

From: mike french [REDACTED] 
Subject: Re: [EXT] French_TL-20225-23
Date: April 8, 2024 at 10:35 AM
To: Nnama Joy Joy.Nnama@irscounsel.treas.gov
Cc: Dawn French [REDACTED]

MF

Joy Nnama,

Thank you for your time this morning. We truly hope we can resolve this issue, and that you take our position fully into consideration. Please see the attached documents so you can see this from our point of view, and show us precisely where we are in error. (The exhibits will be sent separately because of the large file size.)

Thank you again,

Michael A & Dawn M French

**Stipulation of
Facts_draft_04082024.pdf**



On Apr 8, 2024, at 8:51 AM, Nnama Joy <Joy.Nnama@irscounsel.treas.gov> wrote:

Yes please. Expect my call at 9 am central time.

Thank you,
Joy Nnama
Attorney (SB/SE)
4050 Alpha Rd., 13th Floor
Mail Code 2000 NDAL
Dallas, Texas 75244-4203
Telephone: (469) 801-1122
Joy.Nnama@irscounsel.treas.gov

From: mike french [REDACTED]
Sent: Monday, April 8, 2024 8:39 AM
To: Nnama Joy <Joy.Nnama@irscounsel.treas.gov>
Cc: Dawn French [REDACTED]
Subject: Re: [EXT] French_TL-20225-23

Good morning to you as well,

Travel is also difficult because of disability so we would prefer a conference call. We will do our best to listen carefully and take notes over the phone. Are you available this morning?

Thanks.

From: Nnama Joy Joy.Nnama@irscounsel.treas.gov
Subject: RE: [EXT] French_TL-20225-23
Date: April 16, 2024 at 10:55 AM
To: mike french [REDACTED]
Cc: Dawn French [REDACTED]

NJ

I have reviewed the docs you sent. Let me know a good day and time to call you to discuss your case.

Thank you,
Joy Nnama
Attorney (SB/SE)
4050 Alpha Rd., 13th Floor
Mail Code 2000 NDAL
Dallas, Texas 75244-4203
Telephone: (469) 801-1122
Joy.Nnama@irscounsel.treas.gov

From: mike french [REDACTED]
Sent: Monday, April 8, 2024 11:06 AM
To: Nnama Joy <Joy.Nnama@irscounsel.treas.gov>
Cc: Dawn French [REDACTED]
Subject: Re: [EXT] French_TL-20225-23

On Apr 8, 2024, at 10:35 AM, mike french [REDACTED] wrote:

Joy Nnama,

Thank you for your time this morning. We truly hope we can resolve this issue, and that you take our position fully into consideration. Please see the attached documents so you can see this from our point of view, and show us precisely where we are in error. (The exhibits will be sent separately because of the large file size.)

Thank you again,

Michael A & Dawn M French

From: mike french [REDACTED]
Subject: Re: [EXT] French_TL-20225-23
Date: April 18, 2024 at 4:39 PM
To: Nnama Joy Joy.Nnama@irscounsel.treas.gov
Cc: Dawn French [REDACTED]

MF

Joy,

Monday at 10am works for us. We are hoping the audio quality will be better than our previous discussion as we're not entirely sure we understood everything you said.

Thank you,
Michael A & Dawn M French

On Apr 17, 2024, at 9:41 AM, Nnama Joy <Joy.Nnama@irscounsel.treas.gov> wrote:

I can call you Thursday or Friday by 3pm. Otherwise, expect my call at 10am on Monday.

Thank you,
Joy Nnama
Attorney (SB/SE)
4050 Alpha Rd., 13th Floor
Mail Code 2000 NDAL
Dallas, Texas 75244-4203
Telephone: (469) 801-1122
Joy.Nnama@irscounsel.treas.gov

From: Michelle French [REDACTED]
Sent: Tuesday, April 16, 2024 11:17 AM
To: Nnama Joy <Joy.Nnama@irscounsel.treas.gov>
Subject: Re: [EXT] French_TL-20225-23

Joy,

What can you share via email regarding your review?

Concerned about the audio quality issues we had last time due to the call being routed through a different number than the one shown in your signature block below. We are available any time this afternoon, however, maybe we can try to call you instead?

Thanks,

Michael & Dawn

UNITED STATES TAX COURT

Washington, DC 20217

Michael Austin French	}	
Dawn Michelle French	}	
Petitioners	}	Docket Number:
v.	}	20225-23
COMMISSIONER OF	}	
INTERNAL REVENUE,	}	
Respondent	}	

STIPULATION OF FACTS

WE, Michael Austin French and Dawn Michelle French,
declare from our personal knowledge that the following facts are
true:

1. Petitioners affirm these matters to be true of our personal
knowledge and, if called to do so, could and would competently
testify thereto.
2. This Stipulation of Facts includes references to documents
attached hereto as Exhibits 1-P through 25-P, all of which have

been redacted to remove certain private information without further notice hereinafter of such redaction.

3. On October 15, 2021, Petitioners sent our original Form 1040 tax return for the tax year ended December 31, 2020, via Certified Mail 7019 2970 0001 6030 8139, with supporting documents attached thereto (the "2020 return"), reflecting a refund due of amounts withheld in the amount of \$23,354. A true and correct copy of the 2020 return, without original signatures, is attached hereto as **EXHIBIT 1-P**.
4. On December 3, 2021, Respondent issued Letter 12C for the tax year ended December 31, 2020 ("Letter 12C"), requesting more information to support the amount of withholding of \$23,354. A true and correct copy of Letter 12C, without enclosures referenced therein, is attached hereto as **EXHIBIT 2-P**.
5. On December 13, 2021, Petitioners sent a response to Letter 12C, via Certified Mail 7020 1290 0000 4974 7899, noting the Forms 4852 attached to the 2020 return contained the information Respondent requested and were included to correct

erroneous Forms W-2 provided by the payers noted on line 5 of the Forms 4852. A true and correct copy of our response to Letter 12C, without enclosures referenced therein, is attached hereto as **EXHIBIT 3-P**.

6. On March 7, 2022, Respondent issued Notice CP05 for the tax year ended December 31, 2020 ("Notice CP05"), to inform Petitioners Respondent was withholding our refund until he finished reviewing our 2020 return. A true and correct copy of Notice CP05 is attached hereto as **EXHIBIT 4-P**.

7. On September 21, 2022, Respondent issued Letter 3176C for the tax year ended December 31, 2020 ("Letter 3176C"), which alleged our 2020 return claimed one or more frivolous positions or reflected a desire to delay or impede administration of the tax laws, and threatened the assessment of a \$5,000 penalty under IRC Section 6702 if we did not change our 2020 return. A true and correct copy of Letter 3176C, without enclosures referenced therein, is attached hereto as **EXHIBIT 5-P**.

8. Per Letter 3176C, Respondent alleges information we filed

as a purported tax return, on January 25, 2022, is frivolous and there is no basis in the law for our position.

9. Petitioners filed no information or purported tax return on January 25, 2022, with any agent, officer or employee of Respondent.
10. Per Petitioners' Tax Return Transcript for the tax year ended December 31, 2020, (see Exhibit 20-P) Petitioners' 2020 return was received by Respondent on October 18, 2021.
11. Per Petitioners' Account Transcript for the tax year ended December 31, 2020, (see Exhibit 21-P) there are no transactions listed for the date of January 25, 2022.
12. To the best of Petitioners' knowledge and belief, Petitioners' 2020 return contains information by which the substantial correctness of the self-assessment may be judged.
13. As of the date of executing this Stipulation, Petitioners have received no documentation from any agent, officer or employee of Respondent citing what specific information our 2020 return lacks such that Respondent is unable to judge the substantial correctness of the self-assessment.

14. To the best of Petitioners' knowledge and belief, nothing on Petitioners' 2020 return constitutes information that on its face indicates the self-assessment is substantially incorrect.
15. As of the date of executing this Stipulation, Petitioners have received no documentation from any agent, officer or employee of Respondent citing what specific information on its face indicates that the self-assessment on our 2020 return is substantially incorrect.
16. The information Petitioners provided on our 2020 return is not based on, nor reflective of, any position identified by the Secretary of the Treasury or his delegates as frivolous and published pursuant to IRC Section 6702(c).
17. As of the date of executing this Stipulation, Petitioners have received no documentation from any agent, officer or employee of Respondent identifying with specificity what information we filed has been identified as a frivolous position pursuant to IRC Section 6702(a).
18. Petitioners' 2020 return represents our sincere and honest effort to comply with the tax laws as we understand them to be

and is not intended to delay or impede the administration of any tax law.

19. On September 21, 2022, Petitioners sent a response to Letter 3176C, via Certified Mail 7021 2720 0000 1628 5531, disputing Respondent's frivolous return allegation and provided an affidavit, signed under penalty of perjury, directed at each element of fact involved in the penalty under IRC Section 6702(a). A true and correct copy of our response to Letter 3176C, with enclosed affidavit but otherwise without enclosures referenced therein, is attached hereto as **EXHIBIT 6-P**.

20. On February 8, 2023, Respondent issued Letter 3175C for the tax year ended December 31, 2020 ("Letter 3175C"), which alleged our response to Letter 3176C contained frivolous arguments and again threatened the imposition of a \$5,000 penalty under IRC Section 6702(a). A true and correct copy of Letter 3175C, without enclosures referenced therein, is attached hereto as **EXHIBIT 7-P**.

21. On February 27, 2023, Respondent issued two Notices CP15 for the tax year ended December 31, 2020 ("Notice(s)

CP15"), one Notice CP15 for each Petitioner, charging \$5,000 each for a total of \$10,000 in penalties under IRC Section 6702(a). True and correct copies of Notices CP15 are attached hereto as **EXHIBIT 8-P**.

22. On March 13, 2023, Respondent issued Notice CP49 for the tax year ended December 31, 2021 ("Notice CP49"), which showed \$5,000 of Petitioners' overpayment for the tax year ended December 31, 2021, was applied to one of the \$5,000 penalties under IRC Section 6702(a) for for the tax year ended December 31, 2020. A true and correct copy of Notice CP49 is attached hereto as **EXHIBIT 9-P**.

23. On March 20, 2023, Respondent issued Notice CP39 for the tax year ended December 31, 2020 ("Notice CP39"), which also showed \$5,000 of Petitioners' overpayment for the tax year ended December 31, 2021, was applied to one of the \$5,000 penalties under IRC Section 6702(a) for the tax year ended December 31, 2020. A true and correct copy of Notice CP39 is attached hereto as **EXHIBIT 10-P**.

24. On March 27, 2023, Respondent issued Notice CP42 for the

tax year ended December 31, 2021 ("Notice CP42"), which showed an additional \$5,000 of Petitioners' overpayment for the tax year ended December 31, 2021, was applied to the remaining \$5,000 penalty under IRC Section 6702(a) for the tax year ended December 31, 2020. A true and correct copy of Notice CP42 is attached hereto as **EXHIBIT 11-P**.

25. On March 27, 2023, Petitioners sent our response to Letter 3175C, via Certified Mail 7022 0410 0001 6622 3187, in which we again disputed Respondent's frivolous return allegation. A true and correct copy of our response to Letter 3175C, without enclosures referenced therein, is attached hereto as **EXHIBIT 12-P**.

26. Petitioners' response to Letter 3175C included a request for Respondent to disclose with specificity what exactly it is he finds to be frivolous with regards to our 2020 return.

27. As of the date of executing this Stipulation, Petitioners have received no response from any agent, officer or employee of Respondent regarding what exactly it is he finds to be frivolous with regards to our 2020 return.

28. Petitioners' response to Letter 3175C included a request for Respondent to cite the precise law that we are presumed to have misapplied or misunderstood that resulted in the frivolous elements he claims to have found.

29. As of the date of executing this Stipulation, Petitioners have received no response from any agent, officer or employee of Respondent citing the precise law we are presumed to have misapplied or misunderstood that resulted in the frivolous elements he claims to have found.

30. On August 9, 2023, Respondent issued Letter 525 for the tax year ended December 31, 2020 ("Letter 525"), which notified Petitioners that Respondent was auditing our 2020 return, had made proposed changes to our tax return, and was requesting a response by September 8, 2023, on whether we agreed with the proposed changes. A true and correct copy of Letter 525, with enclosed Form 4549 and Form 886-A but otherwise without enclosures referenced therein, is attached hereto as **EXHIBIT 13-P.**

31. On Form 4549 enclosed with Letter 525, Respondent

alleges that the "Person with whom examination changes were discussed" was MICHAEL A & DAWN M FRENCH.

32. Petitioners engaged in no discussion regarding changes to our 2020 return with any agent, officer or employee of Respondent.

33. Respondent's Letter 525 alleges Form 886-A explains documentation Petitioners need to provide in response to Letter 525.

34. Form 886-A enclosed with Letter 525 does not include any explanation of documents Petitioners are required to provide in response to Letter 525.

35. On August 9, 2023, Petitioners uploaded our response to Letter 525, via the provided IRS Secure Upload QR code, in which we stated we did not agree to any changes to our 2020 return. A true and correct copy of our response to Letter 525, with reply cover sheet Form 14817 and enclosed corrected 1099-INT but otherwise without enclosures referenced therein, is attached hereto as **EXHIBIT 14-P**.

36. As documented in Publication 3498-A enclosed with Letter

525, Step 2 -- Reply to the Letter, under the heading, "If You Do Not Agree with the Proposed Changes," Petitioners did not sign, date and return the agreement page of the Form 4549 with our response to Letter 525.

37. As documented in Publication 3498-A enclosed with Letter 525, Step 2 -- Reply to the Letter, under the heading, "If You Do Not Agree with the Proposed Changes," Petitioners included documentation and an explanation to support our position in our response to Letter 525 (see Exhibit 14-P).

38. Per Publication 3498-A enclosed with Letter 525, Step 2 -- Reply to the Letter, under the heading, "If You Do Not Agree with the Proposed Changes," Petitioners expected but did not receive any notification of any "examiner's decision" from any agent, officer or employee of Respondent after we sent our response to Letter 525.

39. On August 28, 2023, Respondent issued Notice CP21B for the tax year ended December 31, 2020 ("Notice CP21B"), which notified Petitioners that Respondent had decreased the credit for tax withheld by \$9,935. A true and correct copy of Notice CP21B

is attached hereto as **EXHIBIT 15-P**.

40. In the commentary on Notice CP21B, Respondent alleges that the changes to our 2020 return to "correct" our total federal income tax withheld was based on information we provided.
41. Petitioners provided no information to any agent, officer or employee of Respondent that suggested our total federal income tax withheld as reported on our 2020 return was incorrect.
42. Petitioners did not request that any agent, officer or employee of Respondent make changes to the total federal income tax withheld as reported on our 2020 return.
43. In the commentary on Notice CP21B, Respondent alleges that "Our action is the result of your inquiry of January 25, 2022."
44. Petitioners made no inquiry on January 25, 2022, or on any other date, regarding changes to the credit for tax withheld as reported on our 2020 return, to any agent, officer or employee of Respondent.
45. On August 28, 2023, Petitioners sent our response to Notice CP21B, via Certified Mail 7022 0410 0001 6622 3125, in which

we stated we did not agree to any changes to our 2020 return and had accurately accounted for all amounts withheld. A true and correct copy of our response to Notice CP21B, without enclosures referenced therein, is attached hereto as **EXHIBIT 16-P.**

46. On October 5, 2023, Respondent issued Letter 2645C for the tax year ended December 31, 2020 ("Letter 2645C"), which notified Petitioners Respondent needed an additional 60 days to respond to Petitioners' "inquiry of August 30, 2023." A true and correct copy of Letter 2645C is attached hereto as **EXHIBIT 17-P.**

47. Petitioners believe the "inquiry of August 30, 2023" referenced in Letter 2645C was our response to Notice CP21B dated August 28, 2023, (see Exhibit 16-P).

48. As of December 4, 2023, 60 days had elapsed from when Respondent issued Letter 2645C and as of the date of executing this Stipulation, Petitioners have not been contacted by any agent, officer or employee of Respondent regarding our response to Notice CP21B dated August 28, 2023.

49. On October 5, 2023, Petitioners sent, via Certified Mail 7022 0410 0001 6622 3071, multiple requests for records, documents, transcripts, and IRC Section 6020(b) returns for the tax year ended December 31, 2020, under The Freedom of Information Act and Privacy Act ("FOIA request(s)"). True and correct copies of the FOIA requests are attached hereto as **EXHIBIT 18-P**.
50. On October 18, 2023, Respondent issued Letter 3219 for the tax year ended December 31, 2020, (the "NOD"). A true and correct copy of the NOD is attached the Petition.
51. On Form 4549 enclosed with the NOD, Respondent alleges that the "Person with whom examination changes were discussed" was MICHAEL A & DAWN M FRENCH.
52. Petitioners engaged in no discussion regarding changes to our 2020 return with any agent, officer or employee of Respondent and have on numerous occasions stated in writing (see Exhibits 14-P, 16-P, and 23-P) we do not agree to any of the proposed changes to our 2020 return.
53. On October 19, 2023 and December 11, 2023, respectively, Respondent issued responses to the FOIA requests to

Petitioners DAWN M FRENCH and MICHAEL A FRENCH ("FOIA response(s)"), which provided Forms 8278 for the tax year ended December 31, 2020, one for each Petitioner, and confirmation that IRC Section 6020(b) returns were not filed for the tax year ended December 31, 2020, for either Petitioner. True and correct copies of the relevant FOIA responses, with enclosed Forms 8278 but otherwise without enclosures referenced therein, are attached hereto as **EXHIBIT 19-P**.

54. On October 25, 2023, Petitioners requested and received a digital copy of our Tax Return Transcript for the tax year ended December 31, 2020, ("return transcript") reflecting our 2020 return was received by Respondent on October 18, 2021. A true and correct copy of our return transcript is attached hereto as **EXHIBIT 20-P**.

55. On October 25, 2023, Petitioners requested and received a digital copy of our Account Transcript for the tax year ended December 31, 2020, ("account transcript") reflecting our 2020 return was received by Respondent on October 18, 2021. A true and correct copy of our account transcript is attached hereto as

EXHIBIT 21-P.

56. On October 30, 2023, Respondent issued Letter 86C for the tax year ended December 31, 2020 ("Letter 86C"), which notified Petitioners Respondent was sending our "inquiry of August 28, 2023" to the Examination Area Office for review and that office will contact us within 60 days. A true and correct copy of Letter 86C is attached hereto as **EXHIBIT 22-P.**

57. Petitioners believe the "inquiry of August 28, 2023" referenced was our response to Notice CP21B dated August 28, 2023 (see Exhibit 16-P).

58. As of December 29, 2023, 60 days had elapsed from when Respondent issued Letter 86C and as of the date of executing this Stipulation, Petitioners have not been contacted by any agent, officer or employee of Respondent regarding our response to Notice CP21B dated August 28, 2023.

59. On October 31, 2023, Petitioners sent our response to the NOD, via Certified Mail 7020 1290 0000 4975 2985, in which we again disputed any and all changes to our 2020 return. A true and correct copy of our response to the NOD, without

enclosures referenced therein, is attached hereto as **EXHIBIT**

23-P.

60. In our response to the NOD, Petitioners formally requested Respondent provide a copy of the record of assessment for the tax year ended December 31, 2020, per IRC Section 6203, within 30 days of his receipt of our response to the NOD.

61. On November 20, 2023, Respondent received our response to the NOD as shown via the United States Postal Service Tracking Results website for Certified Mail item number 7020 1290 0000 4975 2985 ("tracking result"). A true and correct copy of the screenshot of the tracking result is attached hereto as

EXHIBIT 24-P.

62. As of December 20, 2023, 30 days had elapsed from when Respondent received our response to the NOD and as of the date of executing this Stipulation, Petitioners have not been contacted by any agent, officer or employee of Respondent regarding our request for a copy of the record of assessment for the tax year ended December 31, 2020, per IRC Section 6203.

63. As of the date of executing this Stipulation, Petitioners have

not received a copy of the record of assessment for the tax year ended December 31, 2020, from any agent, officer or employee of Respondent.

64. On November 14, 2023, Petitioners sent our response to Notice CP15, via Certified Mail 7020 1290 0000 4975 3005, in which we again disputed Respondent's frivolous return allegation. A true and correct copy of our response to Notice CP15, without enclosures referenced therein, is attached hereto as **EXHIBIT 25-P**.

65. In our response to Notice CP15 Petitioners requested Respondent confirm if he alleges that frivolous position III. (29) from Notice 2010-33 appears on the face of our 2020 return.

66. As of the date of executing this Stipulation, Petitioners have received no confirmation from any agent, officer or employee of Respondent that Respondent alleges that frivolous position III. (29) from Notice 2010-33 appears on the face of our 2020 return.

67. As of the date of executing this Stipulation, Petitioners have not received any information on which specific frivolous position from Notice 2010-33 we are alleged to be in violation of for the

tax year ended December 31, 2020, from any agent, officer or employee of Respondent.

68. Petitioners are aware that the Constitution of the United States is the supreme law of the United States of America.
69. Petitioners are aware that the Constitution of the United States prohibits the imposition of federal capitations and other direct taxes other than by the mechanism of apportionment at Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4.
70. Petitioners are aware that the United States Supreme Court and other authorities have repeatedly and consistently declared that the rules laid down in Article 1, Section 2, Clause 3 and Article 1, Section 9, Clause 4 are unaffected, unrevoked and unrepealed by the 16th Amendment to the Constitution of the United States or any other, as in the following instances:

"We are of opinion, however, that the confusion is not inherent, but rather arises from **the [erroneous assumption] that the 16th Amendment provides for a hitherto unknown power of taxation** -- that is, a power to levy an income tax which, although direct, should not be subject to the regulation of apportionment applicable to all other direct taxes. ..."

"But it clearly results that [the erroneous assumption], if acceded to, would cause one provision of the Constitution to destroy another; that is, [it] would result in bringing the provisions of the

Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. ..."

"This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion. ..."

"[T]he contention that the Amendment treats a tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, **is also wholly without foundation** ..."

"[T]he purpose [of the Amendment] was not to change the existing interpretation except to the extent necessary to accomplish the result intended, that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and thereby to take an income tax out of the class of excises, duties and imposts and place it in the class of direct taxes."

Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916);

"[B]y the [Brushaber] ruling, it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged, and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived -- that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed."

Stanton v. Baltic Mining Co., 240 U.S. 103 (1916);

"The Amendment, the [Supreme] court said [in its unanimous ruling in *Brushaber v. Union Pacific RR Co.*, 240 U.S. 1 (1916)], **judged by the purpose for which it was passed, does not treat income taxes as direct taxes** but simply removed the ground

which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong."

Cornell Law Quarterly, 1 Cornell L. Q. 298 (1915-16);

"The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it **does not extend the taxing power to new or excepted subjects...**"

Peck v. Lowe, 247 U.S. 165 (1918);

"[T]he settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income."

Taft v. Bowers, 278 US 470, 481 (1929);

"[T]he amendment made it possible to bring investment income within the scope of the general income-tax law, but **did not change the character of the tax. It is still fundamentally an excise or duty...**"

Treasury Department legislative draftsman F. Morse Hubbard summarizing the ruling for Congress in testimony in 1943 (House Congressional Record, March 27, 1943, p. 2580);

"The Supreme Court, in a decision written by Chief Justice White, first noted that **the Sixteenth Amendment did not authorize any new type of tax**, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment..."

Legislative Attorney of the American Law Division of the Library of Congress Howard M. Zaritsky in his 1979 Report No. 80-19A, entitled 'Some Constitutional Questions Regarding the Federal Income Tax Laws';

"[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were

otherwise taxable. 45 Cong. Rec. 2245-2246 (1910); id. at 2539; see also *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 240 U. S. 17-18 (1916)"

So. Carolina v. Baker, 485 U.S. 505 (1988).

71. Petitioners are aware that the “capitations” referred to in the Constitution of the United States, which remain imposable only by apportionment, have been acknowledged by the United States Supreme Court to be what Adam Smith described as such in his 1776 treatise, ‘An Inquiry into the Nature and Causes of the Wealth of Nations’:

"..[Secretary of the Treasury] Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...'

"He then quotes from Smith's *Wealth of Nations*, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptance of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from, and falling immediately on, the revenue;...'"

Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895).

72. Petitioners are aware that Adam Smith's definition of

"capitations" includes, among other things:

"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"...

"Capitation taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at."...

"Capitation taxes, so far as they are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes."...

"In the capitation which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people, according to what is supposed to be their fortune, by an assessment which varies from year to year."
Adam Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', Book V, Ch. II, Art. IV (1776).

73. Petitioners are aware that Adam Smith used the common word 'wages' in his 1776 treatise, not the custom-defined term of the same spelling found in the modern revenue laws, thus declaring that among other things, a tax upon common pay-for-labor is a capitation; and also that Adam Smith includes elsewhere in his definition of "capitations" a version imposed under the label "poll taxes," described as taxes assessed as (or on) a portion of an individual's annual gains.
74. Petitioners are aware that Bouvier's Law Dictionary, 6th Ed. (1856), the official law dictionary of Congress in the middle of the

19th century when the income tax was first enacted, and which, in harmony and concert with Adam Smith's definitions, illuminates Congressional intentions as to what their newly-enacted unapportioned "income tax" of 1862 is, and can be, and isn't, and cannot be, contains the following definition:

"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."

75. Petitioners are aware that the United States Supreme Court and other authorities, including Congress and the United States Department of Treasury, have repeatedly and consistently declared the "income tax" to be an excise tax (an indirect tax), as in the following:

"I hereby certify that the following is a true and faithful statement of the gains, profits, or income of _____, of the _____ of _____, in the county of _____, and State of _____, whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the 1st day of January to the 31st day of December, 1862, both days inclusive, **and subject to an income tax under the excise laws of the United States:**"

From the first income tax return form (emphasis added);

"The income tax is, therefore, not a tax on income [earnings] as such. **It is an excise tax with respect to certain activities and privileges** which is measured by reference to the income which they produce."

F. Morse Hubbard, Treasury Department legislative draftsman.

House Congressional Record, March 27, 1943, page 2580
(emphasis added);

"...in *Springer v. U. S.*, 102 U.S. 586 , it was held that **a tax upon gains, profits, and income was an excise or duty**, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional."

Pollock v. Farmer's Loan & Trust, 158 U.S. 601, 1895 (emphasis added);

"...**taxation on income was in its nature an excise** entitled to be enforced as such,"

Brushaber v. Union Pacific RR. Co., 240 U.S. 1 (1916), quoting and reiterating language used in its ruling in *Pollock v. Farmer's Loan and Trust* (emphasis added);

"In *Brushaber v. Union Pacific Railroad Co.*, Mr. C. J. White, upholding the income tax imposed by the Tariff Act of 1913, construed the Amendment as a declaration that **an income tax is "indirect,"** rather than as making an exception to the rule that direct taxes must be apportioned."

Harvard Law Review, 29 *Harv. L. Rev.* 536 (1915-16)

"If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. *Burnet v. Brooks*, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 240 U. S. 12. **Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost"** (*Pollock v. Farmers' Loan & Trust Co.*, 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soble*, 7 Wall. 433, 74 U. S. 445), **or a "duty"** (*Veazie Bank v. Fenno*, 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore*, 178 U. S. 41, 178 U. S. 46). **A capitation or other "direct" tax it certainly is not.**"

Steward Machine Co. v. Collector of Internal Revenue, 301 U.S. 548 (1937)

"So the [16th] amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. **It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.**"

*F. Morse Hubbard, Treasury Department legislative draftsman.
House Congressional Record, March 27, 1943, page 2580
(emphasis added).*

76. Petitioners are aware that the United States Supreme Court and other authorities have consistently and repeatedly declared "excise taxes" to be taxes on the exercise of privileges, as in the following:

"...the requirement to pay [excise] taxes involves the exercise of privilege..."

Flint v. Stone Tracy Co., 220 U.S. 107 (1911);

"The terms 'excise tax' and 'privilege tax' are synonymous. The two are often used interchangeably."

American Airways v. Wallace, 57 F.2d 877, 880 (Dist. Ct., M.D. Tenn., 1932);

"The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..."

United States v. County of Allegheny, 322 US 174 (1944);

"The income tax...is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the

tax; it is the basis for determining the amount of tax.”

Former Treasury Department legislative draftsman F. Morse Hubbard in testimony before Congress in 1943;

“The obligation to pay an excise is based upon the voluntary action of the person taxed in performing the act, enjoying the privilege or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking.” ...

"The term "excise tax" is synonymous with "privilege tax" and the two are used interchangeably. Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax."
71 Am. Jur.2d Sec. 24, pp. 319-320.

77. Petitioners are aware that “privilege” is defined as:

“PRIVILEGE: A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of others citizens. An exceptional or extraordinary power of exemption. A particular right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.”

Black’s Law Dictionary, 6th edition;

PRIVILEGE, rights. This word, taken its active sense, is a particular law, or a particular disposition of the law, which grants certain special prerogatives to some persons, contrary to common right. In its passive sense, it is the same prerogative granted by the same particular law.

Bouvier's Law Dictionary, 6th Ed. (1856);

and that the United States Supreme Court has acknowledged that:

“The right to follow any of the common occupations of life is an inalienable right,...”

“It has been well said that ‘the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property’. Smith, *Wealth of Nations*, Bk. I, c. 10.”

Butcher’s Union Co. v. Crescent City Co., 111 U.S. 746 (1883) (concurring opinion);

"Included in the right of personal liberty and the right of private property- partaking of the nature of each- is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property”.

Coppage v. Kansas, 236 U.S. 1 (1915).

78. The content to which Petitioners attested as being what we know and believe to be true, complete and correct on the tax-related documents we freely signed concerning the tax year ended December 31, 2020, and the conclusions reflected therein, are informed by our belief that in light of the foregoing, however much it may have been carefully crafted to appear otherwise, the unapportioned income tax cannot and does not fall on:

- "all that comes in";
- "every different species of revenue";

- "the fortune or revenue of each contributor";
- "the [common-meaning] wages of labour";
- "what is supposed to be one's fortune [per] an assessment which varies from year to year"; or
- "[an assessed percentage] of [one's] annual gains";

and it is therefore axiomatic that what qualifies as “income” subject to the tax must be only a specialized and distinguished subclass of gains.

79. The content to which Petitioners attested as being what we know and believe to be true, complete and correct on the tax-related documents we freely signed concerning the tax year ended December 31, 2020, and the conclusions reflected therein, are informed by our belief that our economic activities are not extraordinary, not of any special character, and not distinguished or distinguishable in any way as being within the power of any government to make subject to a charge for the enjoyment thereof, and that in light of the foregoing evidence and authorities nothing we have earned and nothing we have done can properly and honestly be reported on forms intended for the reporting of taxable things, other than as we have so

reported.

80. Knowing and believing all of the foregoing to be true and correct, and in light of our own understanding and conclusions about what can and cannot be done by any legitimate government and what powers and authorities have and have not been delegated to governments in the United States of America, Petitioners believe that any and all judicial opinions, rulings or outcomes appearing in any way to conflict, contradict or be out of harmony with any of the authorities quoted and/or cited above or with the construction of the federal income tax as exclusively an excise tax on the gainful exercise or enjoyment of federal privileges, are the product of corruption, incompetence or misunderstanding.

81. Respondent, according to an article on the IRS.gov website¹, "*The Truth About Frivolous Tax Arguments*," in the section titled, "I. Frivolous Tax Arguments in General, D. Constitutional Amendment Claims, 7. Contention: The Sixteenth

¹ <https://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction>

Amendment does not authorize a direct non-apportioned federal income tax on United States citizens," relies on **federal court rulings that are either the product of corruption, incompetence, or a complete misunderstanding of the declaration of the United States Supreme Court** in the case of *Brushaber v. Union Pacific RR Co.*, 240 U.S. 1 (1916), as in the following instances:

“In regards to the income tax, suffice it to say, "[a]t this late date, it seems incredible that we would again be required to hold that the Constitution, as amended, empowers the Congress to levy an income tax against any source of income, without the need to apportion the tax equally among the states, or to classify it as an excise tax applicable to specific categories of activities." *Parker v. Commissioner*, 724 F.2d 469, 471-72 (5th Cir. 1984).”

Young v. Commissioner, 551 F. App'x 229, 203 (8th Cir. 2014)

““[for nearly a century], the 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.’ *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990).”

Taliaferro v. Freeman, 595 F. App'x 961, 962–63 (11th Cir. 2014)

“Dickstein's argument that the sixteenth amendment does not authorize a direct, non-apportioned tax on United States citizens similarly is devoid of any arguable basis in law. Indeed, the Ninth Circuit recently noted "the patent absurdity and frivolity of such a proposition." *In re Becraft*, 885 F.2d 547, 548 (9th Cir. 1989). For seventy- five years, the 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, see *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12- 19, 36 S.Ct. 236, 239-42, 60 L.Ed. 493 (1916)”

United States v. Collins, 920 F.2d 619, 629 (10th Cir. 1990)

“[Becraft's] position can fairly be reduced to one elemental proposition: The Sixteenth Amendment does not authorize a direct non-apportioned income tax on resident United States citizens and thus such citizens are not subject to the federal income tax laws. We hardly need comment on the patent absurdity and frivolity of such a proposition. For over 75 years, the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a non-apportioned direct income tax on United States citizens residing in the United States and thus the validity of the federal income tax laws as applied to such citizens. See, e.g., *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, 12-19, 36 S.Ct. 236, 239-42, 60 L.Ed. 493 (1916); *Ward*, 833 F.2d at 1539; *Lovell v. United States*, 755 F.2d 517, 519 (7th *549 Cir. 1984); *Parker v. Commissioner*, 724 F.2d 469, 471 (5th Cir. 1984); *United States v. Romero*, 640 F.2d 1014, 1016 (9th Cir. 1981).”

In re Becraft, 885 F.2d 547, 548–49 (9th Cir. 1989)

“Plaintiffs also contend that the Constitution prohibits imposition of a direct tax without apportionment. They are wrong; it does not. U.S. Const. amend. XVI; *Parker v. Commissioner*, 724 F.2d 469, 471 (5th Cir. 1984).”

Lovell v. United States, 755 F.2d 517, 518–20 (7th Cir. 1984)

“The Supreme Court promptly determined in *Brushaber v. Union Pacific Ry. Co.*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916), that the sixteenth amendment provided the needed constitutional basis for the imposition of a direct non-apportioned income tax.

...

“The sixteenth amendment merely eliminates the requirement that the direct income tax be apportioned among the states. The immediate recognition of the validity of the sixteenth amendment continues in an unbroken line. See e.g. *United States v. McCarty*, 665 F.2d 596 (5 Cir. 1982); *Lonsdale v. CIR*.

...

“Parker maintains that “the IRS and the government in general, including the judiciary, mistakenly interpret the sixteenth amendment as allowing a direct tax on property (wages, salaries, commissions, etc.) without apportionment.” As we observed in *Lonsdale v. CIR*, 661 F.2d 71 (5th Cir. 1981), the sixteenth amendment was enacted for the express purpose of providing for a direct income tax.”

Parker v. Commissioner, 724 F.2d 469, 471-72 (5th Cir. 1984)

“[McCarty claims] he was not subject to any federal income tax since the Sixteenth Amendment did not really change the former constitutional requirement that direct taxation be apportioned according to population. This latter argument is made in the face of the express language of the Amendment, its undoubted express intention, and an unbroken line of jurisprudence to the contrary. See, e. g., *Lonsdale v. C.I.R.*, 661 F.2d 71, 72 (5th Cir. 1981).”

United States v. McCarty, 665 F.2d 596 (5 Cir. 1982)

“Appellants next seem to argue, in reliance on *Pollock v. Farmers Loan Trust Co.*, 157 U.S. 429, 15 S.Ct. 673, 39 L.Ed. 759 (1895), and other authority, that, so understood, the income tax is a direct one that must be apportioned among the several states. U.S. Const. art. I, sec. 2. This requirement was eliminated by the sixteenth amendment.”

Lonsdale v. CIR, 661 F.2d 71 (5th Cir. 1981)

assertions we know to be untrue from our own personal

understanding of all of the foregoing, particularly the ruling in

Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916) itself,

where it is clear that Respondent's contention the Sixteenth

Amendment authorizes a non-apportioned direct income tax is

an "ERRONEOUS ASSUMPTION" that is "WHOLLY WITHOUT

FOUNDATION."

82. Petitioners know and believe that at minimum tens of thousands of other American men and women have come to the same conclusions we hold regarding all the foregoing.

83. Petitioners' completion of any income tax-related forms concerning the tax year ended December 31, 2020, and all the content thereof for which we are responsible, represents our sincere and honest effort to comply with the tax laws as we understand them to be.

WE declare under penalty of perjury that the foregoing is
true and correct.

Respectfully submitted,

by:  Executed on: 4/8/24

MICHAEL AUSTIN FRENCH
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and:  Executed on: 4/8/24

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