

# LIBERTY TREE

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*Plus ça change, plus c'est la même chose.* The French figured out the tax situation a long time ago — the more things change, the more they stay the same. In the case of the FairTax, however, even a superficial review of the actual bill, H.R. 25, reveals that federal taxes would not only still be painful — they would be imposed on every new service or good sold, and violate *more* privacy than before. Henceforth, therefore, we will refer to it as the “F-Tax.”

## **Tax revenues stay the same**

The F-Tax, brain child of a group of “business leaders,” has been introduced in Congress every year since 1999. F-Tax hype has emanated from Herman Cain and Mike Huckabee, erstwhile presidential candidates, and radio host Neal Boortz. Many in the “Tea Party” promote it as *the* way to “abolish the IRS” and end the “incomprehensible and punishing tax code.”<sup>1</sup> The painful *amount* of taxes would stay the same, however: “The FairTax is revenue neutral. In other words, the sales tax rate will be set to ensure that the federal government — and all the programs within it ... will receive from the national retail sales tax exactly what they had been receiving under the current tax system. This isn’t about cutting spending ...”<sup>2</sup> So, all that unconstitutional federal-program pork? Won’t be cut, and you’ll still pay for it.

## **Everyone is roped in**

Under the F-Tax, every seller “liable to collect and remit taxes ... who is *engaged in a trade or business* shall register as a seller ...”<sup>3</sup> If a person fails to register with the sales tax administering authority (STAAsi),<sup>4</sup> they are “prohibited from selling taxable property or services,” which

## “FairTax” is for April’s Fools



*Since April is tax month, it's a good time to put the “FairTax” under the scope and see if it's as advertised — or even Constitutional. We've enclosed guest articles looking at the Trojan-horse FairTax from several perspectives. Our hope is that you will soon be able to rebut its proponents with some facts, too.*

means, in effect, selling any services or new goods. Either the Treasury or STAAsi could obtain an injunction against a nonregistered person so that if he sold something, he could be jailed for criminal contempt.<sup>5</sup>

Once the seller is registered, he must remit the sales taxes collected with a *monthly* return. As window dressing for the lie that the F-Tax is better than the current IRS system, H.R. 25 mostly calls this a “report,” but the drafter(s) slipped up a few times and reverted to “return.”

Even worse, every person, business, association, etc. that buys services or property upon which the F-Tax *wasn't collected* is required to file a “report” and pay sales tax due every month, too. And don't forget, *everyone* who provides even a small “business” service — from plumbing to snow shoveling — is a “seller” required to remit the tax.

In addition, the F-Tax authorizes cooperating States to collect the federal sales tax, and gives them concurrent administrative jurisdiction, which shall “not be in derogation of Federal jurisdiction over the same matter....” This is a straight-forward consolidation of federal and state jurisdictions, in violation of the Constitution. Welcome to the nightmare of feds and States violating your life forever, together.

## **Corralling the sheep**

Then there's the much ballyhooed prebate, or “consumption allowance rebate.” Because everything new, including basic necessities like food and clothing, would be taxed, the F-Tax

provides for “duly registered” families to receive a *monthly* tax rebate. Every household *voluntarily* registered with the Social Security Administration — listing the name and “bona fide” SSN of *all* household members, and signed by each one over age 21 — will receive a monthly rebate based on DHHS poverty levels.<sup>6</sup> Registering isn't mandatory, but most, especially those living paycheck to paycheck, would see this as “free money” or just necessary to make ends meet. The SSA “may” pay such prebates with smartcards and direct deposit,

*(Continued on page 4)*

1. Boortz, Neal and Linder, John. *The FairTax Book* (2005), p.4.
2. *The FairTax Book*, p.76.
3. “Trade or business,” *unchanged* by the F-Tax, is defined only as: “includes the performance of the functions of a public office.” IRC § 7701(a)(26).
4. STAAsi seems appropriate for cooperating state tax departments, reminiscent of the feared Stasi, the East German secret police who spied on every aspect of society.
5. All information is from “The Fair Tax Act of 2013,” text at <http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.25>.
6. For 2012, this would have been a monthly 214 frns (aka “cash”) for a single person, 580 for a family of four. See [en.wikipedia.org/wiki/FairTax](http://en.wikipedia.org/wiki/FairTax).

# FAIR TAX: DIGGING A BIGGER HOLE

By Tayra Antolik

The most telling thing she said was “The purpose of the Fair Tax is to replace the entire income tax system ... You and I know that the income tax is unconstitutional.” However, income (gain) tax **is not** unconstitutional per se; the vagueness of the law, its misapplication, and the conflicts in court decisions concerning it are the problem.



## Starting with misconceptions

Nowhere on the FairTax website<sup>1</sup> is any definition of the word “income.” Without it, the whole proposition is misleading, relying on what we *think* the word means. Every time we read the word on the website or in the book *FairTax: The Truth*<sup>2</sup> we think of our hard-earned money instead of the gain it may or may not produce. The application of the current tax system and the Fair Tax rely on our ignorance; that ignorance is a fundamental necessity for both. The coverup is so perfect against those who don’t know that “income” was defined by the Supreme Court in the landmark case *Eisner v. Macomber*, 252 U.S. 189 (1920), **not** the Internal Revenue Code:

After examining dictionaries in common use (*Bow. L. D.*; *Standard Dict.*; *Webster's Internat. Dict.*; *Century Dict.*), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of 1909 — “Income may be defined as the **gain** derived **from** capital, **from** labor, or **from** both combined,” provided it be understood to include **profit** gained through a sale conversion of capital assets, to which it was applied in the *Doyle* Case. [internal citations omitted]

Because the definition of “income” is not in the Code but in Supreme Court decisions, the people have adopted the custom of defining it as “everything that comes in.” Congress and the IRS have allowed that erroneous customary use of the word to continue; they will never “cut off their nose to spite their face” in admitting that. The FairTax is a

perfect political way to bury this history of congressional and judicial abuse while “buying” votes. But replacing the current income tax system would not necessarily do away with a tax on income (gain) and could be the worst mistake we could ever make. What must be done is to burst the bubble of presumption and dismantle the propaganda the three branches of government are knowingly, willingly, and voluntarily perpetrating.

## Continuing with unconstitutional solutions

The Constitution Barb Rudelic professes to want to return to — and that we all want the government to return to — does not allow Congress to impose a sales tax on goods and services directly on the people of the several States. “Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). If the FairTax were to be passed, and then challenged as to its constitutionality, the Supreme Court would have to rule that the FairTax falls within the authority of Art. 1, § 8:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

This empowers the federal government to impose excise taxes. As defined in Black’s Law Dictionary, 6<sup>th</sup> Ed., *excise* means “a tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege. A tax on the manufacture, sale, or use of goods or on the carrying on of an occupation or activity... .” An excise is an indirect tax, defined in Black’s as “a tax upon some right or privilege or corporate franchise; e.g., privilege tax; franchise tax.” From these definitions, it appears that excises have *generally* been imposed on corporations, not people. The FairTax seeks the imposition of an excise or indirect type of tax on the people’s consumption. But the activity of buying goods and services is not a privileged one. So nowhere in the Constitution is an authority to impose a general sales tax.

## Ending with a complete mess?

Repealing the 16<sup>th</sup> Amendment — as the FairTaxers claim is their goal — might, in theory, get rid of the IRS, but it will not affect Art. I, § 2, Cl. 3, and § 9, Cl. 4 of the Constitution, because the 16<sup>th</sup> Amendment never repealed them. Respectively, their text is as follows: “Representatives and direct taxes shall be apportioned among the several States \*\*\* according to the respective Number, \*\*\* actual Enumeration” and “No Capitation, or other direct Tax shall be laid, unless in Proportions to the Census or Enumeration hereinbefore directed to be taken.” The apportionment of Representatives and direct taxes are fused at the hip by enumeration of the people. The way we apportion Representatives through districting must be also the way direct taxes (taxes on property; our labor is our most inviolable property) must be apportioned. Graduated (income) taxes are not apportioned taxes.

Why would repealing the 16<sup>th</sup> Amendment have no le-

1. fairtax.org  
2. Boortz, Neal, *FairTax: The Truth* (2008), purports to answer the critics of the FairTax.

So you want to get rid of the IRS, huh? You say the current tax code is unconstitutional. You say you want the IRS out of your back pocket? If you remember the 1960s Batman show, you will remember the announcer would say, "The worst is yet to come!" Let's look at why you need to change your thinking about the proposed "Fair Tax" code.

## **A**bolish the IRS!

This has been the battle cry for many of you in response to the criminal abuses of the Service over the last thirty or so years. Well, I've got a secret for you: go ahead and lean in a little and I'll whisper it in your ear: **It ain't gonna happen!** H.R. 25 and its Senate companion bill would not get rid of the IRS. It would split that sucker right in half and rename the two parts. First, it just removes the *name* Internal Revenue Service. See Title III, SEC. 301(c): "Section 7802 is amended— ... (2) by striking 'Internal Revenue Service' each place it appears and inserting 'Department of the Treasury', and (3) by striking 'Commissioner' or 'Commissioner of Internal Revenue' each place they appear and inserting 'Secretary'."

This means the IRS's authority would be moved to the Department level. This would be akin to an Air Force squadron being disbanded, and everything it had been tasked with would now be completed by the next higher headquarters.

## **T**he Split

But what's left of the old IRS? Good question. Title III, SEC. 302: "(a) IN GENERAL—Section 7801 (relating to the authority of the Department of the Treasury) is amended by adding at the end the following: ...

(d) Excise Tax Bureau—There shall be in the Department of the Treasury an Excise Tax Bureau to administer those excise taxes not administered by the Bureau of Alcohol, Tobacco and Firearms.

(e) Sales Tax Bureau—There shall be in the Department of the Treasury a Sales Tax Bureau to administer the national sales tax in those States where it is required pursuant to section 404, and to discharge other Federal duties and powers relating to the national sales tax ..."

See? It's still there, just split in two and renamed. The same people are still employed at the same place with the same mindsets that we have to deal with today, yesterday and last year. So if you believe what the "FairTaxers" are saying, that all our troubles will vanish into thin air, wake up and smell the road apples!

## **T**he Good News

Good news?! Gol' darn it, man. How can you say there is good news with plagues of locusts, seas boiling, cats and dogs living together, and politicians still inhabiting the planet? Easy. This is still an indirect tax that must be uniform throughout the United States. It's not a direct, unapportioned tax. That's it really, though.

## **N**ot So Good News

Those of you who have studied the current Subtitle A know that the devil is in the details when unlocking the secrets of the tax code. The secret often lies in how terms are defined. For example, the current code at § 7701(a)(9)

# The Deception of the Fair Tax

By C. J. Culpeper

states the "United States" in "a geographical sense ... includes only the States and the District of Columbia." This is followed by § 7701(a)(10): "The term 'State' shall be construed to include the District of Columbia, where such construction is necessary to carry out the provisions of this title." Now, some folks have

concluded that the combination of these rather strangely worded definitions means "United States" as used for the federal income tax includes only jurisdiction over D.C. But in H.R. 25, "United States," for the purposes of the nationwide sales tax, is specifically defined: "in the geographical sense, means each of the 50 states, the District of Columbia, and any commonwealth, territory, or possession of the United States." In other words, federal income tax enforcement may be limited in jurisdiction (although most people have not discovered this yet), but the "Fair Tax" explicitly covers the entire United States.

Here is the liability statement in H.R. 25: "Sec. 101(d) Liability for Tax— (1) IN GENERAL—The person using or consuming taxable property or services in the United



"No, No! Not That Way!" The idea of imposing a federal sales tax is decades old — this cartoon by Clifford Berryman was published June 3, 1933. "Looks easier!" still seems the rallying cry of sales tax proponents today.

States is liable for the tax imposed by this section, ...." Note the change from the liability statement found in the current Subtitle A: "Every person required to deduct and withhold any tax [on nonresident aliens and foreign corporations] is hereby made liable for such tax ...," or Subtitle C: "The employer shall be liable for the payment of the tax required to be deducted and withheld ..." What happens to the liability narrowly imposed on the withholders of the taxes? It's gone. With the "Fair Tax," *everyone* is liable for the tax.

(Continued on page 4)

(Continued from page 3)

## The Really, Really Bad News

Ok. Suppose for a moment this thing actually passes some year: this is a tax on everything you buy new; every man, woman and child pays it for every transaction they make every day. Let's look at some numbers: the "current dollar" Gross Domestic Product is 15.7 trillion frns (2012). Federal taxes amount to about 16 percent of that GDP, a taking of some 2.5 trillion in 2012. But the "Fair Tax Act" would raise this to 23 percent: a taking of 3.6 trillion frns out of the economy every year, which means an *increase* in tax revenues of 44 percent!

Think of the gun control, welfare, and internet surveillance they can fund with that kind of money. You, though, can probably see that you would spend seven cents *more* out of every dollar you use to buy new services or products, just to pay the tax — *if* this bill becomes law.

### Final action

I don't have a lock on brain power and I know there are smarter people in the Patriot and Liberty movements. I am generally the first to tell you if I am wrong when confronted with new information. So take a look at this bill. Cross-examine it using the Constitution's limited taxing powers. Tear it apart, and spread the truth to all the folks ready to swallow the fair-tax pill. Remember, I'm pulling for you.



*C. J. Culpeper gained his fame as the co-host of CJ and the Doctor on Liberty Feed Radio.*

(Continued from page 1)

but of course, Treasury has already transitioned to electronic payments (about 93 percent complete) — ensuring that many families' purchasing transactions will also be tracked.

Finally, since social security and medicare taxes won't be collected, the F-Tax would require employers to report the wages of all employees, so the SSA can calculate benefits. The F-Tax thus registers and tracks every citizen — forget the Census; who needs it anymore? It's no stretch to say the F-Tax is a gateway to the "number to buy and sell"<sup>7</sup> endgame.

### Want to tax income? Just call it sales!

The F-Tax, say Boortz and Linder, is "about being able to save and *invest*, for your future and for the future of your nation's economy."<sup>8</sup> "According to recent news reports, the personal savings rate in the United States is at an all-time low. People are spending their money, not saving it. ... Virtually every economic study on the FairTax proposal concludes that people ... will either start a savings and investment plan or increase the one they already have."<sup>9</sup> The poor dumbed-down Americans who listen to this rallying cry no doubt presume the F-Tax will abolish all those pesky taxes on capital gains from investments, right? Because that's under Subtitle A of Title 26, and Sec. 101 of H.R. 25 *repeals* Subtitle A.

But here's what really happens: the F-Tax *redefines* interest payments as *sales* of "implicitly charged fees for financial intermediation services." It gives authority to the Treasury

7. See Revelation 13:16-17.

8. *The FairTax Book*, p. xv. Note the appeal to "your nation's economy," which is merely collective-style newspeak in the vein of "paying your fair share."

9. *The FairTax Book*, p. 108.

10. *The FairTax Book*, p. 166. Ellipses in original.

11. [www.lewrockwell.com/rothbard/rothbard24.html](http://www.lewrockwell.com/rothbard/rothbard24.html)

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gal affect on these two sections of the Constitution? The Supreme Court answered this in *Stanton v. Baltic Mining Co*, 240 U.S. 103, 112 (1916): "...by the previous ruling it was settled that the provisions of the 16th 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 [compensation, property] subject to apportionment..." (emphasis added). So, the 16<sup>th</sup> Amendment kept "income" (gain) taxation in the category of indirect taxes by taking out the apportionment provision.<sup>3</sup> Therefore, repealing it affects *nothing* except perhaps getting rid of the IRS. I am 100 percent for that! But, thanks to ObamaCare,<sup>4</sup> that won't happen any time soon.

If the FairTax were to succeed, since the repealing of the 16<sup>th</sup> Amendment would not affect the tax clauses of the Constitution, then Congress would have a double-barreled shot gun pointed at our wallets: the FairTax *and* Art. I, §§ 2 and 9.



*The article above is adapted from "Rebutting the Fair Tax," by Tayra Antolik, radio host for Truth Attack Hour on Liberty Works Radio Network.*

- By the way, the federal courts are in conflict and split, not only within the federal judiciary but also with their respective state courts, on whether "income" tax is a direct or indirect tax. That presents a huge due process problem. See attorney Larry Becraft's brief on the subject at home. [hiwaay.net/~becraftUNCERTAIN.html](http://hiwaay.net/~becraftUNCERTAIN.html)
- ObamaCare uses the IRS to administer the penalties for not buying health insurance.

Secretary to set the "basic interest rate" according to the average interest on marketable U.S. obligations, and imposes the tax, payable by the financial institution, on the "gross imputed amount": the (profitable) difference between the basic rate and the actual interest rate, times the principal. *Voilà!* One wave of the lying F-wand, and income is no longer income. But ... it's still taxed.

### Robbery at the cash register

Boortz and Linder say, with straight faces: "In short ... income taxes are seized. Consumption taxes are paid. Which way do you want it?"<sup>10</sup> Oops. What happened to the fiction that income taxes are met through "voluntary compliance"? For propaganda purposes, the income tax can (and must) be vilified for the illegal confiscation — uh, "seizure"— that it truly is. After all, they're selling a *new* tax, *nicer* than the old one, one that is *voluntarily* "paid" simply by engaging in commerce. Of course, the new tax has *all* the enforcement powers of the old tax it is supposed to replace, including criminal fines and imprisonment and "civil" fines for "willfully fail[ing]" to collect or remit the taxes, filing late returns, filing false "prebate" registrations, filing or accepting fraudulent "intermediate sales exemption certificates," or failing to register as a seller. As Murray Rothbard, a founder of modern libertarianism, observed back in 1969, "The first great lesson to learn about taxation is that taxation is simply robbery. ... the taking of a man's property by the use of violence or the threat thereof, ..." <sup>11</sup> The F-Tax is not only *more* robbery, it would, contrary to its claims, allow the STAAsi to intrude into every aspect of your private life. *Plus ça change ...*

