

STEP 9: Taxable for Whom?

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This is the ninth in a series of messages written especially for people new to the "861 evidence." This follows **Step 8: Taxable Domestic Income** (when domestic income is taxable). 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>.

In 1924, there was a section of the income tax code which listed certain kinds of domestic income (such as compensation for doing work in the U.S. and interest from U.S. investments), saying that such income (after subtracting deductions) was to be included as taxable domestic income when received by **NONRESIDENT ALIENS**, and Americans who get most of their income from federal **POSSESSIONS** (e.g. Guam, Puerto Rico). Here is that section:

Section 217 (1924)

(Another section said that those rules also apply to **FOREIGN** corporations, and American companies getting most of their income from federal **POSSESSIONS**. In other words, it applies to corporations the same as individuals.)

"Conventional wisdom" says that wages earned in the U.S., interest from U.S. investments, and other domestic income is taxable for **EVERYONE** (Americans and foreigners alike). So why would a section of law say that income from the U.S. is taxable for **NONRESIDENT ALIENS**, and for Americans doing business in **FEDERAL POSSESSIONS**? What about if you and I receive that kind of income?

By 1939, the income tax laws had been rearranged and reworded, and there was a **new section** about "*income from sources within the United States*." It listed the same kinds of domestic income as before (wages earned here, interest on investments here, rents from property located here, etc.), but the section **NO LONGER SAID** that such income was taxable only in the case of nonresident aliens, etc. Here is that statute: **Section 119 (1939)**

So had domestic income become taxable for everyone? No. The **REGULATIONS** (which are the "official interpretation" of the correct application of the statutes by the Executive Branch) continued to say that those kinds of domestic income, after subtracting deductions, were to be included as taxable income when received by **NONRESIDENT ALIENS** and **FOREIGN CORPORATIONS** doing business in the U.S.

Here is that section (the predecessor of **26 CFR 1.861-8**):

Section 39.119 (b)-1 (1939)

The wording makes it quite clear what is happening. After the prior sections spell out **when** the various **ITEMS** of income are considered to be **DOMESTIC** income, it states that allowable deductions can be taken from such income **IN ADDITION TO** telling the reader **WHO SPECIFICALLY OWES** these income taxes. Again, if domestic income is taxable for **EVERYONE** (as most tax professionals insist) then why **would the law ONLY say** that it is taxable for **FOREIGNERS** (and Americans with possessions income)?

Keep in mind how the Supreme Court (Gould v. Gould) and that "*inclusio*" legal principle say that we should **NOT** assume that the law applies to matters **NOT** "specifically pointed out," and that if the law spells out certain matters **and not others**, we should conclude that what was **left out** was **INTENDED** to be left out. In other words, the law only applies to what it **SAYS** it applies to.

So when the law goes out of its way to say that domestic income is taxable for people **OTHER THAN YOU**, then what is the proper conclusion? That domestic income is **NOT TAXABLE** for you.

As you may have guessed, the sections discussed above are what became **Section 861** and its regulations. Just like in the 1939 statutes, Section 861 lists common kinds of domestic income, and by itself makes it sound like such income is taxable for everyone.

But the **REGULATIONS** which "interpret" Section 861 say that the section is about income from "specific sources," which (surprise, surprise) are all about **INTERNATIONAL** matters, including foreigners doing business here, Americans doing business in federal possessions, Americans with foreign income, etc. By now you can probably guess what is **NOT** on the list: **YOUR** domestic income (the income of most Americans).

It is hard to keep section numbers in your head and what section became what *differently numbered* section over time. But for purposes of illustration, here is a table that shows that the written law **IS** consistent over time and it **CAN** be tracked logically and systematically (don't be confused by all the entries in the table, notice how the truth **migrated to the regulations** under Section 861):

History Table

Below (again) is the link for **26 CFR 1.861-8**, (the predecessor was **39.119 (b)-1**, above) which (as you saw) is the **main regulation** to be used for determining someone's taxable domestic income. Notice that the **ONE** paragraph in 1939 **BECAME** 28 pages of convoluted but *technically correctly written* garbage in the current code. While looking it over, you can try to figure out what it is trying to say, but also ponder the question: does it look like the writers **WANTED** you to understand it, or does it look like they are **TRYING** to make it confusing?

26 CFR § 1.861-8

You might not be able to make heads or tails of it, but in light of that legalese mess, and the older sections of law it "evolved" from, don't you think that at the very least the following is a reasonable question?:

Do **Section 861** and its regulations show **OUR** income to be taxable?

(When I say "our" income, I'm talking about those of us who are U.S. citizens living and working just in the 50 states.)

I'm happy to say (and you're probably happy to hear), that is the **END** of the **TECHNICAL** terminology in this series of messages. I hope people new to the issue at least followed the general gist of it. Rather than being a comprehensive proof of anything, the goal here was just to make you familiar enough with the issue to understand that based on what the **LAW ITSELF** says, there are several important and reasonable questions about how to determine what we owe.

Here is a summary of the most important points:

- 1) Old regulations defining "gross income" said:
 - Some income is exempt because of the Constitution. (Like what?)
 - Income from certain international trade **MUST** be included as taxable. (What about **OUR** income?)
- 2) Current regulations say:
 - Common "items" of income are sometimes exempt. (When?)
 - Income from certain international trade is **NOT** exempt. (What about **OUR** income?)
- 3) Current law says to look to 861 and its regulations to determine taxable domestic income. (Does that apply to **ALL** of us?)
- 4) The regulations under the current 861, and many decades of predecessor statutes and regulations, said that income from **within** the U.S. was taxable for foreigners, Americans with possessions income, etc. (It **doesn't say** that **OUR** income is taxable?)
- 5) We are not to **ASSUME** that the law applies to matters not specifically pointed out, and when the law mentions some things and not others, we should conclude that what was not mentioned was **INTENDED** to be omitted. (So what should we conclude?)

I believe the only reasonable conclusion to reach (regardless of what popular opinion says) is that income from within the U.S. is **NOT TAXABLE** for most Americans.

If you think I made an error somewhere, or just can't believe my conclusion no matter what the basis for it, at this point that's just fine with me (but be aware that this is just the tip of the **proof iceberg** of the evidence in other parts of the law that is completely consistent with the above).

If you at least acknowledge that we've raised some **REASONABLE QUESTIONS**, then I'm happy. Though we're done with the legalese maze, now is **NOT** the time to stop reading (especially since we're finally through the confusing stuff).

What comes next should raise an eyebrow or two.

Sincerely,

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NEXT: [STEP 10](#): Questions and Answers