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[Home](#) | [News](#) | [Site Map](#) | [Search](#) | [Contact](#)

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## **Snake-Oil Warning ("Un-Taxing" Notions)**

A COUPLE OF NEW SLAY-THE-MONSTER-BY-REMOTE-CONTROL silver-bullet fantasies are on the market, assuring the gullible that they can be permanently immunized against the "income" tax by some clever "election", "revocation" or "rescission" procedure-- for a fee, of course.

The purveyors of these "plans" exploit the unfortunately pervasive erroneous notion that fundamental liability for the "income" tax is citizenship or residency based. They advocate some process by which something about one's citizenship or residency can be entered into the official record, after which one will be presumed "non-taxable".

However, the applicability of the taxing power has nothing to do with citizenship or residency. The tax is an excise (a tax on the exercise/benefits of a privilege granted by the taxpayer), and it applies to anyone, natural or artificial, and of any citizenship or residency whatever, who engages in that exercise.

The nature, function and applicability of the tax is clear per the relevant statutes, which extend the tax to those

resident in the "United States" and those who are citizens thereof, AND to those who are neither, as well. The statutes reflected at 26 USC § 1 imposes the tax upon the "taxable income" of every individual. Period. "Taxable income" is "gross income" less allowable deductions, etc.. Period. "Gross income" includes "income" of all kinds and from any source whatsoever. Period.

No distinctions are drawn in these statutes as a whole as to residency or citizenship, other than the specification that the "income" of non-resident aliens is taxed under special rules (which arise due to considerations of tax treaties generally providing that recipients of "income" in, and from within, foreign jurisdictions will be taxed by, and per the tax structure of, the foreign jurisdiction); and the rules concerning the availability of the personal exemption at 26 USC § 6013 (g) or (h).

The manner in which those special rules are presented and organized in the statutes is complex and elaborate, but a concise rendering of certain of those provisions, sufficient for purposes of this discussion, can be found by looking at 26 CFR § 1.1-1, 26 USC § 871(b), and a couple of the regulations related to 26 USC § 871(b):

#### 26 CFR § 1.1-1 Income tax on individuals.

##### (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) [below] or 877(b) [relating to special treatment of those deemed expatriates for the purpose of tax-avoidance, and thus not presented here -PH], on the income of a nonresident alien individual.

#### 26 USC § 871(b)

(b) Income connected with United States business - graduated rate of tax

##### (1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the

taxable year shall be taxable as provided in section 1 [regular tax rates and rules] or 55 [alternative minimum tax rates and rules] on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

26 CFR § 1.871-1 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. Resident alien individuals are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See §1.1-1(b). Nonresident alien individuals are taxable only on certain income from sources within the United States and on the income described in section 864(c)(4) from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States. However, nonresident alien individuals may elect, under section 6013 (g) or (h), to be treated as U.S. residents for purposes of determining their income tax liability under Chapters 1, 5, and 24 of the code. Accordingly, any reference in §§1.1-1 through 1.1388-1 and §§1.1491-1 through 1.1494-1 of this part to non-resident alien individuals does not include those with respect to whom an election under section 6013 (g) or (h) is in effect, unless otherwise specifically provided. Similarly, any reference to resident aliens or U.S. residents includes those with respect to whom an election is in effect, unless otherwise specifically provided.

26 CFR § 1.871-2 Determining residence of alien individuals.

(a) General. The term nonresident alien individual means an individual whose residence is not within the United States, and who is not a citizen of the United States. The term includes a nonresident

alien fiduciary. For such purpose the term fiduciary shall have the meaning assigned to it by section 7701(a)(6) and the regulations in part 301 of this chapter (Regulations on Procedure and Administration). For presumption as to an alien's nonresidence, see paragraph (b) of §1.871-4.

In sum, the tax applies to "U.S. citizens", those who are NOT "U.S. Citizens" but are resident within the "United States", and those who are not "U.S. citizens" and ARE NOT resident within the "United States". The common denominator is the receipt of "income"-- a profit from the exercise of federal privilege. Citizenship and/or residency have nothing to do with it-- not even on the creative notion that "citizenship" is some kind of privilege.

After all,

- the income tax [is an excise tax, and excise taxes are privilege taxes](#);
- being a naturally-born "US citizen" is *not* a federally-granted privilege, but instead a Constitutionally-secured status, government recognition of which is mandated and not optional whether imagined to arise under the provisions of the 14th Amendment or otherwise; but in any event,
- the income tax cannot apply or be construed so as to amount to [a capitation](#), whether on "US citizens" or anyone else, and therefore cannot be a tax on "all that a "citizen" does" or "all gains of a "citizen"..." or anything like that, even if "citizenship" *were* creatively imagined to be a privilege.

SO, BECAUSE THE TAX IS WHAT IT IS-- conduct based, and not "status"-based, no assertion entered into some record today can immunize one from the tax. Creating an affidavit declaring oneself to be of one kind of citizenship, or not of another, or resident one place or not another, or not "citizen" or "resident" at all, for that matter, does nothing.

If allegations are made that you engaged in a taxable activity, the allegation will be accorded standing until a legally-meaningful response to the contrary is made, or the tax calculated on the basis of the allegation is paid. One can no more immunize oneself against a future allegation of a tax liability than one can do so against a future lawsuit, or indictment. (And frankly, this would remain true even if the tax WERE status-based, for that matter-- nothing that could be done in advance could preempt a future assertion, presumption or implication that one's status had since changed to the "taxable" variety...)

Run, don't walk, away from anyone promoting "revocation" or "untaxing" or "14th Amendment citizen" or "non-resident alien" or "only corporate status" arguments (or any variation thereon). All are nonsense; all will do nothing good, and on the contrary, all will simply obscure the reality of the tax, and prevent you from dealing with that reality properly and productively.

[Click here for some further information related to this commentary](#)

And for goodness sake, just look at [this](#), every single instance of which was accomplished without any attention paid by filer or tax agency to citizenship or residency.

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[Home](#) | [News](#) | [Site Map](#) | [Search](#) | [Contact](#)  
*"Resistance to tyranny is obedience to God"*  
-Thomas Jefferson

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