

## SYNOPSIS OF "ARE, TOO!" CASES

<u>CASE</u>	<u>HOLDING</u>	<u>NOT HOLDING</u>	<u>BASIS</u>
U.S. v. SIMKANIN, <i>420 F.3d 397</i> (5th Cir. 2005)	Upheld conviction for failure to withhold and file withholding returns based upon propriety of instructions. Simkanin's claims re wages and definition of "employee" were dismissed as frivolous without reasons given.	Taxability of wages was not an issue considered by the court, nor were any statutory constructions considered nor were any taxing authority scope issues considered	In footnote, cited <i>Otte v. U.S.</i> 419 U.S. 43, 50-51, as holding that Simkanin's 4201 definition of "employee" was an "incorrect view of the law". [ <i>Otte dealt with trustee's requirement to withhold against wage claims against the bankrupt former employer, but did not rule on the definition of an employee. The issue of "employee" definition was neither raised nor ruled on. In fact, the SC tiptoed around the definition of "employee", even going to the SS act to borrow a definition of "employer" to avoid having to mention it.</i> ]
UNITED STATES v. WHITESIDE, <i>810 F.2d 1306</i> (5th Cir. 1987)	Issues were limited to admission or exclusion of evidence and instructions	Taxability of wages was not an issue considered by the court, nor were any statutory constructions considered nor were any taxing authority scope issues considered	None
STELLY v. C.I.R.,	Held contention that wages aren't	No consideration of any statutory	Based upon Granzow case and

804 F.2d 868 (5th Cir. 1986)	<b>taxable</b> income is frivolous because wages are <b>gross</b> income ???	constructions or constitutional issues nor how being "gross" translates to "taxable"	eleven cases there cited as "holding that wages are gross income"
GRANZOW v. C.I.R., 739 F.2d 265 (7th Cir. 1984)	Upheld civil penalties for making "frivolous" appeal of determination of deficiency based on cases and § 61 alone. Held "exemption is an act of legislative grace"	No consideration of what is taxable, no consideration of constitutional issues nor how being "gross" translates to "taxable"	Basis was cases, infra, and § 61 alone
UNITED STATES v. KOLIBOSKI, 732 F.2d 1328 (7th Cir. 1984)	Upheld evidentiary exclusions and instructions. <b>ONLY</b> In a <b>FOOTNOTE</b> , acknowledged that issue of wages being taxable was not raised, but stated that "Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: <b>WAGES ARE INCOME</b> . Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages — or salaries — are not taxable." !!!!!!!??????? So There! (I guess)	No holding on wages, which were not before the court, Nor any consideration of statutory construction or constitutional issues	No basis whatsoever given for the footnote "holding".
LONSDALE v. C. I. R., 661 F.2d 71 (5th Cir. 1981)	Held that contention that there is no element of profit in wages (basis?) is wrong and that wages are taxable income under the 16 <sup>th</sup> .	No consideration of any statutory construction, no authoritative discussion of Constitutional issues, no consideration of merits of issue on wages as "income"	"Congress has defined income as including compensation for services. 26 U.S.C. § 61(a)(1). [ <i>Congress has <b>NEVER</b> defined "income"</i> ] Broadly speaking, that definition covers all

			"accessions to wealth." <i>See Commissioner v. Glenshaw Glass Co.</i> , 348 U.S. 426, 431, 75 S.Ct. 473, 477, 99 L.Ed. 483 (1955). This definition is clearly within the <u>power to tax "incomes" granted by the sixteenth amendment.</u> [ <b>WHAT power granted by the 16<sup>th</sup>?</b> ]
KNIGHTEN v. C.I.R., 702 F.2d 59 (5th Cir. 1983)	Upheld Tax Court ruling on deficiency. Held burden was on app. to show wages were not income and that no legal authority or evidence was adduced to support that claim. [ <i>CORRECT: but the same thing applies to the "findings" above that wages are income and taxable.</i> ]	Did not hold wages were income, but only that appellant had failed to show that they were not income. No consideration of statutory or constitutional issues or authorities.	Knigheten filed his own brief and failed to support any of his contentions with any authority. [ <i>But he isn't a federal appellate court, so can't do that.</i> ] No authorities for claim that wages are income or taxable income were given.
READING v. COMMISSIONER OF INTERNAL REVENUE, 70 T.C. 730 (1978) Cited as authoritative??  Upheld in READING v. C. I. R., 614 F.2d 159 (8th Cir. 1980)	App. from TC ruling based on deductions for living expenses as recovery of "investment" or "cost of doing labor" Court rejected deduction of living expenses. App. offered no constitutional authority for base/gain claim although they did cite <i>Eisner</i> and other cases [ <i>CORRECT: but the same thing applies to the "findings" above that wages are income and taxable.</i> ]	No discussion of statutes or constitutional authorities, no specific holding or basis for finding that wages are income and taxable.	"One's gain, ergo his 'income,' from the sale of his labor is the entire amount received therefore without any reduction for what he spends to satisfy his human needs. No authority provided for conclusion. In footnote, Court referred to <i>Glenshaw</i> as qualifying <i>Eisner</i> . [ <i>NOTE: Tax Court seemed to understand the distinction between returns on investment and wages for labor, but did not seem to understand the importance of the distinction</i> ]

<p>FUNK v. C. I. R., 687 F.2d 264 (8th Cir. 1982)</p>	<p>Rejected appeal from TC on basis labor was not taxable as income. Held gross income definition (§ 61) defined income and the 16<sup>th</sup> allowed income to be taxed.</p>	<p>No discussion of statutory or constitutional issues, brushed off on basis of two <b>TC rulings</b>.</p>	<p>"We reject Taxpayers' sixteenth amendment claim <b>because the constitutionality of the sixteenth amendment was upheld by the Supreme Court in <i>Brushaber v. Union Pacific R. R.</i>, 240 U.S. 1, 18, 36 S.Ct. 236, 241, 60 L.Ed. 493 (1916). See generally <i>Eisner v. Macomber</i>, 252 U.S. 189, 205-06, 40 S.Ct. 189, 192-193, 64 L.Ed. 521 (1920).</b>" [What???? He's got to be kidding!!!]</p>
<p>LIVELY v. C.I.R., 705 F.2d 1017 (8th Cir. 1983)</p>	<p>Upheld TC ruling on deduction of living expenses, objection based on no liability basis and claim of unconstitutionality. Listed objections and simply declared "This appeal is frivolous."</p>	<p>No discussion of any of the issues, no discussion of statutory content, much less construction, nor constitutional issues.</p>	<p><b><u>NO AUTHORITY OF ANY KIND IS PROVIDED!!</u></b></p>
<p>UNITED STATES v. BURAS, 633 F.2d 1356 (9th Cir. 1980)</p>	<p>Upheld conviction for failure to file. Def contended his wages were not income, but held that wages are "commonly treated as income"</p>	<p>No discussion of constitutional or statutory issues other than reference to S. Ct. case on corporate excise tax on a mining company.</p>	<p>Wages equal income based on Stratton's Independence, quoting the case (partly) as saying that earnings are income. [<i>Stratton's Ind. was a <b>CORPORATION TAX</b> case wherein Stratton, a mining concern, raised depletion of ores as an issue. The actual quote at p. 415: "But the same is true of the earnings of the human brain and hand when unaided by capital, yet</i></p>

			<p><i>such earnings are commonly dealt with in legislation as income." Wages were not at issue in Stratton. The only way the court could get past the depletion/due process argument was to hold that power to tax Stratton was under general excise powers (corporate privilege) and not an income tax. Stratton actually supports wage basis and jurisdiction argument by holding that a tax on gross receipts is not an income tax.]</i></p>
<p>UNITED STATES v. ROMERO, 640 F.2d 1014 (9th Cir. 1981)</p>	<p>Upheld conviction for failure to file. Defendant contended his wages were not income.</p>	<p>No discussion of statutory or constitutional issues, no holding that wages were all gain.</p>	<p>Holding that claim wages are not income is frivolous cited <i>Lucas v. Earl</i>, 281 U.S. 111, 114-15, 50 S.Ct. 241, 74 L.Ed. 731 (1930). [<i>Lucas dealt only with issue over whether agreement with wife that any earnings would be half hers reduced his income by half. Court held "no" in a two page opinion by Holmes. Whether his wages or attorney's fees earned constituted income was not an issue and was not ruled on by the court.]</i></p>