

Director
Internal Revenue
Service Center

Philadelphia, PA

P.O. Box 69, Bensalem, PA 19020

OCT 27 1998

Mr. Claudie Baker
2213 Chase Field
Shreveport, LA 71118

Dear Mr. Baker:

Your letter dated September 26, 1998 to Mr. Charles O. Rossotti, Commissioner of Internal Revenue, has recently been forwarded to my office for reply. Your inquiry concerned the authority by which the Internal Revenue Service (IRS) requires an individual to file a tax return.

It is not the policy of IRS to respond to letters such as yours on a point by point basis. Such letters almost always reflect personal opinions and frustrations with the tax system which the IRS is unable to address. However, we can supply the following general information which may concern the area of the law you are addressing. If more information is needed, you may wish to contact the Library of Congress.

X Our system of taxation is dependent on taxpayers' belief that the laws they follow apply to everyone and that the IRS will respect and protect their rights under the law. We assure you that the mission of the IRS is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all. We apologize for any actions of rude behavior or intimidation you may have encountered.

The courts have consistently upheld the constitutionality of the federal income tax. See, e.g., Broughton v. United States, 632 F.2d 707 (8th Cir. 1980); Cupp v. Commissioner, 65 T.C. 68 (1975), aff'd mem., 559 F.2d 1207 (3rd Cir. 1977); and Schiff v. Commissioner, T.C.M. 1984-223, aff'd, 751 F.2d 116 (2nd Cir. 1984).

The courts have rejected claims that the Sixteenth Amendment, which grants Congress the power to prescribe the current income tax laws, was not properly ratified. Some individuals have alleged that the Sixteenth Amendment is invalid because Ohio was not a state at the time of ratification. However, the amendment was ratified by 38 states altogether, and ratification was necessary by only 36. Therefore, more than enough states ratified this amendment, even without Ohio's vote.

Whether an individual is liable for income tax is determined under Subtitle A of the Internal Revenue Code (the Code), Chapter 1, Subchapter A - Determination of Tax Liability. Part I, Section 1, imposes a tax on the taxable income of every individual. Whether an individual has taxable income is determined under Chapter 1, Subchapter B - Computation of Taxable Income. Part I, Section 63, defines "taxable income", generally, as gross income minus the deductions allowed by Chapter 1.

The current federal tax law enacted by Congress is the Code. Sections 6001 and 6011 of the Code provide, in pertinent part, that every person liable for any tax imposed by the Code shall make a return. In addition, Section 6012 of the Code provides that a federal income tax return shall be made by every individual whose gross income equals or exceeds certain amounts. "Shall" as used in Sections 6001, 6011 and 6012 means "must"; "must" means "to be required to". Who is required by the Code to file a return is explained in the instructions for Form 1040 under the heading "Filing Requirements".

★ The law itself does not require individuals to file a Form 1040. However, Section 6001 of the Code states that every person liable for a tax imposed by the Code shall make returns and comply with such rules and regulations as the Secretary of the Treasury may from time to time prescribe. Section 1.6012(a)(6) of the Income Tax Regulations states that Form 1040 is prescribed for general use in making the return required under Section 6012 of the Code.

Section 6151 of the Code provides that, except as specifically provided otherwise, when a return of tax is required by the Code or the Regulations, the person required to make such a return shall, without assessment or notice and demand from the Secretary, pay such tax to the internal revenue officer with whom the return is filed.

★ Section 6331 of the Code states that if any person liable to pay tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the secretary to collect such tax by levy upon all property and rights to property belonging to such person. The levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer of such officer, employee, or elected official.

Section 6321 of the Code provides that if any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

Your correspondence also request copies of several documents. Under 44 U.S.C. Chapter 1505, the Federal Register publishes Presidential Proclamations and Executive Orders, other documents that have "general applicability and legal effect", and documents required to be published by Congress. That does not mean or imply that any portion of the Code must be published in the Federal Register. The Code is the Federal Tax Law, not a "document" or "order".

We hope this information is helpful.

Sincerely,



for Joseph H. Cloonan
Director