joining together to attack any single State or region through the power of taxation. Excise taxes are required to be uniform and direct taxes are required to be fairly apportioned among the States according to population. Whenever Congress chooses to lay and collect excises and/or direct taxes that are not respectively either uniform or apportioned, then a taxing authority other than Article 1 § 8(1) is being used.

The following are definitions from income tax acts from 1913 to 1954:

Definition at 38 Stat. 177 from Income Tax Act of 1913:

That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

Definition at 39 Stat. 773 from Income Tax Act of 1916:

That the word "State" or "United States" when used in this section shall be construed to include any Territory, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

Definition at 40 Stat. 302 from Income Tax Act of 1917:

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

Definitions at: 40 Stat. 1058 from Income Tax Act of 1918; 42 Stat. 227 from Income Tax Act of 1921; 43 Stat. 253 from Income Tax Act of 1924; 45 Stat. 879 from Income Tax Act of 1928; 47 Stat. 289 from Income Tax Act of 1932; 48 Stat. 771 from Income Tax Act of 1934; 49 Stat. 1027 from Income Tax Act of 1935; and 52 Stat. 584 from Income Tax Act of 1938:

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

1939 Internal Revenue Code, 53 Stat., Pt. 1, 469:

United States.—The term “United States” when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

State.—The word “State” shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

1954 Internal Revenue Code, 68A Stat. 911:

United States.—The term “United States” when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

State.—The word “State” shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

By the mere fact that the various named states and Territories are added and deleted from the different definitions would indicate that the Federal income tax is pursuant to Congress’ Article 4 § 3(2) legislative authority over its territory and other property. A study of the various income tax acts also reveals that Congress is passing different laws for different areas. Congress is passing specific legislation for areas under its jurisdiction. An excellent example of this would be found at page 180<sup>16</sup> of the 1913 Statutes at Large, 63<sup>rd</sup> Congress, Session I, Ch. 16. At subsection “M” on that page, one will find that Congress authorized the governments of Porto Rico and the Philippines to use their own officers to administer and collect the income tax and the revenues so collected were to be paid into the respective treasuries of those two insular possessions of the United States. That particular section also authorized the courts of the Philippine Islands to exercise jurisdiction over legal matters concerning the income tax. (These provisions may exist in later income tax acts or the 1939 IRC. This author some years ago saw a similar provision in a different income tax act, which at the time raised questions.)

In 1915 the book A Treatise on the Federal Income Tax Under the Act of 1913 was written by Roger Foster of the New York Bar. On page 152 of that work he writes the following:

**§ 34. Incidence of the tax with respect to territory and places exempted from the same.** The tax applies to all citizens of the United States, wherever resident, to all residents of the United States irrespective of their citizenship, to the income of all property owned and of every business, trade or profession carried on, in the United States by persons residing elsewhere.<sup>1</sup> It is levied in Alaska, the District of Columbia, Porto Rico and the Philippine Islands.<sup>2</sup> But it is "provided that the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively."<sup>3</sup> The Act expressly directs: "That the word 'State' or 'United States' when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions."<sup>4</sup> Although there might be ground for argument that the phrase "any Territory" applies to the Hawaiian Islands, it was the evident intention of Congress that the residents of

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<sup>16</sup> See Appendix for page 180.

Hawaii, at least when not citizens of the United States, are exempt from the tax, for the reason that the Legislature of Hawaii has imposed an Income Tax upon all residents of that territory.<sup>5</sup>

[Footnote #5] Hawaii Law of April 30, 1901, Session of 1901, Act 20, quoted in full, *infra*, Part V.

Please note that Hawaii (1898) and Alaska (1912) were both organized Territories of the United States at the time of the 1913 Income Tax Act with Hawaii being exempted from the Act while Alaska was specifically included.

The Lawrence v. Wardell case also points out that the income tax was not extended to all citizens of the United States wherever resident until 1918 though some citizens of the United States in certain possessions were being taxed.

When Congress enacted the Revenue Law of October 3, 1917, by section 5 (Comp. St. 1918, Sec. 6336vv) it saw fit to provide expressly that the provisions of the title should not extend to the Philippines or Porto Rico, and the local Legislatures were given power to amend, alter, modify, or repeal the income tax laws in force in the islands, respectively. The result was that under the act of 1916 the entire net income of every individual, a citizen or resident of the United States, resident in the Philippines, became taxable thereunder, but subject to the jurisdiction of the Philippines in respect to tax matters. But Congress, acting doubtless under the after-war needs, by the Revenue Act of 1918, changed the situation and made the net income of every individual citizen of the United States taxable, no matter where he resides. In the place of the taxes imposed by the act of 1916 (subdivision (a) section 1), and by the act of 1917 (section 1) the net income of 'every individual' was subject to the rate prescribed (section 210); and in place of taxes imposed by subdivision (b), section 1, of the act of 1916, and section 2 of the act of 1917 (Comp. St. 1918, Sec. 6336aaa), but in addition to the normal tax imposed by section 210 of the act the surtaxes prescribed should be collected.

[2] The comprehensiveness of the 1918 act is as great as language could make it, for it applied to the income of every individual, changing the rates, and obviously imposing taxes at the new rates, where no tax could have been imposed prior to the 1918 act. We are unable to infer that, by using the words 'in lieu of,' Congress meant to tax only those incomes of individuals who had been subject to taxation under the two prior acts. It is more reasonable to hold that, where the individual was liable under the prior act of 1916, the new act of 1918 became the controlling standard. Where, by the act of 1917, he was relieved of the increased rates of that act, but had been subject to the 1916 act, he was covered by the provisions of the 1918 act, and in the event he was never before included he became liable under the very broad terms of the act of 1918. Section 260, supra, of the act of 1918, also leads to the conclusions indicated. The language there used discriminates, by making individuals who are citizens of a possession of the United States, yet not otherwise citizens of the United States, and who are not residents of the United States, subject to be taxed only as to income derived from sources within the United States. Unless such a person has income so derived, he is not subject to the act.

In the following court cite, it is seen that the Philippine Islands was not incorporated into

the United States and Congress legislated for it under the authority of Art. 4 § 3(2)<sup>17</sup>.

*Rasmussen v. U. S.*, 197 U.S. 516 (1905)

In *Dorr v. United States*, 195 U.S. 138, 24 Sup. Ct. Rep. 808, 49 L. ed. 128, the question was whether the 6th Amendment was controlling upon Congress in legislating for the Philippine Islands. Applying the principles which caused a majority of the judges who concurred in *Downes v. Bidwell*, 182 U.S. 244, 45 L. ed. 1088, 21 Sup. Ct. Rep. 770, to think that the uniformity clause of the Constitution was inapplicable to Porto Rico, and following the ruling announced in *Hawaii v. Mankichi*, 190 U.S. 197, 47 L. ed. 1016, 23 Sup. Ct. Rep. 787, it was decided that, whilst by the treaty with Spain the Philippine Islands had come under the sovereignty of the United States and were subject to its control as a dependency or possession, those islands had not been incorporated into the United States as a part thereof, and therefore Congress, in legislating concerning them, was subject only to the provisions of the Constitution applicable to territory occupying that relation. The power to acquire territory without incorporating it into the United States as an integral part thereof, as we have said, was sustained upon the reasoning expounded in the opinion of three, if not of four, of the judges who concurred in the judgment in *Downes v. Bidwell*, that reasoning being in effect adopted in the *Dorr* Case as the basis of the ruling there made, the court saying ( p. 143, 195 U. S., p. 110, 24 Sup. Ct. Rep., 49 L. ed. 128):

'Until Congress shall see fit to incorporate territory ceded by treaty into the United States, we regard it as settled by that decision [*Downes v. Bidwell*] that the territory is to be governed under the power existing in Congress to make laws for such territories, and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.'

And in view of the status of the Philippine Islands it was decided that the 6th Amendment was not applicable to those islands, and therefore Congress, when it legislated concerning them, was not controlled by the provisions of that amendment. It would serve no useful purpose to re-express the reasons supporting this conclusion, and we content ourselves with quoting [197 U.S. 516, 521] the summing up made by the court in the opinion in the *Dorr* Case, as follows (p. 149, 195 U. S., p. 813, 24 Sup. Ct. Rep., 49 L. ed. 128):

'We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in article 4, 3, to whatever other limitations it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory, not made a part of the United States by congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated.'

We are brought, then, to determine whether Alaska has been incorporated into the United States as a part thereof, or is simply held, as the Philippine Islands are held, under the sovereignty of the United States as a possession or dependency.

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<sup>17</sup> AmJur 2<sup>nd</sup>. States, Territories, and Dependencies § 161. "It should be noted that a possession or territory of the United States has no independent sovereignty comparable to that of a state by virtue of which taxes may be levied, and that it must derive its authority to tax from the United States." *Domenech v National City Bank*, 294 US 199, 79 L Ed 857, 55 S Ct 366.



Also, in 72 AmJur 2<sup>nd</sup>, States, Territories, & Dependencies, § 138, it is pointed out that while Puerto Rico by treaty of cession became territory part of the United States, it was not considered part of the United States subject to the revenue clauses of Art. 1 § 8 requiring duties, imposts, and excises to be uniform throughout the United States.<sup>18</sup>

Congress, as can be seen by the definitions of State and United States, and by reading the Lawrence case, Statutes, and other information, is picking and choosing whom it wishes to tax, which is only possible if Congress is using Article 4 § 3(2) as its authority to lay and collect the Federal income tax.

## Federal Income Tax and the Several States

Now that it has been shown by a number of evidences that the Federal income tax is pursuant to Article 4 § 3(2), it is time to take a look at income taxation by the several States. In those States where state income tax liability is dependent on having a Federal income tax liability, the Federal report “Jurisdiction Over Federal Areas Within the States” is again useful in seeing how state income taxation relies upon the Federal tax system and how the States use it. The report begins by giving an account of problems that residents of a Federal area were having as the result of not being residents of the State in which the Federal area was located. Because of this particular problem and other problems throughout the many Federal areas within the several States, a number of laws were eventually passed by Congress and by the several States to address and alleviate the problems the Federal residents were having. Some of the solutions to those problems resulted in Congress permitting the States to tax the incomes of Federal employees, as well as commerce and businesses located within Federal areas. The two principals laws passed by Congress were known as the Public Salary Tax Act and the Buck Act. These statutes are codified at 4 USC § 111 and §§ 104-110 respectively.

The opening paragraph of Chapter 1 of Part 1 of the Federal report starts by telling how a group of children within a Federal area were denied the privilege of attending the public schools of the State.

### PART I, CHAPTER I, OUTLINE OF STUDY

The instant study was occasioned by the denial to a group of children of Federal employees residing on the grounds of a Veterans’ Administration hospital of the opportunity of attending public schools in the town in which the hospital was located. An administrative decision against the children was affirmed by local courts, finally including the supreme court of the State. The decisions were based on the ground that residents of the area on which the hospital was located were not residents of the State since “exclusive legislative jurisdiction” over such area had been ceded by the State to the Federal Government, and therefore they were not entitled to privileges of State residency.

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<sup>18</sup> Statement cites *Downes v Bidwell*, 182 US 244, 45 L Ed 1088, 21 S Ct 770.

In an ensuing study of the State supreme court decision with a view toward applying to the Supreme Court of the United States for a writ of certiorari, the Department of Justice ascertained that State laws and practices relating to the subject of Federal legislative jurisdiction are very different in different States, that practices of Federal agencies with respect to the same subject very extremely from agency to agency without apparent basis, and that the Federal Government, the States, residents of Federal areas, and others, are all suffering serious disabilities and disadvantages because of a general lack of knowledge or understanding of the subject of Federal legislative jurisdiction and its consequences.

Numerous other problems arose in the past that affected the residents of Federal areas within the States. Most Citizens or residents of the several States fund local government services and school systems through property taxes and state and local sales taxes. Inasmuch as residents of Federal areas were not supporting through taxation the States, or local governments, within which their Federal enclaves were located, State and local governments had no duty to provide various services to such residents.

#### Part 1, Chapter 4, Jurisdiction Over Federal Areas Within the States

Federal areas of exclusive jurisdiction are considered in many respects to comprise legal entities separate from the surrounding State, and, indeed, until a recent decision the United States Supreme Court dispelled the notion, were viewed as completely sovereign areas (under the sovereignty of the United States), geographically surrounded by another sovereign. As a result there is not an obligation on the State or on any local political subdivision to provide for such areas normal governmental services such as disposal of sewage, removal of trash and garbage, snow clearance, road maintenance, fire protection and the like.

Persons and property on exclusive jurisdiction areas are not subject to State or local taxation except as Congress has permitted (income, sales, use, motor vehicle fuel, and unemployment and workmen's compensation taxes only have been permitted). It should be noted that the Federal Government and its instrumentalities are not subject to direct taxation by States or local taxing authorities regardless of the legislative jurisdiction status of the area on which they may be operating. However, the immunity from State authority of exclusive jurisdiction areas has the additional effect of barring State [18] or local taxation of the property on such areas, such as personal property of residents of such areas, and property of lessees of standby Government industrial facilities on such areas, thereby resulting in considerable diminution of State and local tax revenues.

The Public Salary Tax Act gave State taxing authorities permission to collect taxes on the compensation of officers and employees of the Federal Government who maintained their domiciles within the legislative jurisdictions of the States. As the result of inequities that arose as discussed below, the Buck Act was passed allowing State taxing authorities to tax the compensation of those officers and employees who maintained their residences or received income from within Federal areas.

#### Chapter 7, Part 2, Jurisdiction Over Federal Areas Within the States

The provision relating to the application of State income taxes to persons residing within a Federal area or receiving income from transaction occurring on or service performed in a Federal area is

explained in the Senate report on the rationale that:

Section 2 (a) of the committee amendment removes the exemption from income taxes levied by a State, or any duly constituted taxing authority in a State, where the exemption is based solely on the ground that the taxpayer resides within a Federal area or receives his income from transactions occurring or services performed in such area. One of the reasons for removing the above exemption is because of an inequity which has arisen under the Public Salary tax Act of 1939. Under that act a State is permitted to tax the compensation of officers and employees who reside or are domiciled [196] in that State but is not permitted to tax the compensation of such officers and employees who reside within the Federal areas within such State. For example, a naval officer who is ordered to the Naval Academy for duty and is fortunate enough to have quarters assigned to him within the Naval Academy grounds is exempt from the Maryland income tax because the Naval Academy grounds are a Federal area over which the United States has exclusive jurisdiction; but his less fortunate colleague, who is also ordered there for duty and rents a house outside the Academy grounds because no quarters are available inside, must pay the Maryland income tax on his Federal salary. Another reason for removing the above exemption, is that under the doctrine laid down in *James v. Dravo Contracting Co.* (302 U.S. 134, 1937), a State may tax the income or receipts from transactions occurring or services performed in an area within the State over which the United States and the State exercise concurrent jurisdiction but may not tax such income or receipts if the transactions occurred or the services were performed in an area within the State over which the United States has exclusive jurisdiction.

This section contains, for the same reasons, a similar provision to the one contained in section 1 granting the State or taxing authority full jurisdiction and power to levy and collect any such income tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

In Oklahoma, the state tax form that most people fill out is for a “Resident Individual,” form 511. On the second page of its direction booklet, a section titled “Before You Begin” states, “You must complete your Federal income tax return before you begin your Oklahoma income tax return. You will use the information entered on your Federal return to complete your Oklahoma return.” On the third page it states, “If you do not meet the Federal filing requirements as shown in either Chart A or Chart B on this page, you are not required to file an Oklahoma tax return.” There are no doubt a considerable number of individuals within Oklahoma who work for the United States Government in one capacity or another, there are many who work and receive income from within Federal areas within the State. They are liable for the Federal income tax and are therefore liable for the Oklahoma income tax by virtue of the Public Salary Tax Act and the Buck Act. However, most Citizens of Oklahoma have no requirement to file a Federal tax return inasmuch as it is not a tax laid by Congress pursuant to Article 1 § 8(1). Most other State tax systems are no doubt set up to take advantage of those two Acts of Congress and therefore rely upon an individual’s liability for the Federal income tax before the individual becomes liable for the State income tax.

If Internal Revenue Service is constitutionally incompetent to collect any tax laid pursuant to Article 1 § 8(1), then the tax commonly known as Social Security cannot be pursuant to article 1, section 8. It also has to be a tax laid and collected pursuant to Congress' Article 4 § 3(2) constitutional authority. That being the case, why do State authorities go to such lengths to have each Citizen of the States obtain a Social Security number and require it from the Citizen in the many areas where the Citizen conducts his affairs? Why does a judge ask for it when an individual is charged with or prosecuted for a crime? The proffered benefits of Social Security by the United States and the possession of a Social Security account provide the nexus, as Sherry Peel Jackson claims as the result of information discovered from her trial and that the 26 CFR § 301.6109-1(g) subsection shows, that tie a Citizen of a State to those who are subject to Congress' legislative jurisdiction.

## A Few Thoughts

I am not a lawyer and I am not a constitutional legal scholar. I am not going to tell anyone whether or not to file income tax forms and/or pay or not any alleged liability for the income tax. I have set forth the foregoing information on the Federal income tax, which is correct to the best of my knowledge, that was garnered from what legal resources that were available to me. Many people have advanced various theories over the years only to be attacked by the Government and soundly thrashed and the followers of those various theories have also not fared well. I think my premise that the Federal income tax is pursuant to Article 4 § 3(2), Congress' constitutional authority over its territory and other property and is nothing other than a Federal state income tax, is absolutely correct. The premise answers nagging questions other theories have left unanswered. The fact that the President fired all the collectors of internal revenue in 1952 and replaced them with Internal Revenue Service personnel has been one of the great nagging questions. If the Federal income tax is pursuant to Article 4 § 3(2), then there is no constitutional problem where the required use of collectors are concerned. Any arguments against Congress' use of that authority to lay and collect taxes within territory under its legislative jurisdiction and upon its citizens, wherever resident, and residents subject to its jurisdiction are doomed to fail without a showing of a violation of the Constitution. The courts will rightly state that any argument against taxation, which is pursuant to that authority, is frivolous or is a political question. Where the Constitution delegates to Congress the absolute power to do something, it is a waste of time to argue against Congress' acts pursuant to that delegated plenary authority.

As will be pointed out in following sections concerning Federal courts, Article 3 common

law courts known as “district courts of the United States” do not at present exist<sup>19</sup>. The United States District Courts, which were created as legislative courts within the several States, have been given Article 3 powers and they exercise admiralty and Federal question jurisdiction but they do not appear to act in the capacity of common law courts as “district courts of the United States” did. A person desiring to bring an action at common law might be better served by using one of his State courts to file actions for torts against IRS personnel who have unlawfully molested him or his property. There are probably several common law actions a person could bring in his State courts against IRS personnel who are intent on bothering him. Also, one who is a nontaxpayer will avoid using the tax code when bringing actions against IRS personnel as the code is only for taxpayers.

281 F. 236, *Long v. Rasmussen*, (D.C.Mont. 1922):

The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. ...

[7] The distinction between persons and things within the scope of the revenue laws and those without them is vital. See *De Lima v. Bidwell*, 182 U.S. 176, 179, 21 Sup.Ct. 743, 45 L.Ed. 1041. To the former only does section 3224 apply (see cases cited in *Violette v. Walsh* (D.C.) 272 Fed. 1016), and the well-understood exigencies of government and its revenues and their collection do not serve to extend it to the latter. It is a shield for official action, not a sword for private aggression.

The Constitution provides maritime/admiralty jurisdiction to the Federal courts. Within the States, those courts are required to be Article 3 courts. Congress also has the authority to legislatively extend maritime/admiralty jurisdiction to its territories, whether incorporated or unincorporated. The U.S. Code section, 18 USC § 7, which was previously quoted from, sets out the “Special maritime and territorial jurisdiction of the United States.” The Treasury Order (TO) 150-01 delegated to the Commissioner the authority to administer the internal revenue laws within the territories and insular possessions of the United States, along with other authorized areas. The Federal income tax is pursuant to Congress’ constitutional authority over its territory and other property, i.e. Article 4 § 3(2). These things considered, when an individual, who is subject to the internal revenue laws of the United States, i.e., he is a taxpayer, violates any section of the Internal Revenue Code, he has committed an offense that is subject to the special maritime

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<sup>19</sup> In 1965, the United States demonetized silver coins. In that year, as will be pointed out in the Federal Courts’ section, the United States also fired all customs’ official who were appointed by the President. Customs, since then, have been collected pursuant to Congress’ article 4, section 3, clause 2 authority. It would appear and is my opinion that the Federal common law courts were done away with as a result of and ramifications resulting from the lack of gold and silver coins being used as money.

jurisdiction of the United States. Are those individuals who are charged with such tax crimes then being prosecuted under the admiralty jurisdiction of the courts of the United States? It appears that the judges in those courts are little concerned with the accused's understanding of the tax code. What passes for due process in courts under admiralty jurisdiction is not going to be the same as under common law. Those individuals within those courts who feel they are being denied due process might want to determine the body of law under which they are being prosecuted.

112 F.Supp. 383, *Kitchens v. Steele*, (D.C.Mo. 1953)

Ever since the case of *United States v. Worrall*, 2 Dall. 384, 2 U.S. 384, 1 L.Ed. 426, it has been universally recognized that Federal Courts have no common law jurisdiction in criminal cases. The jurisdiction of such Courts is wholly derived from Acts of the Congress. Although the Constitution contains no grant, general or specific, to Congress of power to provide for the punishment of crimes, except piracies and felonies on the high seas, offenses against the law of nations, treason, and counterfeiting the securities and coin of the United States, no one doubts the power of Congress to 'create, define, and punish, crimes and offenses, whenever they shall deem it necessary and proper by law to do so, for effectuating the objects of the Government.' *United States v. Worrall*, supra; Cf. *McCulloch v. Maryland*, 4 Wheat. 316, 17 U.S. 316, 4 L.Ed. 579; *United States v. Hall*, 98 U.S. 343, 346 25 L.Ed. 180. [\*\*\*]

The Congress of the United States of America, in treating with those who violate laws enacted by it, is not fettered by common law concepts of crime and procedure. That is not to say that common law concepts of guilt and innocence are not a part of due process in federal criminal procedure as we conceive it. [\*\*\*]

The colonists went to war against England for a number of different grievances. One of their complaints was the fact that colonists were being taken out of their communities and were being tried by England within its admiralty courts without the benefits of trial by jury. To suppose that those who wrote the Constitution intended for the United States Government to be able to drag any Citizen of one of the several States out of the jurisdiction of his State for any tax crime and try him within the United States' admiralty jurisdiction is unimaginable. If such is the case, it could only be possible if the tax was pursuant to Article 4 § 3(2) and the persons being tried within that jurisdiction had some nexus to that jurisdiction.<sup>20</sup>

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<sup>20</sup> Many reject the idea admiralty jurisdiction plays any significant role in federal taxation, perhaps they are correct. However, if one will do a search on "special maritime" through Title 18 of the U.S. Code, one will find numerous definitions of crimes that are cognizable by the United States in the special maritime jurisdiction of the United States.

In 18 USC § 7 is found: HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., Sec. 451 (Mar. 4, 1909, ch. 321, Sec. 272, 35 Stat. 1142; June 11, 1940, ch. 323, 54 Stat. 304).

Civil suits by the Internal Revenue Service and the Department of Justice would also appear to be suits in admiralty. With an admiralty action, diversity of citizenship would not be a factor, a suit for any amount would be possible, and there is no strict requirement for trial by jury. (See Admiralty generally in AmJur 2<sup>nd</sup>.) If the income tax was pursuant to Article 1 § 8(1), then a civil action against a Citizen of one of the several States would be a common law action and would be brought by a collector of internal revenue.

Constitution of the United States, Analysis and Interpretation, 2002 Ed., pg. 774.

Perhaps the most significant admiralty court difference in procedure from civil courts is the absence of a jury trial in admiralty actions, with the admiralty judge trying issues of fact as well as of law.<sup>829</sup> Indeed, the absence of a jury in admiralty proceedings appears to have been one of the principal reasons why the English government vested a broad admiralty jurisdiction in the colonial vice-admiralty courts, since they provided a forum where the English authorities could enforce the Navigation Laws without “the obstinate resistance of American juries.”<sup>830</sup>

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

CHAPTER 85 - DISTRICT COURTS; JURISDICTION

Sec. 1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

- (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.
- (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

One should also be fully aware that when Congress lays and collects taxes pursuant to Article 1 § 8(1), Congress is acting in its capacity as a national legislative body, is bound by the Constitution, and has limited, delegated powers. When Congress lays and collects taxes pursuant to Article 4 § 3(2), it is acting as a quasi-state legislature with plenary powers, which are granted by that constitutional clause, over its territory and other property. When Congress acts as a quasi-state legislature over its territory and other property, Congress can pass any law that is not repugnant to the Constitution. So there are two different constitutional authorities to lay and collect taxes and those two different

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The words "The term 'special maritime and territorial jurisdiction of the United States' as used in this title includes:" were substituted for the words "The crimes and offenses defined in sections 451-468 of this title shall be punished as herein prescribed."

This section first appeared in the 1909 Criminal Code. It made it possible to combine in one chapter all the penal provisions covering acts within the admiralty and maritime jurisdiction without the necessity of repeating in each section the places covered.

The present section has made possible the allocation of the diverse provisions of chapter 11 of Title 18, U.S.C., 1940 ed., to particular chapters restricted to particular offenses, as contemplated by the alphabetical chapter arrangement. In several revised sections of said chapter 11 the words "within the special maritime and territorial jurisdiction of the United States" have been added. Thus the jurisdictional limitation will be preserved in all sections of said chapter 11 describing an offense.

authorities provide two totally different sets of rules Congress can use in laying and collecting taxes. Because few Americans are aware of these two different constitutional authorities and two different sets of rules, many Citizens who make arguments against the Federal income tax are making arguments that would apply if it were an Article 1 § 8(1) tax while IRS authorities, the United States courts, and Department of Justice personnel fully realize and understand that the Federal income tax is pursuant to Article 4 § 3(2). While those Citizens' arguments might be correct if applied to a direct tax laid and collected under the constitutional authority of Article 1 § 8(1), those arguments are in error because the constitutional authority they believe is being relied upon for the tax is in error.

One speaker I listened to some years ago stated that he was tired of showing IRS personnel how smart he was, he wanted to find out how smart they were. He suggested that instead of stating what you believe are the correct facts you instead ask specific questions based on the information available to you. I follow an approach between the two suggestions. Ask specific questions and also state what you believe to be the correct interpretation of the law. You might query the IRS, or better the officers of the United States over it, e.g., Secretary of the Treasury, Commissioner, and/or Chief Counsel, concerning what constitutional authority is being used for the Federal income tax or what constitutional authority was used for the creation of the Internal Revenue Service. Be specific in phrasing the questions. An affidavit stating specific facts concerning your domicile and residence, citizenship in your State, and source of income is also in order. Be explicit that you live and work on property that is subject to the exclusive legislative jurisdiction of your State or, if so, another State of the Union. The Federal income tax has to do with Congress' Art. 4 § 3(2) legislative jurisdiction. As stated in 26 CFR § 1.1-1(c), the citizen of the United States who is subject to its jurisdiction is made liable for the income tax. The Citizens of the several States are normally subject to their respective States' legislative jurisdictions. Since the IRS is notorious for not answering questions, they will more than likely not wish to answer them in a legal setting. Considering the natures of the Federal income tax and the IRS, neither are going to be abolished anytime soon. The best one can hope for is that the IRS chooses or is forced to obey the law and not bother those who are not liable for the Federal income tax.

Inasmuch as the IRS relies upon SSNs and/or EINs, it is imperative that a Citizen of one of the several States, whose income has no nexus to Congress' Art. 4 § 3(2) legislative jurisdiction, write the IRS for the necessary forms and procedures to change one's status, e.g., nonresident alien. One might also rely upon the claim of fraud to void a SSN or EIN as a result of not being told of the consequence of applying for a SSN and/or EIN. Such a claim might require a civil suit to enforce it. Federal taxation is a Federal question for Federal courts but one's being a citizen of his or her State is a question for one's State court. Again, I am not a lawyer and am just trying to point out the problem. There are many Americans who have never earned income within Congress' legislative jurisdiction



but there are many Citizens of the several States who currently are or in the past have. Some are liable for the income tax and many have never been.

I found the Lawrence v. Wardell case in the Spring of 2004. I thought about that case for close to seven months, I had a lot to unlearn, before I finally understood that the Federal income tax was pursuant to Congress' legislative jurisdiction granted by Article 4 § 3(2). For the previous three decades, I had read books and literature concerning the Federal income tax that all taught that the income tax was pursuant to Article 1 § 8(1). I have found only one other person in the last several years that had some idea that the Federal income tax was pursuant to Article 4 § 3(2). I would assume that there is yet more information to be found pointing to that authority for the income tax. If more people were looking for such information, it could be found much more quickly and the fraud being perpetrated against the Citizens of the several States could be brought into the light much sooner. However, trying to inform people about this information has proven to be a Herculean task. I would encourage those who have obtained this book, and have read and understood it, to speak out and inform others. The truth may well set us free.

IRS personnel generally act against persons who are not subject to their jurisdiction. Ultimately, civil suits or criminal complaints may have to be relied upon. The several officers of the United States who are over the affairs of the IRS should be informed each time IRS personnel violate the law. If they do not correct those violations, then they are also in violation of the law. In using this information, each person will have to determine his circumstances before making use of it. Some persons are going to be liable for the tax and some aren't. Most Citizens of the several States are not generally liable for the Federal income tax.

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There have been numerous different books written concerning the legitimacy of the present federal income tax. To the best of my knowledge, this is the only one advocating that Art. IV, Sec. 3, Cl. 2 is the source of constitutional authority for the tax. This book has been for sale for a number of years; sadly, not many copies have been sold. Reading, studying, and pondering over numerous sources of information over several decades went into this work. Writing it took a number of months once that proverbial light went off in my head. A lot of my time went into this book. If you appreciate this information and find this free PDF version of this book informative, you might make a donation by snail mail to the author.

## THE FEDERAL COURTS

The following information on the Federal courts is an ongoing work and is therefore incomplete. More research is necessary. It is being presented here to point out to the uninformed that the Article 3 inferior courts, known as “District Courts of the United States,” the common law Federal courts intended by the Founders for the Citizens of the several States, disappeared some decades ago. The Federal courts in the States today are “United States District Courts.” They were created as Article 1 or legislative courts. At some point in the mid 1900’s, they were assigned Article 3 judges and given an Article 3 jurisdiction. They are now courts with an amalgamation of Article 1 and Article 3 powers. These are the same type of lower Federal courts that exist in the District of Columbia as a result of Congress exercising a dual authority over that area.<sup>21</sup> An Act of Congress authorized the addition of Article 3 functions to these courts and has not yet been identified.<sup>22</sup> A lack of understanding of the nature of these courts is behind a large part of the fraud being perpetrated against the Citizens of the several States.

The reader of this work should also note that if the premise of this work is correct concerning the Federal income tax being pursuant to Article 4 § 3(2) of the Constitution, then we should find that legal questions affecting the Federal income tax, or internal revenue, would be heard in courts created by Congress pursuant to its legislative authority over its territory. As will be pointed out in the following “Legislative Courts” section, that is exactly the case, though it would appear that Article 3 components of the United States District Courts are used in criminal and civil trials.

### Lower Federal Courts

“United States District Court” and “District Court of the United States” — most Americans would read the names of these two different lower Federal courts and would not realize that those two Federal court systems derive their authority from different sections of the Constitution. Within the United States court systems, we find inferior courts created pursuant to article 1, section 8, clause 9 and Article 3, section 1 of the U.S. Constitution, and we also find legislative courts. Legislative courts are not Article 3 courts. A reading

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<sup>21</sup> The Supreme Court in the following case discusses issues concerning Article 1&3 and the federal courts -- 69 S.Ct. 1173, 337 U.S. 582, *National Mut. Ins. Co. of Dist. of Col. v. Tidewater Transfer Co.*, (U.S.Md. 1949).

<sup>22</sup> Ralph Winterrowd of Alaska claims to have found the pertinent legislation. As of this date, I do not have access to his research. See [www.jusbelli.com](http://www.jusbelli.com) for Ralph’s website.

of a number of court cases is necessary to distinguish the differing authorities. Justice Frankfurter in the following case excerpt points out that there is a difference:

69 S.Ct. 213, at 224; 335 U.S. 469, *Michelson v. U.S.*, (U.S.N.Y. 1948)

Mr. Justice FRANKFURTER, concurring.

Despite the fact that my feelings run in the general direction of the views expressed by Mr. Justice RUTLEDGE in his dissent, I join the Court's opinion. I do so because I believe it to be unprofitable, on balance, for appellate courts to formulate rigid rules for the exclusion of evidence in courts of law that outside them would not be regarded as clearly irrelevant in the determination of issues. For well-understood reasons this Court's occasional ventures in formulating such rules hardly encourage confidence in denying to the federal trial courts a power of control over the allowable scope of cross-examination possessed by trial judges in practically all State courts. After all, such uniformity of rule in the conduct of trials in the crystallization of experience even when due allowance is made for the force of imitation. To reject such an impressive body of experience would imply a more dependable wisdom in a matter of this sort than I can claim.

To leave the District Courts of the United States the discretion given to them by this decision presupposes a [335 U.S. 488] high standard of professional competence, good sense, fairness and courage on the part of the federal district judges. If the United States District Courts are not manned by judges of such qualities, appellate review, no matter how stringent, can do very little to make up for the lack of them.

## Inferior Courts

The following is found in the Article 3 section of the 1992 “Constitution: Analysis and Interpretation,” pg. 597. It points out that where Article 3 inferior courts are concerned, Congress has the power to create them or not and, if once created, Congress has the power to abolish them. Congress also has the authority to determine subject matter jurisdiction the inferior courts can exercise. An example of Congress exercising its authority over the courts’ subject matter jurisdiction is seen in the Pledge of Allegiance Protection Act, which is found on a subsequent page.

### ORGANIZATION OF COURTS, TENURE, AND COMPENSATION OF JUDGES

The Constitution is almost completely silent concerning the organization of the federal judiciary. “That there should be a national judiciary was readily accepted by all.”<sup>1</sup> But whether it was to consist of one high court at the apex of a federal judicial system or a high court exercising appellate jurisdiction over state courts that would initially hear all but a minor fraction of cases raising national issues was a matter of considerable controversy.<sup>2</sup> The Virginia Plan provided for a “National judiciary [to] be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature . . . .”<sup>3</sup> In the Committee of the Whole, the proposition “that a national judiciary be established” was unanimously adopted,<sup>4</sup> but the clause “to consist of One supreme tribunal, and of one or more inferior tribunals”<sup>5</sup> was first agreed to, then reconsidered, and the provision for inferior tribunals stricken out, it being argued that state courts could adequately adjudicate all necessary matters while the supreme tribunal would protect the national interest and assure uniformity.<sup>6</sup> Wilson and Madison thereupon moved to authorize

Congress “to appoint inferior tribunals,”<sup>7</sup> which carried the implication that Congress could in its discretion either designate the state courts to hear federal cases or create federal courts. The word “appoint” was adopted and over the course of the Convention changed into phrasing that suggests something of an obligation on Congress to establish inferior federal courts.<sup>8</sup>

The “good behavior” clause excited no controversy,<sup>9</sup> while the only substantial dispute with regard to denying Congress the power to intimidate judges through actual or threatened reduction of salaries came on Madison’s motion to bar increases as well as decreases.<sup>10</sup>

[\*\*\*]

### Inferior Courts

Congress also acted in the Judiciary Act of 1789 to create inferior courts. Thirteen district courts were constituted to have four sessions annually,<sup>19</sup> and three circuit courts were established. The circuit courts were to consist of two Supreme Court justices each and one of the district judges, and were to meet twice annually in the various districts comprising the circuit.<sup>20</sup> This system had substantial faults in operation, not the least of which was the burden imposed on the Justices, who were required to travel thousands of miles each year under bad conditions.<sup>21</sup> Despite numerous efforts to change this system, it persisted, except for one brief period, until 1891.<sup>22</sup> Since then, the federal judicial system has consisted of district courts with original jurisdiction, intermediate appellate courts, and the Supreme Court.

*Abolition of Courts.*—That Congress “may from time to time ordain and establish” inferior courts would seem to imply that the system may be reoriented from time to time and that Congress is not restricted to the *status quo* but may expand and contract the units of the system. But if the judges are to have life tenure what is to be done with them when the system is contracted? Unfortunately, the first exercise of the power occurred in a highly politicized situation, and no definite answer emerged. By the Judiciary Act of February 13, 1801,<sup>23</sup> passed in the closing weeks of the Adams Administration, the districts were reorganized, and six circuit courts consisting of three circuit judges each were created. Adams filled the positions with deserving Federalists, and upon coming to power the Jeffersonians set in motion plans to repeal the Act, which were carried out.<sup>24</sup> No provision was made for the displaced judges, apparently under the theory that if there were no courts there could be no judges to sit on them.<sup>25</sup> The validity of the repeal was questioned in *Stuart v. Laird*,<sup>26</sup> where Justice Paterson scarcely noticed the argument in rejecting it.

Not until 1913 did Congress again utilize its power to abolish a federal court, this time the unfortunate Commerce Court, which had disappointed the expectations of most of its friends.<sup>27</sup> But this time Congress provided for the redistribution of the Commerce Court judges among the circuit courts as well as a transfer of its jurisdiction to the district courts.

Except where Congress has given exclusivity to Federal courts over certain issues, the State courts can be used in suing Citizens of other States through the Constitution’s diversity of citizenship clause. Continuing at pg. 792;

The Constitution established a system of government in which total power, sovereignty, was not unequivocally lodged in one level of government. In Chief Justice Marshall's words, “our complex system [presents] the rare and difficult scheme of one general government, whose actions extend over the whole, but which possesses only certain enumerated powers, and of numerous state governments, which retain and exercise all powers not delegated to the Union. . . .” Naturally, in such a system, “contests respecting power must arise.”\1124\ Contests respecting power may

frequently arise in a federal system with dual structures of courts exercising concurrent jurisdiction in a number of classes of cases. Too, the possibilities of frictions grow out of the facts that one set of courts may interfere directly or indirectly with the other through injunctive and declaratory processes, through the use of habeas corpus and removal to release persons from the custody of the other set, and through the refusal by state courts to be bound by decisions of the United States Supreme Court. The relations between federal and state courts are governed in part by constitutional law, with respect, say, to state court interference with federal courts and [\[\[Page 793\]\]](#) state court refusal to comply with the judgments of federal tribunals, in part by statutes, with respect to the federal law generally enjoining federal-court interference with pending state court proceedings, and in part by self-imposed rules of comity and restraint, such as the abstention doctrine, all applied to avoid unseemly conflicts, which, however, have at times occurred.

Fn. [\1124\](#)Gibbons v. Ogden. 9 Wheat. (22 U.S.) 1.204-205 (1824).

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Subject to congressional provision to the contrary, state courts have concurrent jurisdiction over all the classes of cases and controversies enumerated in Article III, except suits between States, those to which the United States is a party, those to which a foreign state is a party, and those within the traditional admiralty jurisdiction.[\1125\](#) Even within this last category, however, state courts, though unable to prejudice the harmonious operation and uniformity of general maritime law,[\1126\](#) have concurrent jurisdiction over cases that occur within the maritime jurisdiction when such litigation assumes the form of a suit at common law.[\1127\](#) Review of state court decisions by the United States Supreme Court is intended to protect the federal interest and promote uniformity of law and decision relating to the federal interest.[\1128\](#) The first category of conflict surfaces here. The second broader category arises from the fact that state interests, actions, and wishes, all of which may at times be effectuated through state courts, are variously subject to restraint by federal courts. Although the possibility always existed,[\1129\](#) it became much more significant and likely when, in the wake of the Civil War, Congress bestowed general federal question jurisdiction on the federal courts,[\1130\](#) enacted a series of civil rights statutes and conferred jurisdiction on the federal courts to enforce them,[\1131\](#) and most important of all proposed and saw to the ratification of the three constitutional amendments, especially the Fourteenth, which made subject to federal scrutiny an ever-increasing number of state actions.[\1132\](#)

Fn. [\1125\](#)See 28 U.S.C. Sec. Sec. 1251, 1331 et seq. Indeed, the presumption is that states courts enjoy concurrent jurisdiction, and Congress must explicitly or implicitly confine jurisdiction to the federal courts to oust the state courts. See *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 477-484 (1981); *Tafflin v. Levitt*, 493 U.S. 455 (1990); *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820 (1990). Federal courts have exclusive jurisdiction of the federal antitrust laws, even though Congress has not spoken expressly or impliedly. See *General Investment Co. v. Lake Shore & Michigan Southern R. Co.*, 260 U.S. 261, 287 (1922). Justice Scalia has argued that, inasmuch as state courts have jurisdiction generally because federal law is law for them, Congress can provide exclusive federal jurisdiction only by explicit and affirmative statement in the text of the statute, *Tafflin v. Levitt*, *supra*, 469, but as can be seen that is not now the rule.

Article 1, section 8, clause 9 of the Constitution delegates to Congress the authority to create “inferior” courts. Article 3, section 1 vests the judicial power of the United States in “such inferior Courts as the Congress may from time to time ordain and establish.”

Art. 1, Sec. 8, Cl. 9.

To constitute Tribunals inferior to the supreme Court;

Art. 3, Sec. 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The “inferior courts” authorized by the Constitution are lower federal courts created pursuant to Article 3 and are not legislative courts.

82 S.Ct. 1459, 370 U.S. 530, *Glidden Co. v. Zdanok*, (U.S.N.Y. 1962)

The Constitution nowhere makes reference to "legislative courts." The power given Congress in Art 1, 8, cl 9, "To constitute Tribunals inferior to the supreme Court," plainly relates to the "inferior Courts" provided for in Art 3, 1; it has never been relied on for establishment of any other tribunals.

As the 1938 *Mookini* cite below points out, “District Courts of the United States” was the term used to identify the constitutional Article 3 inferior courts within the several States.

58 S.Ct. 543, 303 U.S. 201, *Mookini v. U.S.*, (U.S.Hawai'i 1938)

[2] [3] [4] The term 'District Courts of the United States,' as used in the rules, without an addition expressing a wider connotation, has its historic significance. It describes the constitutional courts created under article 3 of the Constitution. Courts of the Territories are legislative courts, properly speaking, and are not District Courts of the United States. We have often held that vesting a territorial court with jurisdiction similar to that vested in the District Courts of the United States does not make it a 'District Court of the United States.' *Reynolds v. United States*, 98 U.S. 145, 154, 25 L.Ed. 244; *The City of Panama*, 101 U.S. 453, 460, 25 L.Ed. 1061; *In re Mills*, 135 U.S. 263, 268, 10 S.Ct. 762, 34 L.Ed. 107; *McAllister v. United States*, 141 U.S. 174, 182, 183, 11 S.Ct. 949, 35 L.Ed. 693; *Stephens v. Cherokee Nation*, 174 U.S. 445, 476, 477, 19 S.Ct. 722, 43 L.Ed. 1041; *Summers v. United States*, 231 U.S. 92, 101, 102, 34 S.Ct. 38, 58 L.Ed. 137; *United States v. Burroughs*, 289 U.S. 159, 163, 53 S.Ct. 574, 77 L.Ed. 1096. Not only did the promulgating order use the term District Courts of the United States in its historic and proper sense, but the omission of provision for the application of the rules to the territorial courts and other courts mentioned in the authorizing act clearly shows the limitation that was intended.

In sections 81 thru 131 of chapter 5 of title 28 of the United States Code, we find the legislation creating judicial districts. The legislation includes sections for each of the 50 States plus the District of Columbia and Puerto Rico. The sections detail what counties shall be in the respective judicial districts within each State and also names cities in each judicial district where the “District Courts of the United States” are to hold court. At least within the several States, any person looking for these article 3 “District Courts of the United States” will only find disappointment, as they do not exist. In the aforementioned *Glidden* case, the following is found where the Supreme Courts states:

82 S.Ct. 1459, 370 U.S. 530, *Glidden Co. v. Zdanok*, (U.S.N.Y. 1962)

The great constitutional compromise that resulted in agreement upon Art 3, 1, authorized but did not obligate Congress to create inferior federal courts.

So, while legislation is contained within Title 28 of the U.S. Code creating judicial districts within the several States and naming cities within those judicial districts where courts are to be held, the article 3 “district courts of the United States” are missing. Congress has apparently not seen any necessity of funding them for a number of decades.

These “district courts of the United States” were to be common law courts and relied for the most part upon the laws of the States in which they were held as the bases for their decisions in common law cases.

23 U.S. 1, *Wayman v. Southard*, (U.S.Ky. 1825)

2. The next question was, what had been done by Congress?

The act of the 24th of September, 1789, c. 20. established the judicial tribunals. The 34th section enacts, that 'the laws of the several States, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the Courts of the United States, in cases where they apply.' But this merely gives the ground of decision; it does not give the means of attaining the decision, or of giving it effect.

The powers of the Courts are conferred by the sections from 13 to 17 inclusive. The Courts being thus established, their jurisdiction defined, or to be defined, and the nature of their proceedings distinguished, the power to issue the common law writs of mandamus and prohibition, is vested in the Supreme Court by the latter part of the 13th section. The 14th section then gives them power to issue 'writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for \*7 the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.' This is to be taken *ad referendum*, according to the function they were to perform. They were to be common law Courts, proceeding according to the course of the common law, with power to issue writs agreeably to the principles and usages of that law. The common law remedies were, therefore, adopted by the Judiciary Act of 1789, c. 20. and it has been judicially determined that these remedies are to be not according to the varying practice of the State Courts, but according to the principles of the common law, as settled in England. (FNb) This, of course, is to be understood with the exception of such modifications as have been made by acts of Congress, the rules of Court made under those acts, and the State laws in force in 1789. [Emphasis added.]

U.S. Constitution, Bill of Rights, Article VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## Legislative Courts

The Constitution prescribes the creation of article 3 courts. It does not contain any express authority for Article 1 courts, which are generally referred to as legislative courts. Instead, Congress relies on Article 4 § 3(2) or its “general right of sovereignty” in the creation of legislative courts. As previously stated, within its territory or other property, “Congress exercises the combined powers of the general and state governments.”

26 U.S. 511, American Ins. Co. v. 356 Bales of Cotton, (U.S.S.C. 1828)

The Judges of the Superior Courts of Florida hold their offices for four years. These Courts, then are not Constitutional Courts, in which the judicial powers conferred by the Constitution \*511 on the general government can be deposited. They are incapable of receiving it. They are legislative Courts, created in virtue of the general right of sovereignty, which exists in the government; or in virtue of that clause which enables Congress to make laws regulating the territories belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power, which is defined in the third article of the Constitution, but is conferred by Congress in the exercise of its powers over the territories of the United States. (546)

Although admiralty jurisdiction can be exercised in the states, in those Courts only which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and state governments. (546)

(Article 3 of the Constitution grants jurisdiction over admiralty matters to the Federal Government. Article 3 courts are authorized jurisdiction over admiralty cases within the States. There are no article 3 “district courts of the United States,” which are authorized pursuant to Chapter 5 of Title 28 of the U.S. Code, within the States. Other Article 3 courts within the States must exist.)

53 S.Ct. 740, 289 U.S. 516, O'Donoghue v. U.S., (U.S. 1933)

[4] This court has repeatedly held that the territorial courts are 'legislative' courts, created in virtue of the national sovereignty or under article 4, s 3, cl. 2, of the Constitution, vesting in Congress the power 'to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States'; and that they are not invested with any part of the judicial \*745 power defined in the third article of the Constitution. And this rule, as it affects the territories, is no longer open to question. Do the courts of the District of Columbia occupy a like situation in virtue of the plenary power of Congress, under article 1, s 8, cl. 17, 'To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States? \* \* \*' This inquiry requires a consideration, first, of the reasons upon which rest the decisions in respect of the territorial courts.

Section 132 of chapter 5 of Title 28 of the U.S. Code provides for the creation of a court of record in each judicial district created in chapter 5. These are the United States District Courts found in one or more of the major cities in each State throughout the several States, Washington, D.C., and Puerto Rico. These courts of record are legislative courts (and





Supreme Court “will neither review the administrative proceedings of legislative courts nor entertain appeals from the advisory or interlocutory decrees of such a body.” The section goes on to state that the Supreme Court in certain instances may be vested with appellate jurisdiction over the decisions of legislative courts.

Farther down, a discussion concerning “Public Rights” and the courts is made. The statement is made that, “[T]here are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.” The paragraph following states, **“Among the matters susceptible of judicial determination, but not requiring it, are [\*\*\*] questions arising out of the administration of the customs<sup>23</sup> and internal revenue laws.”** (A reading of Reorganization Plan No. 1 of 1965 reveals that customs officers appointed by the President with the advice and consent of the Senate pursuant to Article 1 § 8(18), just as collectors of internal revenue, were fired, the offices abolished, and their duties assigned to Civil Service employees. It appears that customs taxes also are being collected pursuant to Article 4 § 3(2).)

An understanding of the powers and jurisdiction Congress has given legislative courts, the fact that the Supreme Court does not review their decisions, and that Congress has placed questions concerning the administration of internal revenue laws under them answers several questions many people have concerning the Federal income tax. The Supreme Court doesn’t have appellate jurisdiction over legislative courts except in a few limited instances.

See Article III section at <http://www.gpoaccess.gov/constitution/html/art3.html>:

**Legislative Courts: The Canter Case** [pg. 604]

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<sup>23</sup> Found at 19 USC § 1.

REORGANIZATION PLAN NO. 1 OF 1965

EFF. MAY 25, 1965, 30 F.R. 7035, 79 STAT. 1317

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 25, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended (see 5 U.S.C. 901 et seq.).

BUREAU OF CUSTOMS

SECTION 1. ABOLITION OF OFFICES

All offices in the Bureau of Customs of the Department of the Treasury of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise to which appointments are required to be made by the President, by and with the advice and consent of the Senate, are abolished. The foregoing provisions shall become effective with respect to each office abolished thereby at such time, not later than December 31, 1966, as the Secretary of the Treasury shall specify, \*\*\*

Legislative courts, so-called because they are created by Congress in pursuance of its general legislative powers, have comprised a significant part of the federal judiciary.<sup>45</sup> The distinction between constitutional courts and legislative courts was first made in *American Ins. Co. v. Canter*,<sup>46</sup> which involved the question of the admiralty jurisdiction of the territorial court of Florida, the judges of which were limited to a four-year term in office. Said Chief Justice Marshall for the Court: "These courts, then, are not constitutional courts, in which the judicial power conferred by the Constitution on the general government, can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3rd article of the Constitution, but is conferred by Congress, in the execution of those general powers which that body possesses over the territories of the United States."<sup>47</sup> The Court went on to hold that admiralty jurisdiction can be exercised in the States only in those courts which are established in pursuance of Article III but that the same limitation does not apply to the territorial courts, for in legislating for them "Congress exercises the combined powers of the general, and of a state government."<sup>48</sup>

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<sup>45</sup>In *Freytag v. CIR*, 501 U.S. 868 (1991), a controverted decision held Article I courts to be "Courts of Law" for purposes of the appointments clause. Art. II, Sec. 2, cl. 2. See *id.*, 888-892 (majority opinion), and 901-914 (Justice Scalia dissenting).

<sup>46</sup>1 Pet. (26 U.S.) 511 (1828).

<sup>47</sup>*Id.*, 546.

<sup>48</sup>In *Glidden Co. v. Zdanok*, 370 U.S. 530, 544-545 (1962), Justice Harlan asserted that Chief Justice Marshall in the *Canter* case "did not mean to imply that the case heard by the Key West court was not one of admiralty jurisdiction otherwise properly justiciable in a Federal District Court sitting in one of the States. . . . All the Chief Justice meant . . . is that in the territories cases and controversies falling within the enumeration of Article III may be heard and decided in courts constituted without regard to the limitations of that article. . . ."

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Canter postulated a simple proposition: "Constitutional courts exercise the judicial power described in Art. III of the Constitution; legislative courts do not and cannot."<sup>49</sup> A two-fold difficulty at

[[Page 605]]

tended this proposition, however. Admiralty jurisdiction is included

within the "judicial power of the United States" specifically in Article III, requiring an explanation how this territorial court could receive and exercise it. Second, if territorial courts could not exercise Article III power, how might their decisions be subjected to appellate review in the Supreme Court, or indeed in other Article III courts, which could exercise only Article III judicial power?<sup>50</sup> Moreover, if in fact some "judicial power" may be devolved upon courts not having the constitutional security of tenure and salary, what prevents Congress from undermining those values intended to be protected by Article III's guarantees by giving jurisdiction to nonprotected entities that, being subjected to influence, would be bent to the popular will?

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<sup>49</sup>Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 106 (1982) (Justice White dissenting).

<sup>50</sup>That the Supreme Court could review the judgments of territorial courts was established in *Durousseau v. United States*, 6 Cr. (10 U.S.) 307 (1810). See also *Benner v. Porter*, 9 How. (50 U.S.) 235, 243 (1850); *Clinton v. Englebrecht*, 13 Wall. (80 U.S.) 434 (1872); *Balzac v. Porto Rico*, 258 U.S. 298, 312-313 (1922).

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Attempts to explain or to rationalize the predicament or to provide a principled limiting point have from *Canter* to the present resulted in "frequently arcane distinctions and confusing precedents" spelled out in cases comprising "landmarks on a judicial 'darkling plain' where ignorant armies have clashed by night".<sup>51</sup> Nonetheless, Article I courts are quite usual entities in our judicial system.<sup>52</sup>

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<sup>51</sup>Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 90, 91 (1982) (Justice Rehnquist concurring). The "darkling plain" language is his attribution to Justice White's historical summary.

<sup>52</sup>In addition to the local courts of the District of Columbia, the bankruptcy courts, and the U. S. Court of Federal Claims, considered *infra*, these include the United States Tax Court, formerly an independent agency in the Treasury Department, but by the Tax Reform Act of 1969, Sec. 951, 83 Stat. 730, 26 U.S.C. Sec. 7441, made an Article I court of record, the Court of Veterans Appeals, Act of Nov. 18, 1988, 102 Stat. 4105, 38 U.S.C. Sec. 4051, and the courts of the territories of the United States. Magistrate judges are adjuncts of the District Courts, see *infra*, n. 105, and perform a large number of functions, usually requiring the consent of the litigants. See *Gomez v. United States*, 490 U.S. 858 (1989); *Peretz v. United States*, 501 U.S. 923 (1991). The U. S. Court of Military Appeals, strictly speaking, is not part of the judiciary but is a military tribunal, 10 U.S.C. Sec. 867,

although Congress designated it an Article I tribunal and has recently given the Supreme Court certiorari jurisdiction over its decisions.

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Power of Congress Over Legislative Courts.--In creating legislative courts, Congress is not limited by the restrictions imposed in Article III concerning tenure during good behavior and the prohibition against diminution of salaries. Congress may limit tenure to a term of years, as it has done in acts creating territorial courts and the Tax Court, and it may subject the judges of legislative courts to removal by the President,<sup>53</sup> or it may reduce their

[[Page 606]]

salaries during their terms.<sup>54</sup> Similarly, it follows that Congress can vest in legislative courts nonjudicial functions of a legislative or advisory nature and deprive their judgments of finality. Thus, in Gordon v. United States,<sup>55</sup> there was no objection to the power of the Secretary of the Treasury and Congress to revise or suspend the early judgments of the Court of Claims. Likewise, in United States v. Ferreira,<sup>56</sup> the Court sustained the act conferring powers on the Florida territorial court to examine claims rising under the Spanish treaty and to report its decisions and the evidence on which they were based to the Secretary of the Treasury for subsequent action. "A power of this description," it was said, "may constitutionally be conferred on a Secretary as well as on a commissioner. But [it] is not judicial in either case, in the sense in which judicial power is granted by the Constitution to the courts of the United States."<sup>57</sup>

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<sup>53</sup>McAllister v. United States, 141 U.S. 174 (1891).

<sup>54</sup>United States v. Fisher, 109 U.S. 143 (1883); Williams v. United States, 289 U.S. 553 (1933).

<sup>55</sup>2 Wall. (69 U.S.) 561 (1864).

<sup>56</sup>13 How. (54 U.S.) 40 (1852).

<sup>57</sup>Id., 48.

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Review of Legislative Courts by Supreme Court.--Chief Justice Taney's view, that would have been expressed in Gordon,<sup>58</sup> that the judgments of legislative courts could never be reviewed by the Supreme Court, was tacitly rejected in DeGroot v. United States,<sup>59</sup> in which the Court took jurisdiction from a final judgment of the Court of Claims. Since the decision in this case, the authority of the Court to exercise appellate jurisdiction over legislative courts has turned not upon the nature or status of such courts but rather upon the nature of the proceeding before the lower court and the finality of its judgment. The Supreme Court will neither review the administrative proceedings of legislative courts nor entertain appeals from the advisory or

interlocutory decrees of such a body.<sup>60</sup> But in proceedings before a legislative court which are judicial in nature, admit of a final judgment, and involve the per

[[Page 607]]

formance of judicial functions and therefore the exercise of judicial power, the Court may be vested with appellate jurisdiction.<sup>61</sup>

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<sup>58</sup>The opinion in *Gordon v. United States*, 2 Wall. (69 U.S.) 561 (1864), had originally been prepared by Chief Justice Taney, but following his death and reargument of the case the opinion cited was issued. The Court later directed the publishing of Taney's original opinion at 117 U.S. 697. See also *United States v. Jones*, 119 U.S. 477, 478 (1886), in which the Court noted that the official report of Chief Justice Chase's *Gordon* opinion and the Court's own record showed differences and quoted the record.

<sup>59</sup>5 Wall. (72 U.S.) 419 (1867). See also *United States v. Jones*, 119 U.S. 477 (1886).

<sup>60</sup>E.g., *Postum Cereal Co. v. California Fig Nut Co.*, 272 U.S. 693 (1927); *Federal Radio Comm. v. General Elec. Co.*, 281 U.S. 464 (1930); *D. C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). See *Glidden Co. v. Zdanok*, 370 U.S. 530, 576, 577-579 (1962).

<sup>61</sup>*Pope v. United States*, 323 U.S. 1, 14 (1944); *D. C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).  
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The "Public Rights" Distinction.--A major delineation of the distinction between Article I courts and Article III courts was attempted in *Murray's Lessee v. Hoboken Land & Improvement Co.*<sup>62</sup> In this case was challenged a summary procedure, without benefit of the courts, for the collection by the United States of moneys claimed to be due from one of its customs collectors. It was objected that the assessment and collection was a judicial act carried out by nonjudicial officers and thus invalid under Article III. Accepting that the acts complained of were judicial, the Court nonetheless sustained the act by distinguishing between any act, "which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty," which, in other words, is inherently judicial, and other acts which Congress may vest in courts or in other agencies. "[T]here are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper."<sup>63</sup> The distinction was between those acts which historically had been determined by courts and those which historically had been resolved by executive or legislative acts and comprehended those matters that arose between the government and others. Thus, Article I courts

``may be created as special tribunals to examine and determine various matters, arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it. The mode of determining matters of this class is completely within congressional control."<sup>64</sup>

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<sup>62</sup>18 How. (59 U.S.) 272 (1856).

<sup>63</sup>Id., 284.

<sup>64</sup>Ex parte Bakelite Corp., 279 U.S. 438, 451 (1929).  
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Among the matters susceptible of judicial determination, but not requiring it, are claims against the United States,<sup>65</sup> the disposal of public lands and claims arising therefrom,<sup>66</sup> questions concerning membership in the Indian tribes,<sup>67</sup> and questions arising out of the administration of the customs and internal revenue

[[Page 608]]

laws.<sup>68</sup> Other courts similar to territorial courts, such as consular courts and military courts martial, may be justified on like grounds.<sup>69</sup>

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<sup>65</sup>Gordon v. United States, 117 U.S. 697 (1864); McElrath v. United States, 102 U.S. 426 (1880); Williams v. United States, 289 U.S. 553 (1933). On the status of the then-existing Court of Claims, see Glidden Co. v. Zdanok, 370 U.S. 530 (1962).

<sup>66</sup>United States v. Coe, 155 U.S. 76 (1894) (Court of Private Land Claims).

<sup>67</sup>Wallace v. Adams, 204 U.S. 415 (1907); Stephens v. Cherokee Nation, 174 U.S. 445 (1899) (Choctaw and Chickasaw Citizenship Court).

<sup>68</sup>Old Colony Trust Co. v. CIR, 279 U.S. 716 (1929); Ex Parte Bakelite Corp., 279 U.S. 438 (1929).

<sup>69</sup>See In re Ross, 140 U.S. 453 (1891) (consular courts in foreign countries). Military courts may, on the other hand, be a separate entity of the military having no connection to Article III. Dynes v. Hoover, 20 How. (61 U.S.) 65, 79 (1857).  
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The ``public rights" distinction appears today to be a description without a significant distinction. Thus, in *Crowell v. Benson*,<sup>70</sup> the Court approved an administrative scheme for determination, subject to judicial review, of maritime employee compensation claims, although it acknowledged that the case involved ``one of private right, that is, of the liability of one individual to another under the law as defined."<sup>71</sup> This scheme was permissible, the Court said, because in cases arising out of congressional statutes, an

administrative tribunal could make findings of fact and render an initial decision of legal and constitutional questions, as long as there is adequate review in a constitutional court.<sup>72</sup> The "essential attributes" of decision must remain in an Article III court, but so long as it does, Congress may utilize administrative decisionmakers in those private rights cases that arise in the context of a comprehensive federal statutory scheme.<sup>73</sup> That the "public rights" distinction marked a dividing line between those matters that could be assigned to legislative courts and to administrative agencies and those matters "of private right" that could not be was reasserted in *Marathon*, but there was much the Court plurality did not explain.<sup>74</sup>

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<sup>70</sup>285 U.S. 22 (1932).

<sup>71</sup>*Id.* 51. On the constitutional problems of assignment to an administrative agency, see *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442 (1977); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48 (1937).

<sup>72</sup>*Id.*, 51-65.

<sup>73</sup>*Id.*, 50, 51, 58-63. Thus, Article III concerns were satisfied by a review of the agency fact finding upon the administrative record. *Id.*, 63-65. The plurality opinion denied the validity of this approach in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 86 n. 39 (1982), although Justice white in dissent accepted it. *Id.*, 115. The plurality, rather, rationalized *Crowell* and subsequent cases on an analysis seeking to ascertain whether agencies or Article I tribunals were "adjuncts" of Article III courts, that is, whether Article III courts were sufficiently in charge to protect constitutional values. *Id.*, 76-87.

<sup>74</sup>*Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 67-70 (1982) (plurality opinion). Thus, Justice Brennan states that at a minimum a matter of public right must arise "between the government and others" but that the presence of the United States as a proper party to the proceeding is a necessary but not sufficient means to distinguish "private rights." *Id.*, 69 & n. 23. *Crowell v. Benson*, however, remained an embarrassing presence.

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The Court continued to waver with respect to the importance to decision-making of the public rights/private rights distinction. In

[[Page 609]]

two cases following *Marathon*, it rejected the distinction as "a bright line test," and instead focused on "substance"--i.e., on the extent to which the particular grant of jurisdiction to an Article I court threatened judicial integrity and separation of powers principles.<sup>75</sup> Nonetheless, the Court indicated that the distinction may be an appropriate starting point for analysis. Thus, the fact that private rights traditionally at the core of Article III jurisdiction are at



stake leads the Court to "searching" inquiry as to whether Congress is encroaching inordinately on judicial functions, while the concern is not so great where "public" rights are involved.<sup>76</sup>

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<sup>75</sup>Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568 (1985); CFTC v. Schor, 478 U.S. 833 (1986). The cases also abandoned the principle that the Federal Government must be a party for the case to fall into the "public rights" category. Thomas, *supra*, 586; and see *id.*, 596-599 (Justice Brennan concurring).

<sup>76</sup>"In essence, the public rights doctrine reflects simply a pragmatic understanding that when Congress selects a quasi-judicial method of resolving matters that 'could be conclusively determined by the Executive and Legislative Branches,' the danger of encroaching on the judicial powers is reduced." Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568, 589 (1985) (quoting Northern Pipeline, *supra*, 458 U.S., 68 (plurality opinion)).

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However, in a subsequent case, the distinction was pronounced determinative not only of the issue whether a matter could be referred to a non-Article III tribunal but whether Congress could dispense with civil jury trials.<sup>77</sup> In so doing, however, the Court vitiated much of the core content of "private" rights as a concept and left resolution of the central issue to a balancing test. That is, "public" rights are, strictly speaking, those in which the cause of action inheres in or lies against the Federal Government in its sovereign capacity, the understanding since *Murray's Lessee*. However, to accommodate *Crowell v. Benson*, *Atlas Roofing*, and similar cases, seemingly private causes of action between private parties will also be deemed "public" rights, when Congress, acting for a valid legislative purpose pursuant to its Article I powers, fashions a cause of action that is analogous to a common-law claim and so closely integrates it into a public regulatory scheme that it becomes a matter appropriate for agency resolution with limited involvement by the Article III judiciary.<sup>78</sup> Nonetheless, despite its fixing by Congress as a "core proceeding" suitable for an Article I bankruptcy court adjudication, the Court held the particular cause of ac

[[Page 610]]

tion at issue was a private issue as to which the parties were entitled to a civil jury trial (and necessarily which Congress could not commit to an Article I tribunal, save perhaps through the consent of the parties).<sup>79</sup>

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<sup>77</sup>*Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 51-55 (1989). A seventh Amendment jury-trial case, the decision is critical to the

Article III issue as well, because, as the Court makes clear what was implicit before, whether Congress can submit a legal issue to an Article I tribunal and whether it can dispense with a civil jury on that legal issue must be answered by the same analysis. *Id.*, 52-53.

\78\ *Id.*, 52-54. The Court reiterated that the Government need not be a party as a prerequisite to a matter being of "public right." *Id.*, 54. Concurring, Justice Scalia argued that public rights historically were and should remain only those matters to which the Federal Government is a party. *Id.*, 65.

\79\ *Id.*, 55-64. The Court reserved the question whether, a jury trial being required, a non-Article III bankruptcy judge could oversee such a jury trial. *Id.*, 64. That question remains unresolved, both as a matter, first, of whether there is statutory authorization for bankruptcy judges to conduct jury trials, and, second, if there is, whether they may constitutionally do so. E.g., *In re Ben Cooper, Inc.*, 896 F.2d 1394 (2d Cir. 1990), cert. granted, 497 U.S. 1023, vacated and remanded for consideration of a jurisdictional issue, 498 U.S. 964 (1990), reinstated, 924 F.2d 36 (2d Cir.), cert. den., 500 U.S. 928 (1991); *In re Grabill Corp.*, 967 F.2d 1152 (7th Cir. 1991), pet. for reh. en banc den., 976 F.2d 1126 (7th Cir. 1992).

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## Courts With Dual Natures - Article 1 & 3

Some of the courts of Washington, D.C., rely on dual constitutional authorities. They are empowered by both Article 1 and Article 3. At the time of the 1933 *O'Donoghue* case below, United States courts with dual authorities were forbidden within the several States. Today, all United States District Courts within the several States exercise administrative powers pursuant to Article 1, admiralty, and judicial powers pursuant to Article 3.

53 S.Ct. 740, 289 U.S. 516, *O'Donoghue v. U.S.*, (U.S. 1933)

[9] The fact that Congress, under another and plenary grant of power, has conferred upon these courts jurisdiction over nonfederal causes of action, or over quasi judicial or administrative matters, does not affect the question. In dealing with the District, Congress possesses the powers which belong to it in respect of territory within a state, and also the powers of a state. *Keller v. Potomac Elec. Power Co.*, 261 U.S. 428, 442, 443, 43 S.Ct. 445, 448, 67 L.Ed. 731. 'In other words,' this court there said, 'it possesses a dual authority over the District, and may clothe the courts of the District, not only with the jurisdiction and powers of federal courts in the several states, but with such authority as a state may confer on her courts. *Kendall v. United States*, 12 Pet. 524, 619, 9 L.Ed. 1181. Instances in which congressional enactments have been sustained which conferred powers and placed duties on the courts of the District of an exceptional and advisory character are found in *Butterworth v. (United States ex rel.) Hoe*, 112 U.S. 50, 60, 5 S.Ct. 25, 28 L.Ed. 656, *United States v. Duell*, 172 U.S. 576, 19 S.Ct. 286, 43 L.Ed. 559, and *Baldwin Co. v. Howard Co.*, 256 U.S. 35, 41 S.Ct. 405, 65 L.Ed. 816. Subject to the guaranties of personal liberty in the amendments and in the original Constitution, Congress has as much power to vest courts of the District with a variety of jurisdiction and powers as a state Legislature has in conferring jurisdiction

on its courts. In *Prentis v. Atlantic Coast Line Co.*, supra, we [289 U.S. 546] held that when ‘a state Constitution sees fit to unite legislative and judicial powers in a single hand, there is nothing to hinder so far as the Constitution of the United States is concerned.’ 211 U.S. 225, 29 S.Ct. 67, 69 (53 L.Ed. 150); *Dreyer v. Illinois*, 187 U.S. 71, 83, 84, 23 S.Ct. 28, 47 L.Ed. 79.’

If, in creating and defining the jurisdiction of the courts of the District, Congress were limited to article 3, as it is in dealing with the other federal courts, the administrative and other jurisdiction spoken of could not be conferred upon the former. But the clause giving plenary power of legislation over the District enables Congress to confer such jurisdiction in addition to the federal jurisdiction which the District courts exercise under article 3, notwithstanding that they are recipients \*749 of the judicial power of the United States under, and are constituted in virtue of, that article. [Emphasis added]

Since Congress, then, has the same power under article 3 of the Constitution to ordain and establish inferior federal courts in the District of Columbia as in the states, whether it has done so in any particular instance depends upon the same inquiry, Does the judicial power conferred extend to the cases enumerated in that article? If it does, the judicial power thus conferred is not and cannot be affected by the additional congressional legislation, enacted under article 1, s 8, cl. 17, imposing upon such courts other duties, which, because that special power is limited to the District, Congress cannot impose upon inferior federal courts elsewhere. The two powers are not incompatible; and we perceive no reason for holding that the plenary power given by the District clause of the Constitution may be used to destroy the operative effect of the judicial clause within the District, where, unlike the territories occupying a different status, that clause is entirely appropriate and applicable.

82 S.Ct. 1459, 370 U.S. 530, *Glidden Co. v. Zdanok*, (U.S.N.Y. 1962)

X.

We turn finally to the more difficult questions raised by the jurisdiction vested in the Court of Customs and Patent Appeals by 28 USC 1543 to review Tariff Commission findings of unfair practices in import trade, and the congressional reference jurisdiction given the Court of Claims by 28 USC 1492 and 2509. The judicial quality of the former was called into question though not resolved in *Ex parte Bakelite Corp.* 279 US 438, 460, 461, 73 L ed 789, 798, 49 S Ct 411,<fn 50> while that of the latter must be taken to have been adversely decided, so far as susceptibility to Supreme Court review is concerned, by *Re Sanborn*, 148 US 222, 37 L ed 429, 13 S Ct 577.<fn 51>

[580]

At the outset we are met with a suggestion by the Solicitor General that even if the decisions called for by these heads of jurisdiction are nonjudicial, their compatibility with the status of an Article 3 court has been settled by *O'Donoghue v United States*, 289 US 516, 545-548, 77 L ed 1356, 1368, 1369, 53 S Ct 740. It is true that *O'Donoghue* upheld the authority of Congress to invest the federal courts for the District of Columbia with certain administrative responsibilities--such as that of revising the rates of public utilities<fn 52> --but only such as were related to the government of the District. See *Pitts v Peak*, 60 App DC 195, 197, 50 F2d 485, 487, cited and relied upon in *O'Donoghue*, 289 US, at 547, 548.<fn 53> To extend that holding to the wholly nationwide jurisdiction <\*pg.705> of courts whose seat is in the District of Columbia would be to ignore the special importance attached in the *O'Donoghue* opinion to the need there for an independent national judiciary.

[581]

The restraints of federalism are, of course, removed from the powers exercisable by Congress within the District. For, as the Court early stated, in *Kendall v United States* (US) 12 Pet 524, 619, 9 L ed 1181, 1218.

"There is in this district, no division of powers between the general and state governments. Congress has the entire control over the district for every purpose of government; and it is reasonable to suppose, that in organizing a judicial department here, all judicial power necessary for the purposes of government would be vested in the courts of justice."

Thus those limitations implicit in the rubric "case or controversy" that spring from the Framers' anxiety not to intrude unduly upon the general jurisdiction of state courts, see Madison's Notes of the Debates, in II Farrand, *Records of the Federal Convention* (1911), 45-46, need have no application in the District. The national courts here may, consistently with those limitations, perform any of the local functions elsewhere performed by state courts.<fn 54>

But those are not the only limitations embodied in Article 3's restriction of judicial power to cases or controversies.

[582]

The restriction expresses as well the Framers' desire to safeguard the independence of the judicial from the other branches by confining its activities to "cases of a Judiciary nature," see II Farrand, *op cit.*, *supra*, at 430, and in this respect it remains fully applicable at least to courts invested with jurisdiction solely over matters of national import. Our question is whether the independence of either the Court of Claims or the Court of Customs and Patent Appeals has been so compromised by its investiture with the particular heads of jurisdiction described above as to destroy its eligibility for recognition as an Article 3 court. <\*pg.706>

In the recently passed "Pledge Protection Act of 2005," there is found some interesting language having to do with Federal courts. The Supreme Court is denied appellate jurisdiction and "no court created by Act of Congress" shall have any jurisdiction to hear suits concerning the Pledge of Allegiance. Legislative courts, however, are allowed jurisdiction over the subject matter to entertain such suits.

109th CONGRESS, 1st Session, H. R. 2389

To amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance.

IN THE HOUSE OF REPRESENTATIVES

May 17, 2005

[names of sponsors omitted]

A BILL

To amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ``Pledge Protection Act of 2005''.

SEC. 2. LIMITATION ON JURISDICTION.

(a) In General.--Chapter 99 of title 28, United States Code, is amended by adding at the end the following:

``Sec. 1632. Limitation on jurisdiction

``(a) Except as provided in subsection (b), no court created by Act of Congress shall have any jurisdiction, and the Supreme Court shall have no appellate jurisdiction, to hear or decide any question pertaining to the interpretation of, or the validity under the Constitution of, the Pledge of Allegiance, as defined in section 4 of title 4, or its recitation.

``(b) The limitation in subsection (a) does not apply to--

``(1) any court established by Congress under its power to make needful rules and regulations respecting the territory of the United States; or

``(2) the Superior Court of the District of Columbia or the District of Columbia Court of Appeals;''.

(b) Clerical Amendment.--The table of sections at the beginning of chapter 99 of title 28, United States Code, is amended by adding at the end the following new item:

``1632. Limitation on jurisdiction.''.

Section 451 of Title 28 is set out below in part. It defines the "courts of the United States" as the Supreme Court, courts of appeals, district courts and district courts of the United States constituted by Chapter 5 of Title 28, and any court created by Act of Congress the judges of which are entitled to hold office during good behavior. As previously pointed out, the district courts were created as legislative courts and the "district courts of the United States" do not exist. We have left courts created by "Act of Congress the judges of which are entitled to hold office during good behavior." These appear to be the courts exercising Article 3 jurisdiction that were amalgamated with the Article 1 district courts, which are seen within a few major cities within the several States, and are known as United States District Courts. However, as previously pointed out, these United States District Courts are not the Article 3 "district courts of the United States" intended by the Founders for the Citizens of the several States and which were to be common law courts. Today's United States District Courts exercise a dual jurisdiction through Article 1 and Article 3. They are just another part of the fraud upon the Citizens of the several States.

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART I--ORGANIZATION OF COURTS

CHAPTER 21--GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

Sec. 451. Definitions [In part]

As used in this title:

The term ``court of the United States" includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of International Trade and any court created by Act of Congress the judges of which are entitled to hold office during good behavior.

The terms ``district court" and ``district court of the United States" mean the courts constituted by chapter 5 of this title.

The term ``judge of the United States" includes judges of the courts of appeals, district courts, Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

The terms ``district" and ``judicial district" means the districts enumerated in Chapter 5 of this title.  
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## APPENDIX

1. Lawrence v. Wardell.
2. Reorganization Plan No. 1 of 1952.
3. Selected pages from Diversified Metals pleadings (see CD for all pages).
4. Copies of pages from IRS website.
5. TDO 150-01. Dated September 28, 1995 (first page only).
6. Page from 1913 tax act.
7. Administrative History of the Bureau of Internal Revenue, Aug. 25, 1945 (PDF file on CD.)

Items 3 through 7 are not included in the PDF version of this book.

## LAWRENCE V. WARDELL CASE

273 F. 405

LAWRENCE v. WARDELL, Collector of Internal Revenue.

May 2, 1921.

Circuit Court of Appeals, Ninth Circuit.

No. 3615.

In Error to the District Court of the United States for the Second Division of the Northern District of California.

Action by W. H. Lawrence against Justus S. Wardell, Collector of Internal Revenue for the First District of California. Judgment for defendant, after general demurrer to the complaint was sustained (> 270 Fed. 682), and plaintiff brings error. Affirmed.

W. H. Lawrence and Burt F. Lum, both of San Francisco, Cal., for plaintiff in error.

Frank M. Silva, U.S. Atty., and E. M. Leonard, Asst. U.S. Atty., both of San Francisco, Cal., for defendant in error.

In an action by plaintiff, Lawrence, to recover certain sums paid under protest to the defendant, collector of internal revenue, the District Court sustained a general demurrer to the complaint and entered judgment of dismissal. Writ of error was taken out, in order to present the question whether sections 210 and 211 of the Revenue Act of 1918 (Comp. St. Ann. Supp. 1919, Secs. 6336 1/8e, 6336 1/8ee) apply to the 1918 income of a citizen of the United States residing in the Philippine Islands. The facts are these:

Plaintiff, a citizen of the United States, was a resident of the

Philippine Islands in 1918, and until March, 1919. In January, 1919, in the Philippines, plaintiff paid an income tax representing the full amount of tax upon his 1918 income, computed in accordance with the Revenue Act of 1916 (39 Stat. 756), as amended by the Revenue Act of 1917 (40 Stat. 300). In March, 1919, plaintiff became a resident of California, and in July, 1919, was required by the defendant collector to pay income tax upon his 1918 income, computed in accordance with the Revenue Act of 1918, with credit for the amount paid in the Philippines. Defendant paid under protest, and his claim for refund was denied. The position of the plaintiff is that by section 1400 of the Revenue Act of 1918 (Comp. St. Ann. Supp. 1919, Sec. 6371 3/4a) title I of the Revenue Act of 1916, as amended by the Revenue Act of 1917, is still in force as to 1918 income of residents of the Philippine Islands; that by section 261 of the Revenue Act of 1918 (section 6336 1/8z) plaintiff was required to pay in the Philippines the income tax as provided by the Revenue Act of 1916 on his whole income of 1918; that sections 210 and 211 of the Revenue Act of 1918 imposed an income tax only in lieu of the corresponding taxes of the Revenue Acts of 1916 and 1917, and are not applicable where the earlier acts stand unrepealed; that the Legislature of the Philippine Islands has not amended or modified or repealed the income tax provisions of the Revenue Acts of 1916 and 1917 as to the income of the year 1918. On the other hand, it is contended that the act of 1916, as amended by the act of 1917, was, so far as it affected the Philippine Islands, enacted by Congress in its capacity of a local Legislature for the Philippine Islands, and that the Revenue Act of 1918 imposes a tax equally upon all citizens of the United States, without regard to the place of residence. Summarizing the pertinent statutes, they are as follows:

The provisions did not extend to the Philippines, and the local Legislature was given power to amend or repeal income taxes in force. The Revenue Act of 1918, approved February 24, 1919 (title II, part 2), provides:



The local Legislature has power to amend or repeal the income tax laws in force in the Islands.

Section 1400 (a) of the Revenue Act of 1918 provided:

'That the following parts of acts are hereby repealed, subject to the limitations provided in subdivision (b) 1: The following titles of the Revenue Act of 1916: Title I (called 'Income Tax') \* \* \* (3) The following titles of the Revenue Act of 1917: Title I (called 'War Income Tax'); \* \* \* Title XII (called 'Income-Tax Amendments'). \* \* \* (b) \* \* \* Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917 shall remain in force for the assessment and collection of the income tax of Porto Rico and the Philippine Islands, except as may be otherwise provided by their respective legislatures.' Section 6371 3/4a.

1. Taxation 16-- Power of Congress to levy taxes not restricted, as in states.

The power of Congress in the imposition of taxes in the Philippine Islands is derived from Const. art. 4, Sec. 3, cl. 2, authorizing it to make rules and regulations respecting the territory of the United States, and is not restricted by Const. art. 1, Sec. 8, limiting its general power of taxation as to uniformity and apportionment.

2. Internal revenue 7-- Citizen residing in Philippines liable to taxation under Revenue Act of 1918.

The income tax levied by Revenue Act 1916, as amended by Revenue Act 1917, in the Philippine Islands, which, under section 23 of the former act (Comp. St. Sec. 6336v) is to be paid to the insular treasury, and which was not repealed by Revenue Act 1918, Sec. 1400a (Comp. St. Ann. Supp. 1919, Sec. 6371 3/4a), does not prevent the levy of the income tax under sections 210, 211 (sections 6336 1/8e, 6336 1/8ee), on every individual in lieu of the taxes levied by the acts of 1916 and 1917; the latter provision not limiting the persons taxable to those who were taxed under the preceding act, especially in view of section 260

of the act of 1918 (section 6336 1/8yy), limiting the tax on citizens of possessions, but not otherwise citizens of the United States, to the income derived from sources within the United States.

3. Internal revenue 7-- Saving of 1916 act in Philippines does not prevent collection of tax under act of 1918.

The provision of Revenue Act 1918, Sec. 1400a (Comp. St. Ann. Supp. 1919, Sec. 6371 3/4a), that Revenue Act 1916, as amended by Revenue Act 1917, should remain in force for the collection of the income tax of the Philippine Islands, except as may be otherwise provided by their Legislature, does not prevent the collection of the income tax under the act of 1918 from a citizen of the United States residing in the Philippines.

4. Internal revenue 7-- Citizen residing in Philippines liable for difference between local income tax and tax of 1918.

Under Revenue Act 1918, Sec. 222a (Comp. St. Ann. Supp. 1919, Sec. 6336 1/8k), allowing credit on the income tax for taxes paid to any possession of the United States, a citizen of the United States residing in the Philippine Islands, who had paid into the treasury of the Islands there the income tax levied as local revenue under the Revenue Acts of 1916 and 1917, is liable to the United States treasury for the difference between the amounts paid under those acts and the amount of the income tax computed under Revenue Act 1918, Secs. 210, 211 (sections 6336 1/8e, 6336 1/8ee).

By the Revenue Act of 1916, title I, part 1, it is provided in section 1(a)-- Comp. St. Sec. 6336a-- that taxes should be levied and collected annually upon the entire net income received in the preceding calendar year by every individual, a citizen or resident of the United States. Section 23 (section 6336v) made the provisions of the title extend to Porto Rico and the Philippine Islands, provided that the administration of the law and the collection of taxes imposed in Porto Rico and the Philippine Islands should be by internal revenue

officers of the government of those islands, and that all revenue collected in those islands under the act 'shall accrue intact to the general governments thereof.' By the Revenue Act of 1917, approved October 3, 1917 (Comp. St. 1918, Sec. 6336aa), it is provided (section 1):

'That in addition to the normal tax imposed by the subdivision (a) of section one of the act entitled 'An act to increase the revenue, and for other purposes,' approved September 8, 1916, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year 1917 and every calendar year thereafter.'

210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates. \* \* \* ' Comp. St. Ann. Supp. 1919, Sec. 6336 1/8e.

211. ( a) That, in lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 and by section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following. \* \* \* ' Section 6336 1/8ee.

222. ( a) That the tax computed under part II of this title shall be credited with:

'(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and \* \* \* . ' Section 6336 1/8k.

260. T That any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.' Section 6336 1/8yy.

261. T That in Porto Rico and the Philippine Islands the income tax shall be levied, assessed, collected, and paid in accordance with the provisions of the Revenue Act of 1916 as amended.

'Returns shall be made and taxes shall be paid under Title I of such act in Porto Rico or the Philippine Islands, as the case may be, by (1) every individual who is a citizen or resident of Porto Rico or the Philippine Islands or derives income from sources therein. \* \* \* An individual who is neither a citizen nor a resident of Porto Rico or the Philippine Islands but derives income from sources therein, shall be taxed in Porto Rico or the Philippine Islands as a non-resident alien individual. \* \* \* ' Section 6336 1/8z.

Before GILBERT and HUNT, Circuit Judges, and WOLVERTON, District judge.

HUNT, Circuit Judge (after stating the facts as above).

By the statutes above cited Congress extended the provisions of the Revenue Law of 1916 to the Philippine Islands, and authorized the assessment and levies to be made by the administrative internal revenue officers of the Philippine government, but, instead of requiring the taxes when collected to be paid into the treasury of the general government of the United States, directed that they should accrue to the general government of the Philippine Islands. A like policy obtained and still obtains as to Porto Rico. The purpose of

such legislation was to enable the governments of those islands, respectively, to have sufficient revenue to meet their needs and to receive the money through the most direct channels, and not have to await appropriation by Congress. The policy was not new. For example, in the island of Porto Rico, ever since the institution of civil government in May, 1900, customs duties collected have been turned over to the insular treasury by the collector of customs for the island, to be expended as required by law for the government and benefit of the island, 'instead of being paid into the treasury of the United States.' Act of Congress April 12, 1900, Sec. 4, Supplement R.S.U.S. vol. 2, p. 1128 (U.S. Comp. St. Sec. 3752).

[1] The power of Congress, in the imposition of taxes and providing for the collection thereof in the possessions of the United States, is not restricted by constitutional provision (section 8, article 1), which may limit its general power of taxation as to uniformity and apportionment when legislating for the mainland or United States proper, for it acts in the premises under the authority of clause 2, section 3, article 4, of the Constitution, which clothes Congress with power to make all needful rules and regulations respecting the territory or other property belonging to the United States. *Binns v. United States*, > 194 U.S. 486, 24 Sup.Ct. 816, 48 L.Ed. 1087; *Downes v. Bidwell*, > 182 U.S. 244, 21 Sup.Ct. 770, 45 L.Ed. 1088.

When Congress enacted the Revenue Law of October 3, 1917, by section 5 (Comp. St. 1918, Sec. 6336vv) it saw fit to provide expressly that the provisions of the title should not extend to the Philippines or Porto Rico, and the local Legislatures were given power to amend, alter, modify, or repeal the income tax laws in force in the islands, respectively. The result was that under the act of 1916 the entire net income of every individual, a citizen or resident of the United States, resident in the Philippines, became taxable thereunder, but subject to the jurisdiction of the Philippines in respect to tax matters. But Congress, acting doubtless under the after-war needs, by

the Revenue Act of 1918, changed the situation and made the net income of every individual citizen of the United States taxable, no matter where he resides. In the place of the taxes imposed by the act of 1916 (subdivision (a) section 1), and by the act of 1917 (section 1) the net income of 'every individual' was subject to the rate prescribed (section 210); and in place of taxes imposed by subdivision (b), section 1, of the act of 1916, and section 2 of the act of 1917 (Comp. St. 1918, Sec. 6336aaa), but in addition to the normal tax imposed by section 210 of the act the surtaxes prescribed should be collected.

[2] The comprehensiveness of the 1918 act is as great as language could make it, for it applied to the income of every individual, changing the rates, and obviously imposing taxes at the new rates, where no tax could have been imposed prior to the 1918 act. We are unable to infer that, by using the words 'in lieu of,' Congress meant to tax only those incomes of individuals who had been subject to taxation under the two prior acts. It is more reasonable to hold that, where the individual was liable under the prior act of 1916, the new act of 1918 became the controlling standard. Where, by the act of 1917, he was relieved of the increased rates of that act, but had been subject to the 1916 act, he was covered by the provisions of the 1918 act, and in the event he was never before included he became liable under the very broad terms of the act of 1918. Section 260, supra, of the act of 1918, also leads to the conclusions indicated. The language there used discriminates, by making individuals who are citizens of a possession of the United States, yet not otherwise citizens of the United States, and who are not residents of the United States, subject to be taxed only as to income derived from sources within the United States. Unless such a person has income so derived, he is not subject to the act.

[3] In the repealing clauses of the act of 1918, as quoted in the statement of the case, the act of 1916, as amended by the act of 1917, in force in the Philippines, was continued in force, except as might

be otherwise provided by the local Legislature. As a general statute of the United States there was clear repeal, but as to the Philippines the act of 1916 was kept alive, as direct legislation by Congress with respect to the local affairs of the island, and not as a general statute of the United States.

A citizen of the United States residing in the Philippines becomes subject to the Income Tax Law under the act of 1918. By section 261, supra, of that act, the tax shall be levied, collected, and paid in accordance with the act of 1916, as amended, returns to be made and taxes to be paid under title I of the act by 'every individual who is a citizen or resident' of the island; the local Legislature having power as already defined. The citizen of the United States residing in the island is in much the same position as is a citizen of a state, where there is a state income tax. The fact of residence in the Philippines avails him no more than would the fact of residence in a state.

[4] Section 222 of the act of 1918, in providing for credits for taxes, makes the taxes computed under part II of the title subject to a credit (1) in the case of a citizen of the United States the amount of any income taxes paid during the taxable year to any foreign country upon income derived from sources therein, 'or to any possession of the United States.' It is argued that a citizen of the United States, resident of the islands, is not subject to taxation under the 1918 act, because the return to the 'possession' is not a return under the act of 1916, though it is a return under a local act.

Section 222 allows to one residing in the Philippines a credit upon the tax computed under part II of the 1918 act, but there is nothing to indicate that there is exemption to the citizen residing in the islands. He may have paid to the island treasury such amounts as are due, but still be liable to the United States for a sum in excess of that paid in the islands.

The regulations of the Treasury Department (regulation 45, articles 1131, 1132) have been framed upon the construction which we have

adopted; and, as credit appears to have been given to plaintiff for the amount of taxes which he had already paid in the Philippines, we think he cannot complain of the judgment rendered against him.

The judgment is affirmed.

# REORGANIZATION PLAN NO. 1 OF 1952

## REORGANIZATION PLAN NO. 1 OF 1952

Effective Mar. 14, 1952, 17 F.R. 2243, 66 Stat. 823, as amended June 28, 1955, ch. 189, Sec. 12(c)(19), 69 Stat. 182; Sept. 13, 1982, Pub. L. 97-258, Sec. 5(b), 96 Stat. 1068, 1085

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, January 14, 1952, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 (see 5 U.S.C. 901 et seq.).

### BUREAU OF INTERNAL REVENUE

#### SECTION 1. ABOLITION OF EXISTING OFFICES

There are abolished the offices of Assistant Commissioner, Special Deputy Commissioner, Deputy Commissioner, Assistant General Counsel for the Bureau of Internal Revenue, Collector, and Deputy Collector, provided for in sections 3905, 3910, 3915, 3931, 3941, and 3990, respectively, of the Internal Revenue Code (this title). The provisions of the foregoing sentence shall become effective with respect to each office abolished thereby at such time as the Secretary of the Treasury shall specify, but in no event later than December 1, 1952. The Secretary of the Treasury shall make such provisions as he shall deem necessary respecting the winding up of the affairs of any officer whose office is abolished by the provisions of this section.

#### SEC. 2. ESTABLISHING OF NEW OFFICES

(a) New offices are hereby established in the Bureau of Internal Revenue as follows: (1) three offices each of which shall have the title of "Assistant Commissioner of Internal Revenue"; (2) so many offices, not in excess of twenty-five existing at any one time, as the Secretary of the Treasury shall from time to time determine, each of which shall have the title of "district commissioner of internal revenue"; and (3) so many other offices, not in excess of seventy existing at any one time, and with such title or titles, as the Secretary of the Treasury shall from time

to time determine.

(b) (Repealed. Pub. L. 97-258, Sec. 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085. Subsection established a new and additional office of Assistant General Counsel. See section 301 of Title 31, Money and Finance.)

#### SEC. 3. APPOINTMENT AND COMPENSATION

Each Assistant Commissioner and district commissioner, the Assistant General Counsel, and each other officer provided for in section 2 of this reorganization plan shall be appointed by the Secretary of the Treasury under the classified civil service and shall receive compensation which shall be fixed from time to time pursuant to the classification laws, as now or hereafter amended. (As amended Act June 28, 1955, ch. 189, Sec. 12(c)(19), 69 Stat. 182).

#### SEC. 4. TRANSFER OF FUNCTIONS

There are transferred to the Secretary of the Treasury the functions, if any, that have been vested by statute in officers, agencies, or employees of the Bureau of Internal Revenue of the Department of the Treasury since the effective date of Reorganization Plan Numbered 26 of 1950 (15 F.R. 4935) (set out in the Appendix to Title 5, Government Organization and Employees).

#### MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1952, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Bureau of Internal Revenue of the Department of the Treasury.

A comprehensive reorganization of that Bureau is necessary both to increase the efficiency of its operations and to provide better machinery for assuring honest and impartial administration of the internal revenue laws. The reorganization plan transmitted with this message is essential to accomplish the basic changes in the structure of the Bureau of Internal Revenue which are necessary for the kind of comprehensive reorganization that is now required.

By bringing additional personnel in the Bureau of Internal

Revenue under the merit system, Reorganization Plan No. 1 likewise removes what the Commission on Organization of the Executive Branch of the Government described as "one of the chief handicaps to effective organization of the Department \* \* \*."

It is my determination to maintain the highest standards of integrity and efficiency in the Federal service. While those standards have been observed faithfully by all but a relatively few public servants, the betrayal of their trust by those few demands the strongest corrective action.

The most vigorous efforts are being and will continue to be made to expose and punish every Government employee who misuses his official position. But we must do even more than this. We must correct every defect in organization that contributes to inefficient management and thus affords the opportunity for improper conduct.

The thorough reorganization of the Bureau of Internal Revenue which I propose will be of great help in accomplishing all of these ends. It is an integral part of a program to prevent improper conduct in public service, to protect the Government from insidious influence peddlers and favor seekers, to expose and punish wrong-doers, and to improve the management and efficiency of the executive branch.

I am confident that the Congress and the public are as deeply and earnestly concerned as I am that the public business be conducted entirely upon a basis of fairness, integrity, and efficiency. I therefore hope that the Congress will give speedy approval to Reorganization Plan No. 1, in order that we may move ahead rapidly in to achieving the reorganization of the Bureau of Internal Revenue.

The task of collecting the internal revenue has expanded enormously within the past decade. This expansion has been occasioned by the necessary additional taxation brought on by World War II and essential post-war programs. In fiscal year 1940, tax collections made by the Bureau of Internal Revenue were slightly over 5 1/3 billions of dollars; in 1951, they totaled almost 50 1/2

billions. In 1940, 19 million tax returns were filed; in 1951, 82 million. In 1940, there were 22,000 employees working for the Bureau; in 1951, there were 57,000.

Throughout this tremendous growth, the structure of the revenue-collecting organization has remained substantially unchanged. The present field structure of the Bureau of Internal Revenue is comprised of more than 200 field offices which report directly to Washington. Those 200 offices carry out their functions through more than 2,000 suboffices and posts of duty throughout the country. The Washington office now provides operating supervision, guidance, and control over the principal field offices through 10 separate divisions, thus further adding to the complexities of administration.

Since the end of World War II, many procedural improvements have been made in the Bureau's operations. The use of automatic machines has been greatly increased. The handling of cases has been simplified. One major advance is represented by the recently completed arrangements to expedite criminal prosecutions in tax-fraud cases. In these cases, field representatives of the Bureau of Internal Revenue will make recommendations for criminal prosecutions directly to the Department of Justice. These procedural changes have increased the Bureau's efficiency and have made it possible for the Bureau to carry its enormously increased workload. However, improvements in procedure cannot meet the need for organizational changes.

Part of the authority necessary to make a comprehensive reorganization was provided in Reorganization Plan No. 26 of 1950, which was one of several uniform plans giving department heads fuller authority over internal organizations throughout their departments. The studies of the Secretary of the Treasury have culminated since that time in a plan for extensive reorganization and modernization of the Bureau. However, his existing authority is not broad enough to permit him to effectuate all of the basic features of the plan he has developed.

The principal barrier to effective organization and

administration of the Bureau of Internal Revenue which plan No. 1 removes is the archaic statutory office of collector of internal revenue. Since the collectors are not appointed and cannot be removed by the Commissioner of Internal Revenue or the Secretary of the Treasury and since the collectors must accommodate themselves to local political situations, they are not fully responsive to the control of their superiors in the Treasury Department. Residence requirements prevent moving a collector from one collection district to another, either to promote impartiality and fairness or to advance collectors to more important positions. Uncertainties of tenure add to the difficulty of attracting to such offices persons who are well versed in the intricacies of the revenue laws and possessed of broadgaged administrative ability.

It is appropriate and desirable that major political offices in the executive branch of the Government be filled by persons who are appointed by the President by and with the advice and consent of the Senate. On the other hand, the technical nature of much of the Government's work today makes it equally appropriate and desirable that positions of other types be in the professional career service. The administration of our internal-revenue laws at the local level calls for positions in the latter category.

Instead of the present organization built around the offices of politically appointed collectors of internal revenue, plan No. 1 will make it possible for the Secretary of the Treasury to establish not to exceed 25 district offices. Each of these offices will be headed by a district commissioner who will be responsible to the Commissioner of Internal Revenue and will have full responsibility for administering all internal-revenue activities within a designated area. In addition, all essential collection, enforcement, and appellate functions can be provided for in each local area and under one roof so far as is practicable. It is not proposed to discontinue any essential facilities which now exist in any local areas. Rather, the facilities will be extended and the service to taxpayers improved. These new arrangements should make it possible for the individual taxpayer to conduct his business

with the Bureau much more conveniently and expeditiously.

In addition to making possible greatly improved service to the taxpayer, the establishment of the district offices will provide opportunity in the field service of the Bureau of Internal Revenue for the development of high-caliber administrators with experience in all phases of revenue administration. These offices will be the backbone of a modern, streamlined pattern of organization and operations with clear and direct channels of responsibility and supervision from the lowest field office to the Commissioner, and through him to the Secretary of the Treasury. The creation of this new framework of district offices is a necessary step in carrying out the overall reorganization of the Bureau.

Plan No. 1 also makes it possible to provide a new framework of supervisory offices in the headquarters of the Bureau of Internal Revenue. Under plan No. 1, the offices of Deputy Commissioner, Special Deputy Commissioner, and Assistant Commissioner are abolished. Three Assistant Commissioners, all in the classified civil service, are authorized, and will be available, to perform such functions as may be assigned to them. The intention of the Secretary of the Treasury under the comprehensive reorganization is to utilize one Assistant Commissioner to assist the Commissioner of Internal Revenue in supervising the operations of the district offices, another Assistant Commissioner to aid in the preparation of technical rulings and decisions, and the third Assistant Commissioner to supervise for the Commissioner the inspection activities of the Bureau.

Two additional advantages will be obtained when the reorganization around this new framework is completed.

First, the strong inspection service which the Secretary is establishing will keep the work of the Bureau under close and continuous observation. Working under the direct control of the Commissioner of Internal Revenue, it will be responsible for promptly detecting and investigating any irregularities.

Second, the new pattern of organization will strengthen and clarify lines of responsibility throughout the Bureau, thus

simplifying and making more effective and uniform the management control of the organization. This is essential in any effort to provide our principal revenue collection agency the best possible administration.

In order to eliminate Presidential appointment and senatorial confirmation with respect to the Assistant General Counsel for the Bureau of Internal Revenue, and in order to provide a method of appointment comparable to that obtaining in the case of other assistant general counsel of the Department of the Treasury, plan No. 1 abolishes that office and provides in lieu thereof a new office of Assistant General Counsel with appointment under the classified civil service.

The success of the reorganization of the Bureau of Internal Revenue will to a considerable extent depend upon the ability to attract the best qualified persons to the key positions throughout the Bureau. In order to do so, it is necessary to make provision for more adequate salaries for such key positions. Plan No. 1 establishes in the Bureau of Internal Revenue a maximum of 70 offices with titles determined by the Secretary of the Treasury. Those offices are in addition to the offices with specific titles also provided for in plan No. 1 and to any positions established under other authority vested in the Department of the Treasury. The compensation of these officials will be fixed under the Classification Act of 1949, as amended, but without regard to the numerical limitations on positions set forth in section 505 of that act. This provision will enable the Chairman of the Civil Service Commission, or the President, as the case may be, to fix rates of pay for those offices in excess of the rates established in the Classification Act of 1949 for grade GS-15 whenever the standards of the classification laws so permit.

All organizational changes under plan No. 1 will be put into effect as soon as it is possible to do so without disrupting the continued collection of revenue. Plan No. 1 will in any event be effective in its entirety no later than December 1, 1952.

The taking effect of the reorganizations provided for in

Reorganization Plan No. 1 of 1952 will make possible many benefits in improved organization and operations which may be expected to produce substantial savings in future years. Those savings should not be expected to be reflected in an immediate reduction in expenditure by the Bureau of Internal Revenue but in an improved service to the public and a more efficient collection of revenue.

It should be emphasized that abolition by plan No. 1 of the offices of collectors and others will in no way prejudice any right or potential right of any taxpayer. The abolition of offices by plan No. 1 will not abolish any rights, privileges, powers, duties, immunities, liabilities, obligations, or other attributes of those offices except as they relate to matters of appointment, tenure, and compensation inconsistent with plan No. 1. Under the Reorganization Act of 1949, all of these attributes of office will attach to the office to which the functions of the abolished office are delegated by the Secretary of the Treasury.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1952 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying Reorganization Plan No. 1, by reason of reorganizations made thereby, provisions for the appointment and compensation of the officers specified therein. The rates of compensation fixed for these officers are not in excess of those which I have found to prevail in respect of comparable officers in the executive branch.

I cannot emphasize too strongly the importance which should be attached to the reorganization plan that I am now transmitting to the Congress. The fair and efficient administration of the Federal internal-revenue laws is of vital concern to every citizen. All of us have a right to insist that the Bureau of Internal Revenue be provided with the finest organization that can be devised. All of us are entitled to have that organization manned by personnel who get their jobs and keep them solely because of their own integrity



and competence. This reorganization plan will be a major step in achieving those objectives.

Harry S. Truman.

The White House, January 14, 1952