

Apr-02-03 08:54am From: Cong. PETE HOEKSTRA-WASH DC

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108th Congress

Congress of the United States
House of Representatives

March 31, 2003

Mrs. Rose Lear
1264 Montgomery Avenue
Muskegon, Michigan 49441-1719

Let's keep talking!!

Dear Mrs. Lear: *Rose*

I respectfully must continue to disagree with your conclusion that the federal government has no authority to collect income taxes.

Before addressing the matters raised in the "Petition for Redress of Grievances" as well as the other requests you have made, I want to reiterate that I believe that my staff made a good faith effort to be responsive to you and your family over the years. Specifically, on December 2, 2002, I requested the Commissioner of the Internal Revenue Service (IRS) to provide a response to you regarding the validity of the Federal Income Tax and the people's obligation to file a return and to pay income taxes due. The IRS provided a response, which was promptly furnished to you on January 15, 2003.

You disagreed with that response.

Previously, you were furnished a copy of a report to Congress prepared by the Congressional Research Service (CRS), a key element of the Library of Congress. CRS has provided valuable analyses to Congress for decades. The report in question, No. 97-59A, provides a thorough review, with extensive citations, regarding the issues relating to the validity of the Federal Income Tax.

You disagreed with the analysis contained in that CRS report because it did not provide the conclusions you wanted.

You stated that it was my Constitutional responsibility to respond to the "Petition for Redress of Grievances" submitted by "We the People," an organization of which you are a member.

Mrs. Lear, I respectfully submit it is not my obligation to agree with you. With respect to your positions regarding the validity of the current Federal Income Tax, I simply do not agree.

Following your visit to my office on March 20, 2002, several members of my staff reviewed the ample materials furnished by you and your colleagues, including the so-called 532 "questions." These "questions" can be more accurately described as "assertions" designed to produce the desired conclusions.

Based on that review, I have grouped the "questions" into three basic issue areas: (1) the validity of the 16th Amendment to the Constitution of the United States; (2) the obligations imposed by the congressional implementation of that amendment which is found in what is commonly referred to as the "Internal Revenue Code" and the obligations imposed by that Code; and (3) the authority the federal government has to enforce that code within the 50 states.

The "Petition for Redress of Grievances" argues that all federal income tax laws are unconstitutional because the 16th Amendment was not officially ratified. The 16th Amendment to United States Constitution provides that:



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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.

Under Article 5 of the Constitution, only three-fourths of the states are needed to ratify an Amendment. The 16th Amendment was ratified by forty states and issued by proclamation in 1913. The U.S. Supreme Court upheld the constitutionality of the income tax laws enacted subsequent to ratification of the 16th Amendment in *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1916). Since that time, the courts have repeatedly and consistently upheld the legitimacy of the ratification of the 16th Amendment.

For example, in *Knoblauch v. Commissioner*, 749 F.2d 200, 201 (5th Cir. 1984), cert. denied, 474 U.S. 830 (1986), the court rejected the contention that the 16th Amendment was not constitutionally adopted as "totally without merit" and imposed monetary sanctions against Knoblauch based on the frivolousness of his appeal. "Every court that has considered this argument has rejected it," the court observed.

The ratification of the 16th Amendment to the U.S. Constitution gave Congress the authority to impose an income tax. Congress did so in the Internal Revenue Code, which is found at Title 26 of the United States Code. Title 26 is the codification of the Tax Reform Act of 1986 (Public Law 99-514) and was earlier passed as the Internal Revenue Act of 1954 (P.L. 83-272). Section 1(a) of Title 26 unequivocally states:

Married individuals filing joint returns and surviving spouses. There is hereby imposed on the taxable income of - (1) every married individual who makes a single return jointly with his spouse under section 6013, and (2) every surviving spouse, a tax determined in accordance with the following table: ..

Section 1 of Title 26 goes on to detail the income tax brackets for various classes of persons, such as "Heads of Households," "Unmarried Individuals," and "Married individuals filing separate returns."

The law continues in Subsection (a) of Section 6012 of Title 26, "Persons required to make returns of income:"

General rule. Returns with respect to income taxes under subtitle A shall be made by the following:
(1)(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount.

This section goes on to describe individuals exempted from the federal income tax.

Subsequently, the law at Section 7203 of Title 26 describes the penalties for "Willful failure to file return, supply information, or pay tax." Federal courts have repeatedly upheld the constitutionality of income taxes and the applicability of the income tax.

The "Petition for Redress of Grievances" makes the argument that the Internal Revenue Code imposes taxes only on income derived from certain foreign-based activities. The premise for this argument is a misreading of sections 861, and 911, as well as the regulations under those sections. Section 61 of Title 26 USC defines "gross income" as income from whatever source derived. Treasury Regulation Section 1.1-1(b) provides:

In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.

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Sections 861 and 911 of Title 26 USC define the sources of income to prevent the double taxation of income that is subject to tax by more than one country. These sections also describe the payment requirements for non-residents. All citizens of the United States, wherever they reside, and all resident aliens are liable to the income taxes imposed by the code whether the income is received from inside or outside the United States. These sections are only applicable in situations where an individual or business derives income from other countries. These sections neither specify whether income is taxable, nor do they determine or define gross income. Further, any assertion otherwise is clearly contrary to well-established legal precedent.

For example, in *Great-West Life Assur. Co. v. United States*, 678 F.2d 180, 183 (Ct. Cl. 1982), the court stated that:

The determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under I.R.C. Section 1 and I.R.C. Section 11, respectively, on their worldwide income.

In a more recent case, *Corcoran v. Commissioner*, T.C. Memo. 2002-18, 83 T.C.M. (CCH) 1108, 1110 (2002), the court rejected the taxpayer's argument that his income was not from any of the sources in Treas. Reg. § 1.861-8(f), stating that the "source rules [of sections 861 through 865] do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States." The court further required the taxpayers to pay a \$2,000 penalty under section 6673(a)(1) because "they . . . wasted limited judicial and administrative resources."

The third point is that the federal government lacks authority to impose the federal income tax in the 50 states. The "Petition for Redress of Grievances" argues that the United States consists only of the District of Columbia, federal territories, and federal enclaves and does not include the "sovereign" states. According to this argument, if a taxpayer does not live within the "United States," as so defined, he is not subject to the federal tax laws. This contention has been uniformly rejected by the courts. The United States Code imposes a federal income tax upon all U.S. citizens and residents, not just those who reside in the District of Columbia, federal territories, and federal enclaves.

In *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12-19 (1916), and noted the United States Supreme Court has recognized that the "sixteenth amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves."

In another case, *re Becraft*, 885 F.2d 547, 549-50 (9th Cir. 1989), the court, observing that Becraft's claim that federal laws apply only to United States territories and the District of Columbia "has no semblance of merit," and noting that this attorney had previously litigated cases in the federal appeals courts that had "no reasonable possibility of success," imposed monetary damages and expressed the hope "that this assessment will deter Becraft from asking this and other federal courts to expend more time and resources on patently frivolous legal positions."

Following your visit to my office on March 26, 2003, my staff has also examined eight new questions to which you requested answers. Questions one, two and three are not accurate portrayals of the true status of the situation in our nation's court system. The use of Section 7203 as a criminal statute is appropriate in this context for instances of "willful failure to file." Questions four and five deal with the applicability of Section 861 to United

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States citizens. As outlined above, Section 861 is only applicable in situations where an individual or business derives income from other countries.

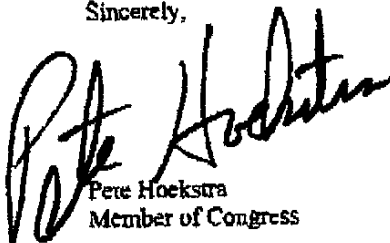
Questions six and seven take issue with the use of the word "frivolous" by the Department of Treasury and the courts. It has been established in law that it is "frivolous" to contend something that is well-settled law. Thus, the term "frivolous" is used correctly in this context. The court case *Speiser v. Randall*, 357 U.S. 513 (1958), is not applicable to the situation described in question seven. Question eight refers to recently introduced legislation in the U.S. Senate, S. 476, the CARE Act of 2003. Please be assured that I will keep your concerns in mind should this legislation be introduced in the U.S. House and brought to the floor for debate.

As a nation of laws, every American is required to abide by them regardless of whether you agree with them or not. Philosophically, I would prefer and do support the elimination of the income tax and replacing it with a national sales tax. But, neither of our preferences changes what is clearly the law today. Authority to impose an income tax is sanctioned by the U.S. Constitution, has been implemented multiple times by Congress and approved by the President, and upheld repeatedly and consistently by our nation's courts.

To further accommodate your requests, I have sent letters to the Department of Justice and the Department of the Treasury along with a printed copy of the 532 statements to which you first desired a response. I requested that they supply you with a full response to those "questions" within 30 days. Also, in accordance with your request regarding your difficulties with insurance discussed during our meeting on March 26, 2003, my staff has spoken with State Representative Gerald VanWoerkom and will continue to work on this issue.

I hope this response can convince you to bring your hunger strike to an end and that you will stay healthy. Your well-being is to me the issue of utmost importance. I do respect your views. We simply disagree.

Sincerely,



Pete Hoekstra
Member of Congress