Appendix A

Letter to John Knox:
1929 - 1992

-and-

Memorandum of Law by John Knox:

edited in honor of his passing

by

Paul Andrew Mitchell
Counselor at Law, Federal Witness
and Private Attorney General

Reader's Notes:

c/o general delivery
San Rafael, California
Postal Code 94901/TDC

September 23, 1991

Mr. John Knox, Director
Texas Hill County Patriots
Kerrville, Texas Republic
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Dear John:

I am writing to thank you for the time you spent explaining to me your in-depth understanding of federal jurisdiction at the recent Denver Conference on tax and monetary reform.

By listening to you and Walt Myers debate the question in the hotel lobby, I came to believe that you have done a great deal of good research, John. I was very rewarded by my decision to stay and pick your brains after Walt walked away.

I am also writing this letter to remind you of your offer to send me copies of the legal briefs you mentioned during our conversation. Enclosed are 20 FRN's to this end.

I am slowly collecting substantive papers on the questions of federal jurisdiction, the definitions of "United States", their implications for Congressional taxing powers and statutes, and their implications for the American economy in general.

It is most intriguing, for example, that Alaska became a State when it was admitted to the Union, and yet the United States Codes had to be changed because Alaska was defined in those Codes as a "state" *before* admission to the Union, but not afterwards. This apparent anomaly is perfectly clear once the legal and deliberately misleading definition of "state" is understood.

Even though my own research has only scratched the surface of this question, I now have ample reasons to believe that the fluctuating definitions of "United States" in Title 26 are likewise intentional and may constitute the essential core of a system of deliberate legal deception that was fastened upon our entire nation by the year 1913.

Notably, Mr. Brushaber was identified in his court documents as a New York Citizen. The Union Pacific Railroad Company was incorporated by Congress. Accordingly, Brushaber was a State Citizen identified as a **nonresident alien** and taxed upon unearned income that derived from a **domestic** corporation. He was *alien* to the jurisdiction of the corporate United States, and *nonresident* within that jurisdiction because he resided within New York State. He derived income from a *domestic* corporation, because the Union Pacific Railroad Company was incorporated by Congress, *i.e.*, in the District of Columbia.

If the Union Pacific Railroad Company had **not** been incorporated by Congress, it would have been a *foreign* corporation (*i.e.*, foreign to the federal, corporate United States). If Brushaber had resided in the District of Columbia or in some other federal enclave or possession under exclusive jurisdiction of Congress, he would have been a **resident alien**. If he had been born inside this exclusive jurisdiction, or if he had been naturalized, he would have been a **United States citizen**, not an alien, regardless of where he resided. Note that I have been careful to distinguish a "United States citizen" from a "Citizen of the United States"; the former is a person under the jurisdiction of Congress, while the latter is not.

It is quite stunning how the carefully crafted definitions of "United States" do appear to unlock a horribly complex statute, and also expose perhaps the greatest fiscal fraud that has ever been perpetrated upon any people at any time in the history of the world.

I will anxiously look forward to receiving the legal papers which we discussed in Denver.

Thanks very much, John, for your significant contributions to our important and difficult search for the truth in this matter.

Sincerely yours,

/s/ Paul Andrew Mitchell, Founder

Account for Better Citizenship

copies: interested colleagues

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UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO, TEXAS

JOHN H. KNOX and LOIS C. KNOX	)	
	)	
Plaintiffs,	)	
	)	Case No. SA-89-CA-1308
v.	)	(Consolidated with
	)	SA-89-CA-0761)
THE UNITED STATES,	)	
HERMAN SILGUERO and	)	
DOROTHY SILGUERO,	)	
	)	
Defendants	)	

MEMORANDUM IN SUPPORT OF REQUEST FOR THE DISTRICT COURT TO CONSIDER THE T.R.O. AND INJUNCTION DENIED BY THE MAGISTRATE

Plaintiffs in the above entitled action are NONRESIDENT ALIENS *with respect to* the "United States" as those terms are defined in 26 U.S.C., and have had no income effectively connected to a trade or business within the "United States". They COME NOW to file this their Memorandum in Support of a Request for the District Court to Consider the Temporary Restraining Order and the Motion for Injunction and, in support, to show the Court as follows:

1. The issues as to whether there are different meanings for the term "United States", and whether there are three different "United States" operating within the same geographical area, and one "United States" operating outside the Constitution over its own territory (in which it has citizens *belonging to* said "United States"), were settled in 1901 by the Supreme Court in the cases of De Lima v. Bidwell, 182 U.S. 1 and Downes v. Bidwell, 182 U.S. 244. In Downes *supra*, Justice Harlan dissented as follows:

> The idea prevails with some -- indeed, it found expression in arguments at the bar -- that **we have in this country substantially or practically two national governments**; one, to be maintained under the Constitution, with all its restrictions; **the other to be maintained by Congress outside and independently of that instrument, by exercising such powers as other nations of the earth are accustomed to exercise**.
>
> [Downes *supra*, page 380, emphasis added]

He went on to say, on page 382:

> It will be an evil day for American liberty if the theory of **a government outside of the supreme law of the land finds lodgment in our constitutional jurisprudence**. No higher duty rests upon this court than to exert its full authority to prevent all violation of the principles of the Constitution.
>
> [Downes *supra*, page 382, emphasis added]

2. This theory of a government operating outside the Constitution over its own territory, with citizens of the "United States" belonging thereto under Article 4, Section 3, Clause 2 (4:3:2) of the Constitution, was further confirmed in 1922 by the Supreme Court in Balzac v. Porto Rico, 258 U.S. 298 (EXHIBIT #4), wherein that Court affirmed, at page 305, that **the Constitution does not apply outside the limits of the 50 States of the Union**, quoting Downes *supra* and De Lima *supra*; that, under 4:3:2, the "United States" was given exclusive power over the territories and the citizens of the "United States" residing therein.

3. The issue arose again in 1944, in the case of Hooven & Allison Co. v. Evatt, Tax Commissioner of Ohio, 324 U.S. 652, wherein the U.S. Supreme Court stated as follows at page 671-672 (EXHIBIT #8):

> The term "United States" may be used in any one of several senses. **[1]** It may be merely the name of a sovereign occupying the position analogous to that of other sovereigns in the family of nations. **[2] It may designate the territory over which the sovereignty of the United States extends**, **[3]** or it may be the collective name of the states which are united by and under the Constitution.[1]
>
> [brackets, numbers and emphasis added]

Quoting Fourteen Diamond Rings v. United States, 183 U.S. 176; *cf.* De Lima v. Bidwell, 182 U.S. 1; Dooley v. United States, 182 U.S. 222; Faber v. United States, 221 U.S. 649; *cf.* Huus v. New York & P.R.S.S. Co., 182 U.S. 392; Gonzales v. Williams, 192 U.S. 1; West India Oil Co. v. Domenech, 311 U.S. 20.

The Court, in Hooven *supra*, indicated that this was the last time it would address the issue; it would just be judicially noticed.

4. The issue arose in Brushaber v. Union Pacific Railroad Company, 240 U.S. 1. In that case, the high Court affirmed that the "United States" could levy a tax on the income of a nonresident alien when that income derived from sources WITHIN the "United States" (*i.e.* its territorial jurisdiction).

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[1]. See Langdell, "The Status of our New Territories," 12 Harvard Law Review 365, 371; see also Thayer, "Our New Possessions," 12 Harvard Law Review 464; Thayer, "The Insular Tariff Cases in the Supreme Court," 15 Harvard Law Review 164; Littlefield, "The Insular Cases," 15 Harvard Law Review 169, 281.

5. Based upon the decision in Brushaber *supra*, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, promulgated the Court's decision as Treasury Decision 2313 (see EXHIBIT #1). T.D. 2313 declared that Frank R. Brushaber was a NONRESIDENT ALIEN *with respect to* the "United States". T.D. 2313 also declared that the Union Pacific Railroad Company was a DOMESTIC CORPORATION *with respect to* the "United States" (*i.e.* its territorial jurisdiction).

6. The Complaint (EXHIBIT #2) filed by Mr. Brushaber shows that he was a nonresident of the "United States", residing instead in the State of New York, in the borough of Brooklyn, and a Citizen thereof, with his principal place of business in the borough of Manhattan. He owned stocks and bonds issued by the Union Pacific Railroad Company, upon which a cash dividend was declared to him by said company, a domestic corporation of the "United States". Union Pacific was chartered by an Act of Congress for the territory of the federal state of Utah, in order to build a railroad and telegraph line and other purposes. It is a matter of public record that the Union Pacific Railroad Company was a domestic "United States" corporation, of the federal state of Utah, residing in the District of Columbia, with its principal place of business in Manhattan, New York. It was created by an Act of the "United States" Senate and House of Representatives (under their exclusive authority, granted by the Constitution for the United States at 1:8:17) on July 1, 1862 by the 37th Congress, 2nd Session, as recorded in the Statutes At Large, December 5, 1859 to March 3, 1863 at Chapter CXX, page 489 (EXHIBIT #3). Considering the foregoing evidence of the diversity of citizenship of the two parties, it is clear that Mr. Brushaber was a "nonresident alien *with respect to* the United States", who had income from sources within said "United States". His income derived from the Union Pacific Railroad Company, a corporate citizen created by Congress and residing WITHIN the "United States" (*i.e.* the District of Columbia). (See EXHIBIT #3)

> ... [A] domestic corporation is an artificial person whose residence or domicile is fixed by law within the territorial jurisdiction of the state which created it. That residence cannot be changed temporarily or permanently by the migrations of its officers or agents to other jurisdictions. **So long as it is an existing corporation its residence, citizenship, domicile, or place of abode is within the state which created it.** It cannot reside or have its domicile elsewhere; neither can it in legal contemplation be absent from the state of its creation.
>
> [Fowler v. Chillingworth, 113 So. 667, 669 (1927)]
> [emphasis added]

7. Related cases are Hylton v. United States, 3 U.S. (3 Dall.) 171 (1796): Hylton was a Congressman; his salary was income from sources WITHIN the "United States". See also Springer v. U.S., 102 U.S. 586 (1881): Springer, a Virginia Citizen, operated a carriage business in the District of Columbia.

8. The first paragraph of the Secretary's Treasury Decision (EXHIBIT #1) is quoted here as follows:

(T.D. 2313)
Income Tax

Taxability of interest from bonds and dividends on stock of **domestic**[2] corporations owned by nonresident aliens, and the liabilities of nonresident aliens under Section 2 of the act of October 3, 1913.

To collectors of internal revenue:

Under the decision of the Supreme Court of the United States **in the case of Brushaber v. Union Pacific Railway** [sic] **Co.**, decided January 24, 1916, it is hereby held that income accruing to **nonresident aliens** in the form of interest from the bonds and dividends on the stock of **domestic corporations** is subject to the income tax imposed by the act of October 3, 1913.

[footnote and emphasis added]

9. The above decision by the Secretary of the Treasury determined that a tax on income derived from rents, sales of property, wages, professions, or a trade or business WITHIN the "United States", was applicable to such "income" when payable to a nonresident alien, *i.e.* a Union State Citizen.

10. All income tax provisions under 26 U.S.C., subtitle A (an excise tax on "income"), are divided between sources WITHIN and WITHOUT the "United States". They are imposed upon the worldwide income of citizens of the "United States" and aliens residing therein, and upon nonresident aliens (of all kinds) receiving income from sources WITHIN said "United States" and WITHIN the *other* parts of the American Empire which fall WITHIN the exclusive legislative jurisdiction of the Congress of the "United States", pursuant to 1:8:17 and 4:3:2.

CONSTITUTIONAL AUTHORITY GRANTED TO CONGRESS

11. The Constitution gives to Congress the power to act for the 50 Union States as an international representative and to do so *without* (outside) the boundaries of each of those 50 States. These powers are expressed in Article 1, Section 8, Clauses 1 thru 16 (1:8:1-16).

12. The Constitution gave to Congress a seat of government, known as the District of Columbia. In time, Congress created a government for the "District", and this "District" became a federal state by definition. (For the other federal "states" of the "United States", see EXHIBIT #5.) However, this "state" (D.C.) is not "united" by or under the Constitution for the United States of America. D.C. has never joined the Union.

13. Furthermore, the Constitution granted to Congress the authority to govern the "District", just as the Legislatures of each of the several States of the Union govern their States within the geographical limits of

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[2]. "Domestic" in the "United States" statutes means inside D.C., the possessions, territories, and enclaves of the "United States", *i.e.* federal states of which there are 14. (EXHIBIT #5)

those States. As Congress began to legislate for the "District", under authority of 1:8:17 and 1:8:18, the difference between the citizens of the "District" and the Citizens[3] of the Union became apparent, in that the citizens of the "District" did not possess the right of suffrage or other rights (see Balzac *supra*, De Lima *supra*, and Downes *supra*) and therefore were not recognized as a part of the Sovereignty of "We the People".

The Constitution for the United States of America provided no means of taxing these "District" citizens of the "United States". A method of forming municipal governments and of exercising taxing power over these citizens within the territories of the "United States" was decided by The Insular Cases (see the Bidwell cases, *supra*). "The Constitution was made for States, not territories," wrote Daniel Webster. "... [T]he Constitution of the United States as such does not extend beyond the limits of the States which are united by and under it ....", wrote author Langdell in "The Status of Our New Territories", 12 Harvard Law Review 365, 371.

14. The distinction between "citizens of the United States" and "Union State Citizens" has been fully recognized by the Congress and the Courts as follows:

> We have in our political system **a government of the United States** and **a government of each of the several States**. Each one of these governments is distinct from the others, and **each has citizens of its own** who owe it allegiance, and whose rights, within its jurisdiction, it must protect.
>
> [United States v. Cruikshank, 92 U.S. 588, 590 (1875)]
> [emphasis added]

The Federal Government is a "state".

[Enright v. U.S., D.C.N.Y., 437 F.Supp 580, 581]

> *Foreign State.* A foreign country or nation. The several United States are considered "foreign" to each other except as regards their relations as common members of the Union.
>
> [Black's Law Dictionary, Sixth Edition, page 1407]

15. Congress identifies these citizens of the "District" as "individuals" or citizens who reside in the "United States" and who are subject to the direct control of Congress in its local taxing and other municipal laws.

16. In De Lima *supra*, the U.S. Attorney defined federal taxes with the following words, at page 99-108:

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[3]. Please note that the U.S. Constitution always denoted Citizen and Person in capital letters until the 14th Amendment, wherein citizen and person were not capitalized.

> Federal taxation is either general or local. Local taxes are levied under Article 1, Section 8, Paragraph 1. Local taxes are for the support of territorial or non-state governments.

Congress imposed a federal excise tax on the "income" of these citizens or "individuals" at 26 U.S.C., Section 1, as a *local* tax:

> Such taxes are not for the common welfare of the United States, but are to defray the expense of the government of the locality, and in the dual position which Congress occupies in our system, as Federal Government and as local government for the territory of the United States not ceded into States of the Union, it has the power to tax for local purposes.
>
> [De Lima *supra*, page 99]

Hence the term "from sources WITHIN the United States".

> General taxes are of two kinds, direct; and what, for brevity may be called indirect, meaning thereby duties, imposts, and excises. Direct taxes must be laid on all the States alike.
>
> [De Lima *supra*, page 100]

17. A Citizen of one of the 50 States, residing therein, is a nonresident alien *with respect to* this local taxing power of Congress (see Brushaber *supra*). Outside the geographical area of the "United States" (as that term is defined at 26 C.F.R. 1.911-2(g)), Congress lacks power to support the local government by imposing a tax on the incomes of nonresident aliens (ones outside the locality, *i.e.* Citizens of the 50 States) UNLESS they reside within that jurisdiction by residence, or UNLESS the source of their income is situated WITHIN that geographical territory. Any income arising from sources therein must be withheld at the source by the "withholding agent" (see T.D. 2313, 26 C.F.R. 871, and 26 U.S.C. 1461), unless the recipient is engaged in a trade or business therein. For a full discussion of this local taxation, see pages 55 and 99-108 of De Lima *supra*. For confirmation of the *domestic* municipal jurisdiction of the "United States", see Downes *supra* at pages 383-388.

18. Congress has control of these "individuals", whether they "reside" WITHIN the "United States" (*i.e.* territorial states, see EXHIBIT #5) or WITHOUT the "United States". These "individuals" (*i.e.* born within the jurisdiction of Congress, such as a citizen born in the District of Columbia or in one of the territories), whether they reside *within* "United States" territories, *without* the "United States" in the "foreign countries" (as defined at 26 C.F.R. 1.911-2(h)), or *abroad*, are still liable for the federal income tax unless they abrogate that citizenship by naturalization or otherwise. (See 26 C.F.R. 871-5, -6 and -12 and 1.932-1). However, at 26 U.S.C. 911(a)(1), Congress has exempted from taxation all "foreign earned income" of these citizen individuals, except for Puerto Ricans (see 26 C.F.R. 1.932-1(b), IRS Form 2555).

19. Another type of nonresident aliens are those citizens of contiguous countries such as Mexico, Canada and other foreign countries. These foreigners, residents or nonresidents (as the case may be), are subject to the tax on incomes received from *any* place in the American Empire, *i.e.* in

these united States *and* in the "United States". A Union State Citizen, previously nonresident, may lose his nonresident status by residing within the territorial sovereignty of the "United States" for 183 days (26 C.F.R. 1.871-7(d)(2)) and thereby becomes subject to the local tax on incomes received from sources within *and* without the "United States" (*i.e.* worldwide income).

THE INCOME TAX IS A LOCAL TAX
IMPOSED WITHIN THE "UNITED STATES".
PLAINTIFFS ARE STRANGERS TO THIS LOCALITY.

THE DEFINITIONS IN 26 U.S.C.:
THE INTERNAL REVENUE CODE

20. The definitions used in 26 U.S.C. are very clear in defining "State" and "United States". In every definition that uses the word "include", only the words that follow are defining the term. For example:

21. 26 U.S.C. 3121(e)(1) **State**. -- The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

22. 26 U.S.C. 7701(a)(9) **United States**. -- The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

23. The federal government has used these definitions correctly, but IRS agents seem to assume that they mean the 50 States of the Union (America) when they look at the word "States" in 26 U.S.C. 7701(a)(9). You cannot use the common, everyday meaning of the terms "United States" or "State" when talking about the tax laws and many other laws that are enacted under the local, municipal authority of the "United States" government.

24. Another example is the Omnibus Acts at 86th Congress, 1st Session, Volume 73, 1959, and 2nd Session, Volume 74, 1960, Public Laws 86-70 and 86-624. These Acts reveal the crafty way in which the federal government uses correct English and how Congress changes the meanings of words by using its own definitions. For example, all the United States Code definitions had to be changed to allow Alaska and Hawaii to join the Union of States united under the Constitution. When Alaska joined the Union, Congress added a new definition of "States of the United States". This definition had never appeared before, to wit:

> Sec. 48. Whenever the phrase "continental United States" is used in any law of the United States enacted after the date of enactment of this Act, it shall mean the 49 States on the North American Continent and the District of Columbia, **unless otherwise expressly provided**.
>
> [*cf.* 1 U.S.C.S. 1, "Other provisions:"]
> [emphasis added]

Where is it otherwise expressly provided? Answer:

> **Sec. 22. (a) Section 2202 of the Internal Revenue Code of 1954 (relating to missionaries in foreign service), and sections 3121(e)(1), 3306(j), 4221(d)(4), and 4233(b) of such code (each relating to a special definition of "State")** are amended by striking out "Alaska,".
>
> (b) Section 4262(c)(1) of the Internal Revenue Code of 1954 (definition of "continental United States") is amended to read as follows: "(1) **Continental United States**. -- The term 'continental United States' means the District of Columbia and the States other than Alaska."

When Hawaii was admitted to the Union, Congress again changed the above definition, to wit:

> Sec. 18. (a) Section 4262(c)(1) of the Internal Revenue Code of 1954 (relating to the definition of "continental United States" for purposes of the tax on transportation of persons) is amended to read as follows: "(1) **Continental United States**. -- The term 'continental United States' means the District of Columbia and the States other than Alaska and Hawaii."

WHAT ARE THE STATES *OTHER THAN* ALASKA AND HAWAII?

25. They certainly cannot be the other 48 States united by and under the Constitution, because Alaska and Hawaii just joined them, RIGHT? The same definitions apply to the Social Security Acts. So, what is left? Answer: the District of Columbia, Puerto Rico, Guam, Virgin Islands, etc. These are the States OF (*i.e.* belonging to) the "United States" and which are under its sovereignty. Do not confuse this term with States of the Union, because the word "of" means "belonging to" in this context.

26. Congress can also change the definition of "United States" for two sentences and then revert back to the definition it used before these two sentences. This is proven in Public Law 86-624, page 414, under School Operation Assistance in Federally Affected Areas, section (d)(2):

> The fourth sentence of such subsection is amended by striking out "in the continental United States (including Alaska)" and inserting in lieu thereof "(other than Puerto Rico, Wake Island, Guam, or the Virgin Islands)" and by striking out "continental United States" in clause (ii) of such sentence and inserting in lieu thereof "United States (which for purposes of this sentence and the next sentence means the fifty States and the District of Columbia)". The fifth sentence of such subsection is amended by striking out "continental" before "United States" each time it appears therein and by striking out "(including Alaska)".

27. This one section, all by itself, contains all the evidence you need, by words of construction, to prove that the term "United States" on either side of these sentences did not mean the 50 States united by and under the Constitution. If that is not conclusive to you, then see the following:

26 C.F.R. 31.3121(e)-1 State, United States, and citizen.

(a) When used in the regulations in this subpart, the term "State" includes [in its restrictive form] 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** [in its expansive form] Guam and American Samoa when the term is used in a geographical sense. The term "citizen of the United States" includes [in its restrictive form] a citizen of the Commonwealth of Puerto Rico or the Virgin Islands, and, effective January 1, 1961, a citizen of Guam or American Samoa.

[emphasis added]

Please note the bolded terms. In paragraph (a), Alaska and Hawaii only fit the definition of "State" before joining the Union. That means the definition of "State" was never meant to be the 48 now 50 States of the Union **unless distinctly expressed**. If paragraph (b) confuses you, the following is submitted:

28. The word "geographical" was never used in tax law until Alaska and Hawaii joined the Union, and it is not defined in the Internal Revenue Code. So, we must use the definition found in the Standard Random House Dictionary:

ge.o.graph.i.cal 1. of or pertaining to geography 2. of or pertaining to the natural features, population, industries, etc., of a region or regions

29. Were you born in the "United States"? The preposition "in" shows that the "United States" in this question is a *place*, a geographical place named "United States". It is singular, even though it ends in "s". It also can be plural when referring to the Union States which are places which exist by agreement. Every human in a nation is a natural Citizen of a place called a nation, if he was born in that nation. Those same people must be naturalized (born again) if they want to become a citizen of *another* nation. Original citizenship exists because of places, not agreements. This is *jus soli*, the law of the place of one's birth (see Black's Law Dictionary, Sixth Edition).

30. Here are two questions, your own answers to which will solve the dilemma. In a geographical sense, where is the State of Texas located on the continent? In a geographical sense, where is the "United States" (Congress) located on the continent?

31. Now, since typewriters were purchased from the areas that just joined the Union, namely Alaska and Hawaii, according to Title 1, Congress had to use a term that is NOT used in the Internal Revenue Code, in order to buy the same typewriters from the same geographical area:

> Sec. 45. Title I of the *Independent Offices Appropriation Act, 1960*, is amended by striking out the words "for the purchase within the continental limits of the United States of any typewriting machines" and inserting in lieu thereof "for the purchase within the **STATES OF THE UNION** AND THE DISTRICT OF COLUMBIA OF ANY TYPEWRITING MACHINES".
>
> [emphasis added]

And, for declarations made under the penalties of perjury, the statute at 28 U.S.C. 1746 separately defines declarations made WITHIN and WITHOUT the "United States" as follows:

> If executed WITHOUT the United States: I declare ... **under the laws of the United States of America** that the foregoing is true and correct.
>
> If executed WITHIN the United States, its territories, possessions, or commonwealths: I declare ... that the foregoing is true and correct.
>
> [emphasis added]

The latter clause above is the penalty clause that is found on IRS Form 1040 and similar IRS forms. And, 28 U.S.C. 1603(a)(3) states as follows:

> (3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title ....
>
> Section 1332(d). The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Examples of Two Definitions
of the term "United States" in 26 U.S.C.

First Definition

32. 26 U.S.C. 7701(a)(9):

> (9) United States. -- The term "United States" when used in a geographical sense includes only **the States and the District of Columbia**.

Second Definition

33. 26 U.S.C. 4612(a)(4)(A):

> (A) In general. -- The term "United States" means **the 50 States**, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.
>
> [emphasis added]

34. The Supreme Court stated in Hepburn & Dundas v. Ellsey, 6 U.S. 445, 2 Cranch 445, 2 L.Ed 332, that the District of Columbia is not a "State" within the meaning of the Constitution. Therefore, it is apparent that the meaning of the term "States" in the first definition above can only mean the territories and possessions belonging to the "United States", because of the specific mention of the District of Columbia and the specific absence of the 50 States (*inclusio unius est exclusio alterius*). The District of Columbia is not a "State" within the meaning of the Constitution (see Hepburn *supra*). Therefore, the 50 States are specifically excluded from this first definition of the term "United States".

35. Congress has no problem naming the "50 States" when it is legislating for them, so, in the second definition of the term "United States" above, Congress expressly mentions them, and there is no misunderstanding. If a statute in 26 U.S.C. does not have a special "word of art" definition for the term "United States", then the **First Definition** of the term "United States" is always used (see above) because of the *general* nature of that term as defined by Congress.

36. When citizens or residents of the first "United States" are without the geographical area of this first "United States", their "compensation for personal services actually rendered" is defined as "foreign earned income" in 26 U.S.C., Section 911(b) and 911(d)(2), as follows:

> 911(b) Foreign Earned Income. -- ...
>
> (d)(2) Earned Income. --
>
> (A) In general. -- The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

37. A citizen or resident of the first "United States" does not pay a tax on his "compensation for personal services actually rendered" while residing outside of the first "United States", because Congress has exempted all such compensation from taxation under 26 U.S.C., Section 911(a)(1), which reads as follows:

> 911(a) Exclusion from Gross Income. -- ... [T]here shall be excluded from the gross income of such individual, and exempt from taxation ... (1) the foreign earned income of such individual ....

38. When residing without (outside) this "United States", the citizen or resident of this "United States" pays no tax on "foreign earned income", but is required to file a return, claiming the exemption (see IRS Form 2555).

39. 26 C.F.R., Section 871-13(c) allows this citizen to abandon his citizenship or residence in the "United States" by residing elsewhere.

40. 26 C.F.R., Section 1.911-2(g) defines the term "United States" as follows:

> *United States.* The term "United States" when used in a geographical sense includes any territory under the sovereignty of the United States. It includes the states[4], [Puerto Rico, Guam, Mariana Islands, etc.] the District of Columbia, the possessions and territories of the United States, the territorial waters of the United States, the air space over the United States, and the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law ....

None of the 50 united States comes under the sovereignty of the "United States", and subsection (h) defines the 50 States united by the Constitution as "foreign countries":

> (h) *Foreign country.* The term "foreign country" when used in a geographical sense includes any territory under the sovereignty of a government other than that of the United States.
>
> [26 C.F.R. 1.911-2(h)]

All of the 50 States are *foreign* with respect to each other and are under the sovereignty of their respective Legislatures, except where a power has been expressly delegated to Congress. The Citizens of each Union State are foreigners and aliens *with respect to* another Union State, unless they establish a residence therein under the laws of that Union State. Otherwise, they are nonresident aliens with respect to all the other Union States.

41. The regulations at 26 C.F.R., Section 1.1-1(a) state, in pertinent part:

> (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 and, to the extent provided by Section 871(b) or 877(b), on the income of a nonresident alien individual.

26 U.S.C., Section 1 imposes a tax on "taxable income" as follows, in pertinent part:

> There is hereby imposed on the taxable income of ... every married individual ... who makes a single return jointly with his spouse under section 6013 ....

42. The regulations promulgated to explain 26 U.S.C., Section 1 are found in 26 C.F.R., Section 1.1-1, and state in pertinent part:

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[4]. This term "state" evidently does not embrace one of the 50 States (where I am a free inhabitant), united by the Constitution, because they are separate governments or *foreign states* with respect to the "United States" (*i.e.* D.C., its territories, possessions and enclaves).

(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 and, to the extent provided by Section 871(b) or 877(b), on the income of a nonresident alien individual.

Please note that the term "taxable income" is not used *as such* in the above statute because the "income" of those classes of individuals mentioned is taxable as "taxable income".

Section 1.871 Classification and manner of taxing alien individuals

(a) Classes of aliens. For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. ...

(b) Classes of nonresident aliens. --

(1) In general. For purposes of the income tax, nonresident alien individuals are divided into the following three classes:

(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States,

(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under Section 1.871-9 to be, engaged in a trade or business in the United States, and

(iii) NOT APPLICABLE (concerns residents of Puerto Rico)

43. 26 C.F.R., Section 871-13 states as follows:

(a) In general. (1) An individual who is a citizen or resident of the United States at the beginning of the taxable year but a nonresident alien at the end of the taxable year, or a nonresident alien at the beginning of the taxable year but a citizen or resident of the United States at the end of the taxable year, is taxable for such year as though his taxable year were comprised of two separate periods, one consisting of the time during which he is a citizen or resident of the United States and the other consisting of the time during which he is not a citizen or resident of the United States.

It sounds complicated, doesn't it?

NONRESIDENT ALIEN

44. The federal income tax is a local tax for the "United States" to support local government and, in order to become liable to this tax, a State Citizen must be a resident therein (*i.e.* a resident alien), or receive income from sources therein, or be engaged in a trade or business therein.

45. In 26 U.S.C., Section 7701(b)(1)(A) & (B), Congress defined the statutory difference between "resident alien" and "nonresident alien" as follows:

(b) Definitions of Resident Alien and Nonresident Alien. --

(1) In general. -- For purposes of this title ...

(A) Resident Alien. -- An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i), (ii), or (iii):

(i) Lawfully admitted for permanent residence. -- Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence. -- Such individual meets the substantial presence test of paragraph (3).

(iii) First year election. -- Such individual makes the election provided in subparagraph (4).

(B) **Nonresident Alien. -- An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States** (within the meaning of subparagraph (A)).

46. Plaintiffs are not "residents" (as that term is defined in the above statutes) nor are they citizens of this "United States". They are nonresident aliens as that term is defined in subsections (B) and (A)(i), (ii), and (iii), and they have the same status as the Plaintiff in Brushaber *supra*.

INDIVIDUALS REQUIRED TO MAKE RETURNS OF INCOME

47. The following individuals are required to make returns of income:

26 C.F.R., Section 1.6012-1. Individuals required to make returns of income.

(a) Individual citizen or resident. --

(1) In general. ... an income tax return must be filed by every individual ... if such individual is ...

(i) A citizen of the United States, whether residing at home or abroad,

(ii) A resident of the United States even though not a citizen thereof, or

(iii) An alien *bona fide* resident of Puerto Rico during the entire taxable year.

48. John and Lois Knox clearly are not defined in the above statutes, but they *are* defined in the following statute as ones who are not required to make a return.

49. 26 C.F.R., Section 1.6013-1 states:

> (b) Nonresident Alien. A joint return shall not be made if either the husband or wife at any time during the taxable year is a nonresident alien.

Mr. John H. Knox and Mrs. Lois C. Knox are nonresident aliens *with respect to* the "United States", with no income derived from sources within the "United States", except for John's Military Retirement pay, which is exempt from taxation.

50. 26 C.F.R., Section 871-7 states, in pertinent part, as follows:

> Except as otherwise provided in Section 1.871-12, a nonresident alien individual to whom this section applies is **not subject to the tax imposed by section 1 or section 1201(b)**[5] but, pursuant to the provision of section 871(a), is liable to a flat tax of 30 percent upon the aggregate of the amounts determined under paragraphs (b), (c), and (d) of this section which are received during the taxable year from **sources within the United States**.
>
> [emphasis added]

51. Please note 26 C.F.R., Section 1.871-4(b), Proof of residence of aliens, which establishes a key legal presumption:

> (b) Nonresidence presumed. An alien by reason of this alienage, is presumed to be a nonresident alien.

52. Further facts are illustrated by the definition of "withholding agent" at 26 U.S.C., Section 7701(a)(16):

> Withholding agent. -- The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

53. 26 U.S.C., Section 1441 refers to nonresident aliens who receive income from sources within the "United States", as set forth in Section 871(a)(1). The other sections do not apply to the Plaintiffs.

54. Your attention is invited to 26 C.F.R., Section 31.3401(a)(6)-1(b), which states as follows:

> Remuneration for services performed outside the United States. Remuneration paid to a nonresident alien individual ... for services performed outside the United States is excepted from wages and hence is **NOT SUBJECT TO WITHHOLDING**.
>
> [emphasis added]

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[5]. Capital gains tax.

55. As a rule, Military Retirement Pay of a nonresident alien individual is exempted from the income tax at 26 C.F.R., Section 31.3401(a)-1(b)(1)(ii), with the following exception:

> Where such retirement pay or disability annuity ... is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid to a nonresident alien individual who is a resident of Puerto Rico.

and at 26 C.F.R., Section 935-1(a)(3):

> ... [F]or special rules for determining the residence for tax purposes of individuals under military or naval orders, see section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940[6], 50 App. U.S.C. 574. The residence of an individual, and, therefore, the jurisdiction with which he is required to file an income tax return under paragraph (b) of this section, may change from year to year.

Section 574(1) of The Soldiers' and Sailors' Relief Act states that:

> For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled ... **personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession or political subdivision, or district**.
>
> [emphasis added]

EXTRAORDINARY AND EXCEPTIONAL CIRCUMSTANCES

56. Plaintiffs herein are at an advanced age of 62 and both are in ill health, unable to work or to pay the tax or to sue for a refund. Lois has only one kidney which does not function properly; complicating this is a lung disease which prevents her from breathing. She has been totally disabled since 1981, with no earned income from any source since that time. John has emphysema and has difficulty breathing upon exercise. They are unable to pay the tax and sue for refund without the complete destruction of their home, which is combined with their business. The property which is the subject of this case is a one-of-a-kind property which is, or would be, irreplaceable years down the road, if a refund suit was won. The property has a value of $100,000[7] and was allegedly sold for the sum of $16,000.00, which is all that could be recovered in a refund suit as pertains to said property. This creates an irreparable situation for Plaintiffs. The tax with penalties and interest claimed by the government against both Plaintiffs for 1982 is around $19,000.00 and, without the sale of the business property and home, it will be many years before a tax in this amount can be paid in full. Plaintiffs will not live long enough to prosecute such a suit. Equity and justice require some relief in such a situation.

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[6]. See Exhibit #6 attached hereto and made a part hereof.

[7]. The property had a value of $125,000 two years ago, when the IRS allegedly sold it.

AUTHORITY FOR THE COURT TO ISSUE THE INJUNCTION

57. In Botta v. Scanlon, 288 F.2d 504 (2nd Circuit, 1961), the Court set forth the general exceptions to the bar at 26 U.S.C., Section 7421, stating (see EXHIBIT #7):

> "... [I]t has long been settled that this general prohibition is subject to exception in the case of an individual taxpayer against a particular collector where the tax is clearly illegal or other special circumstances of an unusual character make an appeal to equitable remedies appropriate." *National Foundry Co. of N.Y. v. Director of Int. Rev.*, 2 Cir. 1956, 229 F.2d 149, 151.

The Court then gave a number of examples, as follows:

> "(a) Suits to enjoin collection of taxes which are not due from the plaintiff but, in fact, are due from others. For example, see *Raffaele v. Granger*, 3 Cir. 1952, 196 F.2d 620, 622 ....
>
> "(b) Cases in which plaintiff definitely showed that the taxes sought to be collected were "probably" not validly due. For example, *Midwest Haulers, Inc. v. Brady*, 6 Cir. 1942, 128 F.2d 496, and *John M. Hirst & Co. v. Gentsch*, 6 Cir. 1943, 133 F.2d 247.
>
> "(c) Cases in which a penalty was involved. For example, *Hill v. Wallace*, 259 U.S. 44, 42 S.Ct 453, 66 L.Ed 822; *Lipke v. Lederer*, 259 U.S. 557, 42 S.Ct. 549, 66 L.Ed. 1061; *Regal Drug Corporation v. Wardell*, 260 U.S. 386, 43 S.Ct 152, 67 L.Ed 318; *Allen v. Regents of the University System of Georgia*, 304 U.S. 439, 58 S.Ct 980, 82 L.Ed 1448.
>
> "(d) Cases in which it was definitely demonstrated that it was not proper to levy the tax on the commodity in question, such as *Miller v. Standard Nut Margarine Company of Florida*, 284 U.S. 498, 52 S.Ct. 260, 76 L.Ed 422.
>
> "(e) Cases based upon tax assessment fraudulently obtained by the tax collector by coercion. For example, *Mitsukiyo Yoshimura v. Alsup*, 9 Cir. 1948, 167 F.2d 104" (141 F.Supp. at page 338).
>
> [4] In the present case, if any of the plaintiffs are not subject to any tax liability, such plaintiff might well be within the exception stated in 9 Mertens, Law of Federal Income Taxation, Section 49.213, Chapter 49, page 226, as follows: ...
>
> "[2] It is equally well setted [*sic*] that the Revenue laws relate only to taxpayers. No procedure is prescribed for a nontaxpayer where the Government seeks to levy on property belonging to him for the collection of another's tax, and no attempt has been made to annul the ordinary rights or remedies of a non-taxpayer in such cases. If the Government sought to levy on the property of A for a tax liability owing to B, A could not and would not be required to pay the tax under protest and then institute an action to recover the amount so paid. His remedy would be to go into a court of competent jurisdiction and

> enjoin the Government from proceeding against his property." In Tomlinson v. Smith, 7 Cir. 1942, 128 F.2d 808 ... the Court affirmed an order granting interlocutory injunction and noted the "distinction between suits instituted by taxpayers and non-taxpayers" (at page 811).

CONCLUSION

Plaintiffs are in no way subjected to any derivative liability. The procedures set forth in 26 C.F.R. do not authorize the Secretary or his delegate to manufacture income and tax it where a Person is without the taxable class. 26 C.F.R., Section 871 is unclouded in that, where there is no income from sources within the "United States" by a nonresident alien, the choice is delegated to that Person by Congress as to whether a return is to be filed or not (see 26 C.F.R. 1.871-8). Where the Secretary determines the existence of taxable income when there has been no return, he should sign the substitute return and assume the responsibility for the determination as required by 26 U.S.C. 6020(b)(1). Treasury Decision 2313 explains that the withholding agent is responsible for withholding the tax from sources within the "United States", for filing a Form 1040NR and for paying over the tax withheld from said nonresident alien. (See Treasury Decision 2313 and 26 C.F.R. 1.1461-3). Therefore, no penalties should accrue to the Plaintiffs. Lois K. Knox has no community property interest in John's Military Retirement Pay and, therefore, no taxable income accrues therefrom.

The fact that the Knoxs were not aware of the above information from the early years of their lives and they reported the "earned income" from their labor in the foreign States of the Union as a local tax of the "United States", does not change their status as Citizens of the Republic of Union States. Nor does it change their status *from* nonresidents aliens *to* the "individuals" defined in 26 C.F.R., Section 1.1-1. Nor does it justify the Secretary's actions taken when he has been *repeatedly* informed by the Knoxs of their true status. The Secretary is required to know the law he is administering, and to do so with justice and equity within the parameters set forth by Congress. Arbitrary actions are discouraged by the Executive, the Congress and the Courts.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that this Court grant a temporary and permanent injunction against the IRS, its employees, agents, Commissioner and Attorneys by ordering a cessation of the levies and seizures against all forms of property owned by Plaintiffs; that the Court order a return of property seized in the past, declare the sale of such property voidable or void, and order a release of all liens filed against the Plaintiffs. In the alternative, Plaintiffs request that this case be remanded back to the Administrative Agency for resolution and arbitration. Plaintiffs further request the Court to grant such other and further relief in law or in equity as Plaintiffs may be entitled.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, to the best of my knowledge and belief, per 28 U.S.C. 1746(1).

Executed on this 5th day of September, 1991.

Respectfully submitted,

/s/ John H. Knox

[addendum to Knox brief]

CASES

ARGUED AND DETERMINED

in the

SUPREME COURT OF JUDICATURE

of the

STATE OF INDIANA

at Indianapolis, November Term, 1878,
in the Sixty-Third Year of the State.

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Daly *et al.* v. The National Life Insurance Company of the United States of America.
[cite omitted]

"Foreign Corporation" Defined. -- The statutes of this State define a foreign corporation to be "a corporation created by or under the laws of any other state, government, or country," or one "not incorporated or organized in this State".

Same. -- *Insurance Company Created by Act of Congress*. -- An insurance company created by an act of Congress is a foreign corporation subject to the requirements of the statute of this State approved June 17th, 1852, "respecting foreign corporations and their agents in this State." 1 R.S. 1876, p. 373.

Same. -- *Congress as a Local Legislature. -- Constitutional Law*. -- An act of Congress creating a private corporation is the act of Congress as the local Legislature of the District of Columbia; as Congress can not, under the federal constitution, as the Congress of the United States, create a private corporation.

# # #

Reader’s Notes: