

# STEP 7: Flawed Assumptions

(*never **assume** anything about the written law*)

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This is the seventh in a series of messages written especially for people new to the "861 evidence." This follows [Step 6: Foreign Commerce....again](#) (some income is still exempt). The various documents referred to in the discussions are hyperlinked (**blue letters**) to the Internet so that you can see the words for yourself. Where the law is quoted, all emphasis has been added.

- The **BLUE** links take you to the documents on the **Internet**; when finished reading, hit the "**back**" button to return to the discussion.
  - **ALL** the messages in this series can be found linked through the following website: <http://www.861.info/pgs/861course.php>.
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The section which **generally** defines "gross income" ([26 USC 61](#)) gives us a list of some common "**items**" of income (compensation, interest, rents, etc.), and sections after that deal with even more "items" of income. That's as far as most CPAs and tax attorneys ever look into the law.

But if (for example) "compensation" was **always** taxable, which is what this **general** definition *implies*, wouldn't that mean that several hundred million people living in China owe the tax? That is, under this **general** definition (where there is no detail about who is receiving the income and where it is coming from), isn't their income "gross income" as much as ours is?

In the general sense, yes it is, but the U.S. Congress obviously cannot tax every foreigner making money in his own country. In other words, that type of **COMMERCE** that generates such income (Chinese people earning a living in China) is **beyond Congress' power to tax**. Is there any other type of commerce that is **beyond Congress' power to tax**?

Wouldn't it be nice if, in addition to all the rules about which "items" of income are exempt and which aren't, there was a part of the law that described which types of **COMMERCE** generate *taxable* income? There is. It is **Subchapter N** of the tax code, entitled, "Tax based on income from sources within or without the United States." Here are the essentials of these **STATUTES**. (If you want to scroll through these statutes to get used to looking at the law on the Internet go to the Cornell Law website [HERE](#).)

As you can see, it talks about U.S. citizens with certain **FOREIGN** income (sections 901, 911, etc.), foreigners with income from the U.S. (sections 871, 882, etc.), rules about federal possessions (sections 931, 936, etc.), and other international matters. Recognize the pattern? These are the **SAME** types of commerce which the regulations defining "gross income," past and present, mention. And there is **STILL NO MENTION** of Americans living and working **EXCLUSIVELY** within the 50 states.

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What reason could there be for *all this reference to international trade*, but at the same time the rather conspicuous **FAILURE** to mention the domestic income of most Americans? For a hint, here is a quote from one of the first Supreme Court cases dealing with the 1913 income tax, about an American company that was shipping goods to **FOREIGN** countries and then selling them. About that, the Supreme Court said this:

*"The Constitution broadly empowers Congress not only 'to lay and collect taxes, duties, imposts, and excises,' but also 'to regulate commerce with FOREIGN nations.' So... Congress undoubtedly has power to lay and collect such a tax as is here in question." [Peck v. Lowe, 247 U.S. 165 (1918)]*

Therefore, since Congress has power over, "commerce with foreign nations" (i.e. international trade) they can therefore "undoubtedly" tax income from that trade. And **ALL** we see in the law is all about **money crossing country borders**: Americans getting foreign income and income from the U.S. going to people **OUTSIDE** the country (e.g. nonresident aliens). (Federal possessions are separately under federal jurisdiction.)

What about trade **within** one of the 50 states (intrastate or domestic commerce)? Doesn't Congress have power over that too?

*"[Over] internal commerce or domestic trade of the States... Congress has **NO POWER** of regulation nor any direct control. This power belongs exclusively to the States. **NO INTERFERENCE** by Congress with the business of citizens transacted **WITHIN A STATE** is warranted by the Constitution, except such as is strictly incidental to the exercise of powers clearly granted to the legislature." [License Tax Cases, 72 U.S. 462 (1866)]*

For now I won't get into a more involved explanation of **WHY only international trade** is taxed, but it was necessary to at least give a brief summary or else the evidence makes no sense. But in the end, it is what **THE LAW SAYS** that matters; **WHY** it says what it says is secondary.

(Before filling out a tax return you are required to determine **IF** your income is taxable or exempt from tax using the sections of the written law that exist for that purpose but you don't need to know **WHY** it is exempt.)

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Important point: The way we "interpret" evidence depends a lot upon what *assumptions* we start with. Most people look at the law starting with the assumption that all income is taxable by default, unless some section specifically says it is exempt.

But that is the exact **OPPOSITE** of how our system of written law works. The reader must **NEVER** "assume" anything about the law; they must **let the law tell them what it means at all times**.

Try this exercise:

**Prove** that your income isn't subject to the federal wagering excise tax.

Where does the law **SAY** that you are **exempt** from this tax? Specifically, it does **NOT** say that you are exempt, but it doesn't need to. The law has to **specifically state** what **IS** subject to a tax, not what **IS NOT** subject to the tax.

With the wagering tax, this is obvious. But with the income tax, most people start by assuming that **EVERYTHING** is taxable unless the law specifically says otherwise, which is completely backwards. As we saw, both the Supreme Court (in *Gould v. Gould*) and the principle of "*inclusio unius*" dictate that **NOTHING** is subject to a tax **unless** it is "specifically pointed out."

As we have seen in the law books:

1. Nothing **specifically says** that your income is exempt.
2. Nothing **specifically says** that your income is taxable.

Therefore, if you start by *assuming* you owe the tax unless the law says otherwise, you will end up still thinking you owe something. But if you **START** by *assuming* that your income is **NOT** taxable unless the law says otherwise (which is what the Supreme Court **SAYS** that you should do), you will conclude from the evidence in the law that you **DON'T** owe the tax.

The dead give-away is that the law **DOES NOT** specifically say either way for most of us (though it is **VERY** specific for nonresident aliens, Americans with foreign income, etc.). If **YOU** were writing the law, would you **FORGET** (for over 80 years in a row) to specifically tell millions of Americans that they owe the tax?

To use an analogy, what would you think of someone charged with murder whose defense was "I did not stab Bob... but I'm not going to specifically say whether I shot him or not"? Wouldn't that make you suspicious? Well the tax laws say, in effect, "income from international trade is taxable... but I'm not going to specifically say whether **YOUR** income is taxable or not"? Can you think of any **HONEST** reason for them to **NOT** specifically **SAY** one way or the other whether our income is exempt or taxable? I can't.

While IRS employees and CPAs often claim that us "average Americans" don't need to look at Subchapter N at all, next you'll see where the regulations prove them dead wrong.

Sincerely,

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**NEXT: [STEP 8: TAXABLE DOMESTIC INCOME](#)**