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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 EASTERN DIVISION

13	JOHN GARY GIVEN, MICHELE LOUISE	No. ED CV 04-00075 RT (MCx)
14	GIVEN,)
15	Plaintiff,) Date: May 23, 2005
16	v.) Time: 10:00 a.m.
17	UNITED STATES OF AMERICA,) Place: Courtroom 4, Riverside
18	Defendant.) Courthouse
) [Exempt from Local Rule 7.4.1 -
) <u>pro se</u> plaintiffs]

21 REPLY OF DEFENDANT UNITED STATES OF AMERICA TO
 22 PLAINTIFFS RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT

1 Defendant United States of America hereby responds to the
2 "Response Opposing Motion for Summary Judgment" filed by
3 Plaintiffs John Gary Given and Michele Louise Given as follows.

4 Plaintiffs claim that the motion did not comply with the meet
5 and confer requirements prior to the filing of the motion.
6 However, as stated on the face of the motion, this motion is
7 exempt from the pre-filing conference requirement in Local Rule 7-
8 3 because the plaintiffs are appearing pro se and are not
9 attorneys. Local Rule 16-11(c).

10 Plaintiffs make no direct response to the legal authority supplied
11 by the United States with respect to the issue raised by plaintiffs that
12 "wages are not income." Wages are clearly income, and plaintiffs are
13 clearly required by law to pay taxes on that income. 26 U.S.C. § 61.¹
14 All compensation for personal services, no matter what the form of
15 payment, must be included in gross income. This includes salary or
16 wages paid in cash, as well as the value of property and other economic
17 benefits received because of services performed, or to be performed in
18 the future. 26 U.S.C. § 61(1) through (15).² See United States v.

19
20 1 "[A]n abiding principle of federal tax law is that, absent an
21 enumerated exception, gross income means all income from whatever
22 source derived." Reese v. United States, 24 F.3d 228, 231 (Fed.
23 Cir. 1994).

24 2 Criminal and civil penalties have been imposed against
25 individuals relying upon the frivolous argument that wages are
26 not income. Referring to the statute's words "income derived
27 from any source whatever," the Supreme Court stated, "this
28 language was used by Congress to exert in this field 'the full
measure of its taxing power.' . . . And the Court has given a
liberal construction to this broad phraseology in recognition of
the intention of Congress to tax all gains except those
specifically exempted." Commissioner v. Glenshaw Glass Co., 348
U.S. 426, 429-30, 75 S.Ct. 473, 99 L.Ed.483 (1955). The Supreme
Court further found that payments are considered income where the
payments are undeniably accessions to wealth, clearly realized,

1 Romero, 640 F.2d 1014, 1016 (9th Cir. 1981); Stark v. United States of
2 America, 2005 WL 924079 (9th Cir. (Cal.)) (IRS properly assessed
3 frivolous return penalties against taxpayer because "either her
4 self-assessment was substantially incorrect, see 26
5 U.S.C. §6702(a)(1)(B), and/or it was premised on a position which
6 is frivolous, see 26 U.S.C. §6702(a)(2)(A)) (citing Olson v. United
7 States, 760 F.2d 1003, 1005 (9th Cir. 1985) (per curiam)).


8 **V. CONCLUSION**

9 For the foregoing reasons, the Court should grant summary
10 judgment in favor of the United States.

11 Respectfully submitted,

12 DATE: May 16, 2005

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26 and over which a taxpayer has complete dominion. Commissioner
27 v. Kowalski, 434 U.S. 77, 98 S.Ct. 315, 54 L.Ed.2d 252 (1977).
28 "Every court which has ever considered the issue has
unequivocally rejected the argument that wages are not income."
United States v. Connor, 898 F.2d 942, 943-44 (3rd Cir.), cert.
denied, 497 U.S. 1029 (1990).