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**Jeff Hover's page.
Wages are not income.**

Jeff was right. I was wrong. I stand corrected.

He changed my mind with this page.

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LawyerDude says: This letter was sent to me by Jeff Hover to support his position that the income tax may not tax labor. I have added the table of contents to facilitate my analysis. I have inserted my comments. **I agree that the tax was not originally intended to tax labor. I would like to see more on this subject.**

Jeff says: To those reading this:

The income tax as currently enforced within the fifty states constitutes a direct tax and is thus subject to apportionment - because I think that the Sixteenth Amendment was not properly ratified. Nonetheless it is the law of the land. However, it gave Congress no new powers of taxation.

Jeff's argument that labor should not be taxed by the income tax. "Income" means "profit"

Tables added by Palaschak:

Table of cases cited by Jeff herein:

Adair v. United States, 208 US_____, 28 Sup. Ct. 280, 13 Ann. Cases. 764 Mr. Justice Harlan 175, speaking for the court said: The **right** of a person to **sell his labor** upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell [Page 5 of 7](#)

Butchers Union Co. v Crescent City Co, 111 U.S. 764, 767: "*The property which every man has in his own labor*, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of *this most sacred property*."

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Coppage v. State of Kansas (1915), 236 U.S. 1, 59 L. Ed. 441, 35 S. Ct. 240, wherein the court was considering the constitutionality of a statute relating to an individual's right to become a member of a labor union the court stated: Neither the doctrine nor this application of it is novel; we will endeavor to re-state some of the grounds upon which it rests. The principle is fundamental and vital. Included in the right of personal liberty and the right of private property -- partaking of the nature of each -- is the right to make contracts for the acquisition of property. **Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.** If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money.

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Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185 [Page 3 of 7](#)

Eisner v. Macomber, 252 U.S. 189, 206 (1920): While the significance of the next three words was either overlooked or misconceived. "**Derived -- from -- capital**"; -- "**the gain -- derived -- from -- capital**", etc. Here we have the essential matter: not a gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value proceeding from [Page 2 of 7](#)

Goodrich v. Edwards (1921), 255 U.S. 527, 65 L. Ed. 758, 41 S. Ct. 390 the court was analyzing whether the conversion of a capital asset by the taxpayer into cash constituted a gain: Before conversion into money, no one would question that the property was capital, although it then included the enhancement of value. Bearing in mind that the Sixteenth Amendment is not to be "extended by loose construction" and that it is "essential to distinguish between what is and what is not 'income' . . . according to truth and substance, without regard to form" (Eisner v. Macomber, 252 U.S. at 206), we must find some distinct benefit to the taxpayer as income directly attributable to the conversion, before it can be declared that what the taxpayer now has is, not merely his capital, but income instead. Otherwise, the mere fact of conversion, that is, the form alone, would prevail over the substance and be made the decisive factor. Yet the court has declared, although in considering the Act of 1909, that "subsequent change of form by conversion into money did not change the essence." Doyle v. Mitchell Brothers Co., 247 U.S. at 187. [Page 6 of 7](#)

Stratton's Independence v. Howbert, 231 U.S. 399, 415. Not relevant to Jeff's theory. [Page 3 of 7](#)

Table of constitution's excerpts, statutes and regulations cited by Jeff herein:

26 USC §61 (in pertinent part):(a) General definition: Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: Compensation for services, including fees, commissions, fringe benefits, and similar items; [Page 2 of 7](#)

Corporation Tax Act of 1909 [Page 3 of 7](#)

Obsolete tax code of 1939. Section 22. Gross Income. General Definition: "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid [Page 3 of 7](#)

Sixteenth Amendment in its entirety: 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. [Page 3 of 7](#)

Jeff's Argument

There are two separate, and distinct categories of wages, salaries and compensation for services. This will be demonstrated infra. For purposes of clarity and brevity the two categories will be called "statutory" and "non-statutory" wages. The first, statutory wages, is the subject of, and subject to, the income tax. The second category, non-statutory, is neither the subject of, nor subject to, the income tax.

Title 26 of the United States Code contains the law relating to the income tax. In particular, the relevant portion of the Code is to be found at §61:

26 USC §61 (in pertinent part):(a) General definition: Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: Compensation for services, including fees, commissions, fringe benefits, and similar items;

Note that Section 61 does NOT state that ALL compensation for services, including fees, commissions, fringe benefits, and similar items generate income. Thus, we must state the obvious, but overlooked corollary to Section 61: Compensation for services, including fees, commissions, wages, salaries, fringe benefits, and similar items; from which NO "income is derived", are NOT included in "gross income" as that which is not included, is excluded. The importance of income being "derived from" the source in order for something to be an item of "gross income" is not only demonstrated, but *emphasized* by the court in **Eisner v. Macomber** (1920 - pertaining to the prior code which was changed and superseded) 252 U.S. 189, 206:

While the significance of the next three words was either overlooked or misconceived. **"Derived -- from -- capital"; -- "the gain -- derived -- from -- capital"**, etc. Here we have the essential matter: not a gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested or employed,

Review of Section 22 of the 1939 Tax Code, from which 26 USC §61 is derived makes this even clearer (In pertinent part):

Obsolete tax code of 1939. Section 22. Gross Income. General Definition: "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid,

Gross income is that which is separate, and divisible from, salaries wages, or compensation. If this were not the case, then Congress would have simply stated

"ALL salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid are gross income."

Congress did not, because they do not always constitute gross income. Only in certain applications do wages, etc. constitute gross income. As the court in *Eisner*, supra, stated:

It becomes essential to distinguish between what is and what is not "income," as the term is there used; and to apply the distinction, as cases arise, according to truth and substance, without regard to form. Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised.

To obtain a better understanding of what "income" is we refer again to *Eisner*, at 206, wherein the court stated:

After examining dictionaries in common use (Bouvier's L.D.; Standard Dict.; Webster's International. Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 (***Stratton's Independence v. Howbert***, 231 U.S. 399, 415; ***Doyle v. Mitchell Bros. Co.***, 247 U.S. 179, 185) -- "Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the Doyle Case (pp. 183, 185).

Brief as it is, it indicates the characteristic and distinguishing attribute of income essential for a correct solution of the present controversy. **[Lawyerdude says: At first I told Jeff he was wrong because it was based on the definition of income from the 1909 corporate tax act. However, the Supreme Court itself said that the definition of income remained the same as defined in the 1909 act - which was a gain or profit.] The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "Derived -- from -- capital"; -- "the gain -- derived -- from -- capital", etc. Here we have the essential matter: not a gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested or employed, and coming in, being "derived," that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit and disposal; -- that is income derived from property. Nothing else answers the description.**

The same fundamental conception is clearly set forth in the Sixteenth Amendment -- "incomes, from whatever source derived" -- the

essential thought being expressed with a conciseness and lucidity entirely in harmony with the form and style of the Constitution.

The point the court was making was this: One does not derive income from the investment of capital. It is only when the gain or profit is realized, or severed, from the capital (the capital remaining whole and undiminished) that income is derived. The government still has difficulty with those two words "derived from."

A clear understanding of the nature of income is now possible by examining (for purposes of brevity) the first seven items listed in §61 as constituting items of "gross income" (in reverse order).

(7) Dividends; Dividends from stock, when realized, are separate and apart from the "source." The "source" being the capital invested in the stock of the company. The dividend is paid, but the "capital" (the stock) remains whole, and undiminished.

(6) Royalties; A portion of the profit from some endeavor (such as for use of a patent paid to the inventor). The royalty being the "gross income," the patent representing the "source," remaining whole and intact.

(5) Rents; The "source" from which the item of "gross income" is "derived" is the house. The rent is an item of "gross income" which, less deductions, becomes taxable which is then taxed, leaving the source (the house) whole and intact.

(4) Interest; Interest, by its very nature is an item of "gross income" as it represents the profit taken from the capital. For example a bank account with \$100 in it earns \$5 interest over the course of a year. When that interest is taken from the account the capital from which it was derived (the \$100) still remains in the account whole and intact.

(3) Gains derived from dealings in property; A house is purchased for an investment of \$100,000 capital. It is resold for \$110,000. The "gain derived," or gross income from the investment of the \$100,000 of capital is \$10,000, which, when taxed, leaves the initial \$100,000 of capital intact and undiminished.

(2) Gross income derived from business; The gross income of a business is the receipts of a business, which, less deductions for expenses and the costs of doing business, leaves the taxable income which, when taxed, leaves the capital invested to start and operate the business intact (presupposing good business practices, of course.)

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items. Al hires Bill's excavating to dig a drainage ditch across his property for \$200. Bill sends his employee, Charlie, to dig the ditch. Bill pays Charlie \$60 to do the job. Bill has invested \$60 of his capital in Charlie's wages. Bill collects \$200 from Al. Bill's capital (\$60 paid to Charlie in wages) is returned, plus \$140 of gross income "derived from" wages *paid* to Charlie.

Jeff's Litmus test

Examination of the examples of gross income above give certain clear and decisive factors which can be utilized to fashion a "litmus test" for determining whether something is included in the statutory definition of gross income. Those factors are:

There must be a "source" (capital or property) which must be invested;

There must be a "gain" from the transaction;

When the "income" is taxed the "source" must remain whole and undiminished.

Returning to *Eisner*:

The fundamental relation of "capital" to "income" has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs, the latter as the outlet stream, to be measured by its flow during a period of time.

We are able to determine that the litmus test holds true in light of the courts holding. In both examples the court has given, the "source" remains untouched by the tax. Taxing the flow of the fruit, or the crop, leaves the land intact and undiminished, likewise the spring remains intact and undiminished when the flow from the outlet stream is taxed :

It is at this point that we must determine *when* wages, salaries, etc. constitute "gross income."

“Statutory Wages”, salaries and compensation for personal service constituting gross income Wages, Salaries and Compensation for personal services *paid* to an individual by an employer in the course of the operation of a business DO constitute a source of Gross Income under 26 USC §61 as the Court is well aware. The employer, uses his capital to pay wages to his employee. The employee performs his tasks for the employer, and the employer charges more for the services of the employee than he pays out. At the close of his tax year, the employer totals his gross receipts, (gross income,) deducts the capital, (costs of materials and expenses, including the wages paid to his employee,) he has invested in his business, and the remainder comprises [sic, constitutes] his “taxable income” for that year.

On page 1246 of the Congressional Record of May 6, **1913**, Congressman Copley is recorded as introducing an amendment to the Income Tax Act. Mr. Copley succinctly states the purpose of the tax and to whom it applies:

Mr. Chairman, I have introduced this amendment for several reasons, the principal one being that I believe it to be the best way of equalizing the opportunities which society in this country offers ***to certain men in securing more than their fair share of the benefits derived from the labors of other men.*** If there is one tax which bears lightly on the shoulders of the individual paying it. it

is that which is paid out of a surplus income. It galls no shoulders, though it will probably gall some hearts. (Emphasis added)

The income tax was to apply to those who “derived income from the labors of other men.” In other words, those who “pay” wages, salaries, etc. An example of this is given in the case of ***Stratton's Independence, Ltd. v. Howbert***, 231 U.S. 399, 415 (1913):

The very process of mining is, in a sense, equivalent in its results to a manufacturing process. And, however the operation shall be described, the transaction is indubitably 'business' within the fair meaning of the act of 1909; and the gains derived from it are properly and strictly the income from that business; ***for 'income' may be defined as the gain derived from capital, from labor, or from both combined, and here we have combined operations of capital and labor.*** (Emphasis added)

Stratton's demonstrates unequivocally how “income” is derived from wages, salaries or personal compensation. The utilization (investment) of capital to purchase the land, and to pay wages to it's employees to remove the mined materials to prepare them for market, when generating a “gain” constitute “income derived from salaries or wages,” and capital. While those mined materials are still in the possession of ***Stratton*** they do not constitute “gross income.” Once they have been marketed, or sold, the amount of the sale price constitutes “gross income,” (less the appropriate deductions), both the subject of, and subject to, the income tax.

“Non-statutory”, or **received** wages, salaries and compensations for personal services

Labor is recognized as property by the Supreme Court as stated in the concurring opinion in ***Butchers Union Co. v Crescent City Co*** (1884) 111 U.S. 764, 767:

"The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property." - ***Butchers Union Co. v Crescent City Co*** (1884) 111 U.S. 764, 767.

In ***Adair v. United States***, 208 US_____, 28 Sup. Ct. 280, 13 Ann. Cases. 764 Mr. Justice Harlan 175.), speaking for the court said:

The **right** of a person to **sell his labor** upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such

labor from the person offering to sell.

Proceeding upon the stated principle of law that labor is property, and the sale of that property is a right, the conversion of that property (labor) to money does not create a "gain or profit." Returning to the holding of the court in **Stratton** (supra) at 414, 415, we can see that the change of form of the property (Petitioner's labor to money) does not produce income:

The sale outright of a mining property might be fairly described as a mere conversion of the capital from land into money.

As previously noted, this is a conversion of form only. This is not income, as the capital, once represented by land, is now represented by money.

In the case of **Coppage v. State of Kansas** (1915), 236 U.S. 1, 59 L. Ed. 441, 35 S. Ct. 240, wherein the court was considering the constitutionality of a statute relating to an individual's right to become a member of a labor union the court stated:

Neither the doctrine nor this application of it is novel; we will endeavor to re-state some of the grounds upon which it rests. The principle is fundamental and vital. Included in the right of personal liberty and the right of private property -- partaking of the nature of each -- is the right to make contracts for the acquisition of property. **Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.** If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money.

The exchange of labor for money is just that, an exchange, or change in form of property represented by labor to property represented by money. There is no gain, profit, or "income derived" from the transaction.

In **Goodrich v. Edwards** (1921), 255 U.S. 527, 65 L. Ed. 758, 41 S. Ct. 390 the court was analyzing whether the conversion of a capital asset by the taxpayer into cash constituted a gain:

Before conversion into money, no one would question that the property was capital, although it then included the enhancement of value. Bearing in mind that the Sixteenth Amendment is not to be "extended by loose construction" and that it is "essential to distinguish between what is and what is not 'income' . . . according to truth and substance, without regard to form" (*Eisner v. Macomber*, 252 U.S. at 206), we must find some distinct benefit to the taxpayer as income directly attributable to the conversion, before it can be declared that what the taxpayer now has is, not merely his capital, but income instead. Otherwise, the mere fact of conversion, that is, the form alone, would prevail over the substance and be made the decisive factor. Yet the court has declared, although in considering the Act of 1909, that "**subsequent change of form by conversion into money did not change the essence.**" *Doyle v. Mitchell Brothers Co.*, 247 U.S. at 187.

Thus, the wage earner's "labor," (property,) when converted to money by the wage, or salary earner, does not constitute "income," but merely a conversion of his property, (labor,) into another form of property. Or, stated in another fashion, the wage earner's capital, (his labor,) has been converted into another form of capital, (money,) which he can then invest as he so chooses, to "derive income" which WOULD be subject to, and the subject of, the income tax.

Returning to the case at bar, it is now time to apply the "litmus test." An individual exchanges his property in his labor (his capital) for money. If in truth the money were income, then his capital (8 hours of labor) would remain to be used again to generate yet more income. This is not the case. Once labor is used, it is exhausted, it ceases to be, it is gone. Labor is the most precious of

perishable properties. Thus, we can determine from our litmus test (which holds true for *any* item of gross income) that the wages of the Petitioner DO NOT constitute gross income. Therefore they must be considered to be “non-statutory wages,” neither the subject of, nor subject to, the income tax.

As a practical example of Petitioner utilizing his capital to derive income, let us say that the Petitioner converts his labor to money, and with that money he purchases a stock for \$1000. He then resells the stock for \$1500. He has then utilized his capital to obtain the stock and sold it for \$500 more than his purchase price. He now has stock that he sold for \$1500, less his capital- \$1000, and he has made \$500 of gross income. Had he exchanged his labor for \$1000, then bought a car for \$1000, decided he didn't like it, sold it for a thousand dollars, purchased a motorcycle for a thousand dollars, decided it was too dangerous to ride and sold it for a thousand dollars, then bought a boat for a thousand dollars, decided he was afraid of the water and sold the boat for a thousand dollars, he would still have the same thousand dollars of capital. Although the form of his capital (labor) had changed form seven times, and finally, once again, reverted to the form of money, he had no income from his thousand dollars of capital.

Income derived from wages, salaries, or compensation for personal services can only be derived through the *payment* of wages, salaries or compensation to another. The subsequent charge for that labor above the cost to the wage payer is the income. No other explanation fits the legal definition *and* Title 26 of the United States Code. Any other application would result in an unlawful and unconstitutional form of taxation. As the court in *Eisner*, *supra*, stated:

A proper regard for its genesis, as well as its very clear language, requires also that this Amendment shall not be extended by construction, so as to repeal or modify, except as applied to income, those provisions of the Constitution that require an apportionment according to population for direct taxes upon property, real and personal. This limitation still has an appropriate and important function, and is not to be overridden by Congress or disregarded by the courts.

A tax levied upon the property of labor, or non-statutory wages exchanged for that labor, would constitute a direct tax subject to apportionment.

Jeff's conclusion

An individual, having “non-statutory wages,” which do not comprise “gross income,” has derived no “gross income” from his wages, and thus, those wages are neither the subject of, nor subject to, the income tax.