



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OCT 2 1996

John Gary & Michele Louise Given, Sr.

Dear Mr. & Ms. Given, Sr.:

This is in response to your letter, dated September 5, 1996, concerning questions posed regarding the legality of Federal Income Tax obligations as it applies to individuals.

It is the policy of the Service not to respond to letters such as this on a point by point basis. We can, however, provide you with the following general information, which may concern the area of law that is addressed in your letter. If more indepth information is needed, you may wish to contact the Library of Congress.

Whether an individual is liable for income tax is determined under Subtitle A of the Internal Revenue 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.

Code Section 6012 provides that every individual whose gross income for the year equals or exceeds specified amounts must make a return with respect to income taxes under Subtitle A. Section 6151 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 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.

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

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The Government expects voluntary compliance with the Federal tax law. This means that we expect taxpayers to comply with the law without being compelled to do so by action of a Government agent; it does not mean that the taxpayer is free to disregard the law. If an individual is required by law to file a return or pay tax, it is mandatory that he or she do so. Failure to do so could cause the individual to be subject to civil and criminal penalties, including fines and imprisonment. See, for example, Schiff v. Commissioner, T.C.M. 1984-223, aff'd, 751 F.2d 116 (2nd Cir. 1984).

The U.S. Supreme Court has held that the requirement that individuals file a Federal income tax return does not violate the self-incrimination clause of the Fifth Amendment. United States v. Sullivan, 274 U.S. 259 (1927). Judicial precedents clearly establish that failures to comply with the filing and reporting requirements of the Federal income tax laws will not be excused based upon blanket assertions of constitutional privilege against compelled self-incrimination under the Fifth Amendment. United States v. Irwin, 561 F.2d 198 (10th Cir. 1977), cert. denied, 434 U.S. 1012 (1978); United States v. Neff, 615 F.2d 1235 (9th Cir. 1980), cert. denied, 447 U.S. 925 (1980).

The courts have consistently held that the warning requirements mandated by the Supreme Court in Miranda v. Arizona, 384 U.S. 436 (1966), APPLY ONLY TO SITUATIONS OF "In-custodial interrogations" of suspected criminal defendants by law enforcement investigators, See, e.g., Beckwith v. United States, 425 U.S. 341 (1976). Therefore, so-called "Miranda warnings" are inappropriate in the context of the preparation and filing of Federal income tax returns. See United States v. Amon, 669 F.2d 1351 (10th Cir. 1981), cert. denied, 459 U.S. 825 (1982).

Article I of the United States Constitution provides that Congress shall have power to lay and collect taxes, duties, imposts, and excises, and prohibits any direct taxes that are not apportioned among the several states according to their respective populations. In Pollock v. Farmers' Loan and Trust Co., 157 U.S. 429 (1895), rehearing, 158 U.S. 601 (1895), the Supreme Court recognized that the income tax, by its nature, is an excise but held the income tax to be a direct tax to the extent imposed on rent or other income from real estate or personal property and therefore unconstitutional because not apportioned among the state according to their respective populations. The Sixteenth Amendment to the Constitution removed the need for apportionment of an income tax, and the Supreme Court upheld the Constitutionality of the income tax law enacted subsequent to ratification of the Sixteenth Amendment in Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (1916). The Sixteenth Amendment states, " The Congress shall have power to


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lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The courts since then 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).

I hope this information is helpful.

Sincerely,


Cheryl Kordick, Chief
Assistance Section
T:C:O:A:A

JERRY LEWIS
40TH DISTRICT, CALIFORNIA

COMMITTEES:
APPROPRIATIONS
SUBCOMMITTEES:
HUD AND INDEPENDENT
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(CHAIRMAN)
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March 27, 1997

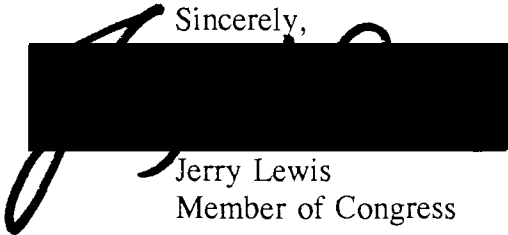
John G. and Michelle L. Given


Dear Mr. and Mrs. Given:

Enclosed is a copy of the response I received from the Internal Revenue Service (IRS) concerning my inquiry on your behalf.

Should you have any additional questions or concerns on this or any other federal matter, please feel free to contact me.

It is a pleasure to be of service.

Sincerely,


Jerry Lewis
Member of Congress

JL:tc
Enclosure

Internal Revenue Service

Department of the Treasury

Director
Internal Revenue
Service Center

Western Region
Fresno, California

P.O. Box 12866, Fresno, Calif. 93779

The Honorable Jerry Lewis
Member of Congress
Attention: Tara Clarke
1150 Brookside Avenue, Suite J-5
Redlands, CA 92373

MAR 13 1997

Re: John Gary, Sr. and Michele Louise Given

Dear Mr. Lewis:

Thank you for your inquiry dated March 11, 1997, on behalf of Mr. and Mrs. Given.

A specific response to your constituents' letter is not being provided. Responding on a point-by-point basis tends to precipitate further endless questions, as letters such as these almost always reflect personal opinions and frustrations with the tax system which the Service is unable to address.

The responsibility of the Internal Revenue Service (IRS) is to administer the tax laws in a fair and equitable manner and, in doing so, encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations while conducting itself with the highest degree of integrity and efficiency. In accomplishing this, the Service continually strives to assist taxpayers in solving their legitimate problems as effectively as possible. We do not, however, have sufficient resources to address the arguments of those individuals who have taken legal statements out of context in an effort to conclude that they are not subject to the tax laws.

The constitutionality and interpretation of the personal income tax laws are not in question. Under Subtitle A, Section 1, of the Internal Revenue Code, Congress has provided regulations authorizing the assessment of personal income tax. The validity of these tax laws has been consistently upheld by the courts.

The IRS enforces the tax laws passed by Congress. The IRS does not have the authority to make or change the laws; therefore, we are unable to render assistance in this matter.

Ms. Oak Yun, a member of my staff, is familiar with this matter. If further assistance is necessary, she may be reached at (209)454-6332. This is not a toll-free number.

Sincerely,



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Bob Wenzel