# Brief Regarding 26 USC § 83(a)

1. This Brief is a detailed analysis of the issue of cost with regard to 26 USC § 83(a). Even if Congress had "expressly" extended the Internal Revenue Code ("IRC") to the several 50 union states pursuant to 4 USC § 72—which it has not done—§ 83(a) demonstrates that the value of one's labor is excluded from "Gross Income" and therefore the value of one's labor is not and cannot be subject to any federal income tax if properly deducted from gross revenue pursuant to 26 USC § 83(a) and the regulations thereunder.

**The IRS has fraudulently denied Citizens a right found in 26 USC § 83(a)**

2. Citizens and all Tax Professionals generally determine what is to be included in "Gross Income" by starting with 26 USC § 61(a).

3. 26 USC § 61(a) defines what is "Gross Income:"

   *"Gross income defined*

   *"(a) General definition*

   *"Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:*

   *"(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;" (Emphasis added)*

4. Once "Gross Income" is determined pursuant to 26 USC § 61(a), Citizens and Tax Professionals generally proceed to 26 USC § 62 to determine what can be deducted from "Gross Income" which, when said items are deducted, then leaves a balance called "Adjusted Gross Income."

5. Once "Adjusted Gross Income" is determined, Citizens and Tax Professionals generally proceed to 26 USC § 63 to determine what further amounts can be deducted which, when said items are deducted, then leaves a balance known as "Taxable Income."

6. Once "Taxable Income" is determined, Citizens and Tax Professionals then generally proceed to 26 USC § 1 to determine their tax liability.

7. However, Citizens and Tax Professionals rarely read and understand the first seven words of 26 USC § 61(a); "***Except as otherwise provided in this subtitle**."* This is the subtle clue to let Citizens and Tax Professionals know that there are other definitions of or exclusions from "Gross Income" which supersede this 26 USC § 61(a) definition of "Gross Income." For example full time ministers of the gospel are allowed to **exclude** from "Gross Income" the rental value of a home furnished to them by their church as part of their compensation. 26 USC § 107 states:

   *26 USC § 107. Rental value of parsonages*

   *In the case of a minister of the gospel, **gross income does not include**—*

   *(1) the rental value of a home furnished to him as part of his compensation; or*

   *(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.*

8. As one can easily from 26 USC § 107, a minister's home compensation is <u>excluded</u> from "Gross Income" and therefore cannot be taxed under any circumstances. Since 26 USC §§ 62 [adjusted gross income] and 63 [taxable income] both start from a value known as "Gross Income," one cannot possibly have a federal tax liability or be subject to a federal tax without first having some amount of "Gross Income."

9. Pursuant to 26 USC § 61(a)(1), compensation for services is included in "Gross Income," **<u>EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE</u>**. This means that if another section of subtitle A provides for a different definition of "Gross Income" or another section of subtitle A articulates what is to be included in or excluded from "Gross Income," then the § 61(a) definition is not applicable. To state it another way, if another section of subtitle A excludes any portion of one's compensation from "Gross Income," then the § 61(a)(1) definition does not apply.

10. For the past several years, millions of Citizens have received compensation for services actually rendered and considered it to be included in "Gross Income." In summary, 26 USC § 83 explains how property received in exchange for services rendered is taxed.[1] Section 83 applies to <u>all</u> compensation paid for both the services of corporations, and for the services of individuals.[2] Labor is property[3].

> *"...It has been well said that,* ***the property which every man has is 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 the <u>most sacred property</u>****" <u>Butchers' Union Co. v. Crescent City Co.</u>, 111 U.S. 746. 1883.*

11. The fair market value ("FMV"") of property ("amount paid" or "labor") is established through the terms of an "arm's length transaction."[4]

12. The language of 26 USC § 83(a) states that when compensation is received [in exchange] for services rendered, ONLY the "**<u>excess</u>**" of the "property" [compensation] over the "amount paid" [value of labor] in cost is to be included in gross income. Section 83(a) states:

> *§ 83. Property transferred in connection with performance of services*
>
> *(a) General rule*
>
> *If,* ***in connection with the performance of services*** *[labor],* ***property*** *[compensation]* ***is transferred*** *to* ***<u>any</u> person*** *[employee] <u>other than the person for whom such services are performed</u> [employer],* ***the <u>excess</u> of****—*
>
> *(1)* ***the fair market value of such property*** *[compensation] (determined without regard to any restriction other than a restriction which by its terms will never lapse)*

---

[1] See Montelepre Systemed, Inc. v. CIR., 956 F.2d 496, 498 at [1] (CA5 1992)

[2] See 26 CFR § 1.83-3(e), (f); <u>MacNaughton v. CIR</u>, 888 F.2d 418 (CA6 1989); <u>Pledger v.CIR</u>, 641 F.2d 287 (CA5 1981); <u>Alves v. CIR</u>, 734 F.2d 478, 481 (CA9 1984); <u>Klingler Electric Co. v. CIR</u>, 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991); <u>Robinson v. CIR</u>, 82 USTC 444 (1984); <u>Cohn v. CIR</u>, 73 USTC 443, 446 (1979).

[3] See ¶ 10 herein and also <u>Butcher's Union Co. v. Crescent City Co.</u>, 111 U.S. 746, 757 (1883); <u>Slaughterhouse Case</u>, 83 U.S. 395, 419; 16 Wall. 36-130 (1873); <u>Adair v. US.</u>, 208 U.S. 161, 172 (1908); <u>Coppage v. Kansas</u>, 236 U.S. 1 (1915); <u>Black's Law Dictionery</u>, 6th Ed., "property."

[4] See 27 CFR § 70.150(b); <u>U.S. v. Cartwright</u>, 411 U.S. 546, 552 (1973); <u>Hicks v. U.S.</u>, 335 F.Supp. 474, 481 (Colo.1971); <u>Pledger v. CIR</u>, supra; Black's Law Dictionary, 6th Ed., "Arm's length transaction."

*at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier,* ***over***

*(2)* ***the amount*** *(if any)* ***paid*** *[labor]* ***for such property*** *[compensation],* ***shall be included in the gross income of the person*** *[employee]* ***who performed such services*** *[labor] in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm's length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.*

13. The formula for "Gross Income" pursuant to 26 USC § 83(a) is:

    "Gross Income" = "Excess"; and

    "Excess" = ("property") minus ("amount paid") or

    "Excess" = (compensation) minus (value of labor).

14. The "amount paid" is defined in 26 CFR § 1.83-3(g) as the definition of cost:

    *(g) Amount paid.* ***For purposes of section 83*** *and the regulations thereunder,* ***the term "amount paid" refers to the value of any money or property*** *[labor—labor is property; see ¶ 10 above]* ***paid for the transfer of property*** *[compensation]* ***to which section 83 applies****.*

15. The value of the "amount paid" [labor] is determined by what the employer paid [compensation] for the services rendered [labor]. 26 CFR § 1.83-3(g) is all inclusive and includes "any money or property."

16. To confirm that this understanding is correct, one can come to the same conclusion by reviewing other sections of the IRC and the regulations thereunder.

17. To properly calculate what constitutes "Gross Income," pursuant to 26 USC § 83(a), one needs to know "the amount paid" (cost of labor) so it can be deducted from the "property" (compensation) in order to calculate the "excess" [realized gain/profit] which is to be included in the "Gross Income." To determine these factors, one can turn to the following regulations:

    *"If property [compensation] to which 1.83-1 applies is transferred [from employer to employee] at an arm's length [see Black's, 6th], the basis [cost of labor] of the property [compensation] in the hands of the transferee [recipient or employee]* ***shall*** *be determined under section 1012 and the regulations thereunder" 26 CFR § 1.83-4(b)(2)*

18. Before one can determine the "excess," one must identify the "amount paid."

19. Labor is property (see ¶ 10 herein). As property, labor has a value with regard to the related compensation transaction and 26 USC § 1012 will either include or exclude said cost for [value of] labor.

    *§ 1012. Basis of property—cost*

    ***The basis of property*** *[compensation]* ***shall*** *be* ***the cost of such property*** *[labor]...*

20. The regulations confirm the basis of property:

*26 CFR § 1.1012-1 Basis of property.*

*(a) General rule. In general, the basis of property [compensation] is the cost thereof.* ***The cost is <u>the amount paid</u>*** *[labor]* ***for such property*** *[compensation]* ***in cash or other property*** *[labor]**...***

21. Congress has cited what it considers to be a "cost." The "<u>amount paid</u> for such property in <u>cash or other property</u>." One can see that nothing is excluded from that which is considered by Congress to be a cost. If Congress intended to exclude labor from that which is a cost, 26 USC § 1012 would reflect such an exclusion. Since labor as property is not excluded, it is to be considered as a cost in the calculation of the "<u>excess</u>" which is to be included in "Gross Income" and in the determination as to whether one has enough "Gross Income" to make it necessary to even file a return.

22. The "amount paid" [labor] is the <u>value</u> of the cost [labor] and is also known as the "adjusted basis." Regulations require that this amount [value of labor] be "withdrawn" from the amount realized [compensation] in the [payment for services] transaction and that it be "restored to the taxpayer."

***26 CFR § 1.1011-1*** *Adjusted basis.*

***The adjusted basis*** *for determining the gain or loss from the sale or other disposition of property* ***is the cost or other basis prescribed in section 1012 [see ¶ 20 herein] or other applicable provisions of subtitle A*** *of the code, adjusted to the extent provided in sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of internal revenue laws.*

***26 CFR § 1.1001-1(a)***

*(a) ...**from the amount realized*** *[compensation]* ***upon the sale or <u>exchange</u> there <u>shall</u> be withdrawn a sum sufficient to restore the adjusted basis*** *[value of labor]* ***prescribed <u>by section 1011 [which includes also § 1012[ and the regulations thereunder</u>***...***The amount which <u>remains</u>*** *[excess]* ***after the adjusted basis*** *[cost of labor]* ***has been restored to the taxpayer constitutes the realized gain*** *[profit or "gross income"]**.***

23. After determining the value of property [labor] that is a cost, as defined by United States law [see 26 CFR § 1.1012-1(a) cited at ¶ 20 herein, labor not excluded], for one to comply with 26 USC § 83(a), and 26 CFR § 1.1001-1(a), the value of the "amount paid" [labor], or the "adjusted basis" [labor], must be subtracted from the amount realized [compensation] BEFORE including ONLY the "excess" balance which remains (if any) in "Gross Income." **Without any "excess" there is no "gross income."**

24. Again, the conclusion reached by reviewing additional sections of the IRC and the regulations thereunder, as cited above, is the same conclusion articulated by the Secretary in 26 CFR § 1.83-3(g) where the "amount paid" is defined as "<u>any</u> money or property" paid for the transfer of property (labor is not excluded):

*(g) Amount paid.* ***For purposes of section 83*** *and the regulations thereunder,* ***the term "amount paid"*** *[labor]* ***refers to the <u>value</u> of <u>any</u> money or property*** *[labor]* ***paid for the transfer of property*** *[compensation]* ***to which section 83 applies****...*

25. In fact, Treasury Regulation 26 CFR § 1.61-1(b) which are applicable to 26 USC § 61(a) it states that "...To the extent that another section of the Code [§ 83(a)] or of the regulations thereunder, provides specific treatment for any item of income, such other provision [§ 83(a)] shall apply **notwithstanding section 61 and the regulations thereunder.**" Therefore, § 83(a) overrides § 61 when it comes to determining the amount of one's federal "gross income". Clearly the Secretary and Congress are misleading the people if their presenting the argument that § 61 supersedes § 83(a) when it comes to calculating one's "gross income" for filing and tax liability purposes.

26. The section(s) of the IRC which embrace(s) intangible personal property as a *cost* (see 26 USC § 1012) is calculated as one's cost when having only sold one's labor, and 26 CFR § 1.83-3(g) does the same. In fact, in order to impose amounts which are not to be included in "Gross Income" upon Citizens, the Secretary must deny Citizens their rights as articulated by Congress in 26 USC §§ 83(a), 212, 1001, 1011, and 1012.

27. The law does not exclude any property, for which there is no basis, from cost. The cost equals the "value" of <u>any and all property</u> (labor) disposed to obtain other property (compensation), unless it is expressly excluded under 26 USC § 1012. <u>The issue of basis never enters the equation.</u>

28. The way one can determine the value of one's labor is to look at the check one received and determine its value. If one receives $1,000 for their labor, the value or FMV of their labor is $1,000.

29. The difference between cost and income is further articulated by Congress in 26 USC § 212 as follows:

> *§ 212. Expenses for production of income*
>
> *In the case of an <u>individual</u>,* ***there <u>shall</u> be allowed as a deduction <u>all</u> the ordinary and necessary expenses*** *[cost]* ***paid or incurred during the taxable year****—*
>
> *(1) for the production or collection of income;*
>
> *(2) for the management, conservation, or maintenance of property held for the production of income; or*
>
> *(3) in connection with the determination, collection, or refund of any tax.*

30. Thus a deduction is mandated ("**shall**") but it is not specified how the expenses are to be deducted. Based on 26 USC § 83(a), the deduction [labor] is to be taken [returned to the "taxpayer"] from "such property" [compensation] to create the "excess" which ONLY then is said "excess" included in "Gross Income." **If there is no "excess" then there is no "Gross Income."**

31. As used in the cited statutes and regulations, the terms "any" or "any property" <u>are to be construed as all inclusive</u> until Congress "expressly" provides an exception to support the notion that such terms are not all inclusive.

32. There is ample case law to support the principle of statutory construction which makes the term "any property" all inclusive; meaning that nothing is to be excluded by the word "any." This is confirmed by the following cases where the United States contends successfully that "any property" is all inclusive and means all property (see *U.S. v. Monsanto*, 491 U.S. 600, 607-611 and (syllabus) (1989)**;** *U.S. v. Alvarez-Sanchez*, 511 U.S. 350, 357 (1994); *U.S. v.*

*Gonzales*, 520 U.S. 1, 4-6 (1997); *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002) citing *Gonzalez* and *Monsanto*). Although these cases are not about taxes, the issue of "any property" is argued by the DOJ successfully that "any property is all inclusive and means all property. Cases are quoted below:

33. **1989 -** *Monsanto (In summary)* - Heroin manufacturer Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that **"any property"** is all inclusive and therefore means the U.S. can seize any and all property unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant.

Monsanto in detail follows:

> *"...Monsanto argues that he should be allowed to keep enough money for attorney's fees, but the DOJ argues successfully that "**any property**" is all inclusive and therefore means the U.S. can seize **any** and **all property** unless Monsanto can point to a specific exclusion of attorney's fees under the law. DOJ can seize everything owned by defendant." U.S. v Monsanto, 491 U.S. 600, 607-611*
>
> *Section 853's **language is plain and unambiguous. Congress could not have chosen stronger words to express its intent** that forfeiture be mandatory than § 853(a)'s language that upon conviction a person "shall forfeit . . . **any property"** and that the sentencing court "shall order" a forfeiture. **Likewise, the statute provides** a **broad definition of property which does not even hint at the idea that assets used for attorney's fees are not included.** Every Court of Appeals that has finally passed on this argument has agreed with this view. **Neither the Act's legislative history nor legislators' post-enactment statements support respondent's argument that an exception should be created because the statute does not expressly include property to be used for attorney's fees, or because Congress simply did not consider the prospect that forfeiture** [491 U.S. 601] **would reach such property. . . .** Moreover, **respondent's admonition that courts should construe statutes to avoid decision as to their constitutionality is not license for the judiciary to rewrite statutory language.** Pg. 606-611."*[5]
>
> *"In determining the scope of a statute, we look first to its language." United States v. Turkette, 452 U.S. 576, 580 (1981). **In the case before us, the language of § 853 is plain and unambiguous: all assets falling within its scope are to be forfeited upon conviction, with no exception existing for the assets used to pay attorney's fees — or anything else, for that matter.***
>
> *As observed above, § 853(a) provides that a person convicted of the offenses charged in respondent's indictment **"shall forfeit . . . any property"** that was derived from the commission of these offenses. After setting out this rule, § 853(a) repeats later in its text that upon conviction a sentencing court "shall order" forfeiture of **all property** described in § 853(a). **Congress could not have chosen stronger words to express its intent** that forfeiture be mandatory in cases where the statute applied, or broader words to define the scope of what was to be forfeited. **Likewise, the statute provides a broad definition of "property" when describing what types of assets are within the section's scope: "real property . . . tangible and intangible personal property,***

[5] *U.S. v. Monsanto,* 491 U.S. 600 (syllabus) (1989)

***including rights, privileges, interests, claims, and securities."*** *21 U.S.C. § 853(b) (1982 ed., Supp.V).* ***Nothing in this all-inclusive listing even hints at the idea that assets to be used to pay an attorney are not "property" within the statute's meaning.***

***Nor are we alone in concluding that the statute is unambiguous in failing to exclude assets that could be used to pay an attorney from its definition of forfeitable property. This argument, advanced by respondent here,*** *see Brief for Respondent 12-19,* ***has been unanimously rejected by every Court of Appeals that has finally passed on it,*** *as it was by the Second Circuit panel below, see 836 F.2d at 78-80; id. at 85-86 (Oakes, J.,* ***dissenting); even the judges who concurred*** *on statutory grounds in the en banc decision* ***did not accept this position,*** *see 852 F.2d at 1405-1410 (Winter, J., concurring). We note also that the Brief for American Bar Association as* ***Amicus Curiae 6, frankly admits that the statute "on [its] face, broadly coverts] all property derived from alleged criminal activity and contain[s] no specific exemption for property used to pay bona fide attorneys' fees."***

***Respondent urges us, nonetheless, to interpret the statute to exclude such property for several reasons.*** *Principally,* ***respondent contends that we should create such an exemption because the statute does not expressly include property to be used for attorneys' fees ...*** *In support, respondent observes that the legislative history is "silent" on this question, and that the House and Senate debates fail to discuss this prospect. But this proves nothing[.]* ***The fact that the forfeiture provision reaches assets that could be used to pay attorney's fees, even though it contains no express provisions to this effect, "'does not demonstrate ambiguity'" in the statute: "'It demonstrates breadth.'"*** *Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985) (quoting Haroco, Inc. v. American Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 398 (CA7 1984)).* ***The statutory provision at issue here is broad and unambiguous,*** *and Congress' failure to supplement § 853(a)'s* ***comprehensive phrase — "any property" — with an exclamatory "and we even mean assets to be used to pay an attorney" does not lessen the force of the statute's plain language."***[6]

*"As we have noted before, such post-enactment views "form a hazardous basis for inferring the intent" behind a statute, United States v. Price, 361 U.S. 304, 313 (1960); instead, Congress' intent is "****best determined*** *by* ***[looking to] the statutory language that it chooses,"*** *Sedima, S.P.R.L., supra,* ***at*** *495, n.13. . . .* ***Finally, respondent urges us, see Brief for Respondent 2029, to invoke a variety of general canons of statutory construction,*** *as well as several prudential doctrines of this Court, to create the statutory exemption he advances; among these doctrines is our admonition that courts should construe statutes to avoid decision as to their constitutionality. See, e.g., Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council, 485 U.S. 568, 575 (1988); NLRB. v. Catholic Bishop of Chicago, 440 U.S. 490, 500 (1979).* ***We respect these canons, and they are quite often useful in close cases, or when statutory language is ambiguous. But we have observed before that such "interpretative canon[s are] not a license for the judiciary to rewrite language enacted by the legislature."*** *United States v. Albertini, 472 U.S. 675, 680 (1985).* ***Here, the language is clear and the statute***

[6] *Monsanto, Id*, at 607-09.

***comprehensive; § 853 does not exempt assets to be used for attorney's fees from its forfeiture provisions."*** [7]

34. Since the 1989 Monsanto decision regarding "any property," three very recent decisions deal directly with the same question as to how to interpret the term "any"; is it all inclusive or subject to derogation? The inclusion here of lengthy excerpts is intended to offer appreciable input upon the topic.

35. **2002 -** *Rucker* (citing *Monsanto* and *Gonzales in summary)* **-** U.S. argues successfully that "innocent owner" defense unavailable to co-tenant of low income housing who, although innocent, was subject to the statute's eviction of an all inclusive "any tenant" of a leased unit where prohibited activity had taken place. U.S. can evict the innocent tenant of low income housing unit which is scene of prohibited behavior.

36. Here, in this unanimous 2002 decision (REHNQUIST, C. J. delivered opinion, BEYER, J. took no part) in the Department of *Housing and Urban Renewal v. Rucker*, the Supreme Court draws upon *Monsanto* for guidance in another instance hinged upon interpretation of the term "any," affirming the claim made herein.

> *"That this is so seems **evident from the plain language of the statute.** It provides that –*
>
> > *each public housing authority shall utilize leases which ... provide that ... any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.*
>
> *42 U.S.C. § 1437d(1)(6) (1994 Ed., Supp.V). The en banc Court of Appeals thought the statute did not address "the level of personal knowledge or fault that is required for eviction." 237 F.3d at 1120. **Yet Congress' decision not to impose any qualification in the statute, combined with its use of the term "any" to modify "drug-related criminal activity," precludes any knowledge requirement.** See United States v. Monsanto, 491 U.S. 600, 609 (1989). As **we have explained, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of** whatever kind:'" United States v. Gonzales, 520 U.S. 1, 5 (1997). Thus, drug-related activity engaged in by the specified persons is grounds for termination, not just drug-related activity that the tenant knew or should have known about."* [8]

37. **1997 -** *Gonzales (In summary)* - U.S. argues successfully that ***"any"*** in sentencing laws is all inclusive and therefore prevents the defendants from serving federal time concurrently with other sentences, argues for more jail time and gets it. More jail time for convict.

38. Below is an excerpt from *U.S. v. Gonzales,* 520 U.S. 1, 4-6 (1997) just cited in *Dept. of Housing & Urban Renewal v. Rucker, Id..*

> *"Our analysis begins, as always, with the statutory text. Section 924(c)(1) provides:*
>
> > *Whoever, during and in relation to any...drug trafficking crime...for which he may be prosecuted in a court of the United States, uses or carries a firearm,*

---

[7] *Monsanto, Id*, at 610-11

[8] *Department of Housing and Urban Renewal v. Rucker*, 535 U.S. 125, 130-31 (2002)

> *shall, in addition to the punishment provided for such crime..., be sentenced to imprisonment for five years... Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the...drug trafficking crime in which the firearm was used or carried.*

*18 U.S.C. § 924(c)(1) (emphasis added). The question we face is whether the phrase "any other term of imprisonment" "means what it says, or whether it should be limited to some subset" of prison sentences, Maine v. Thiboutot, 448 U.S. 1, 4 (1980) -- namely, only federal sentences.* ***Read naturally, the word "any" has an expansive meaning, that is, "one or some indiscriminately*** *of whatever kind." Webster's Third New International Dictionary 97 (1976). Congress did not add any language limiting the breadth of that word, and so we must read § 924(c) as referring to all "term[s] of imprisonment," including those imposed by state courts. Cf. United States v. Alvarez-Sanchez, 511 U.S. 350, 358 (1994) (noting that statute referring to "any law enforcement office?" includes "federal, state, or local" officers); Collector v. Hubbard, 12 Wall. 1, 15 (1871)* ***(stating "it is quite clear" that a statute prohibiting the filing of suit "in any court" "includes the State courts as well as the Federal courts," because "there is not a word in the [statute] tending to show that the words 'in any court' are not used in their ordinary sense").*** *There is no basis in the text for limiting § 924(c) to federal sentences.*

*In his dissenting opinion, JUSTICE STEVENS suggests that the word "any" as used in the first sentence of § 924(c) "unquestionably has the meaning 'any federal.'" Post at 14. In that first sentence, however, Congress explicitly limited the scope of the phrase "any crime of violence or drug trafficking crime" to those "for which [a defendant) may be prosecuted in a court of the United States." Given that Congress expressly limited the phrase "any crime" to only federal crimes, we find it significant that no similar restriction modifies the phrase "any other term of imprisonment," which appears only two sentences later and is at issue in this case. See Russello v. United States, 464 U.S. 16, 23 (1983)* ***("'Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").***

*The Court of Appeals also found ambiguity in Congress' decision, in drafting § 924(c), to prohibit concurrent sentences instead of simply mandating consecutive sentences. 65 F.3d at 820. Unlike the lower court, however, we see nothing remarkable (much less ambiguous) about Congress' choice of words. Because consecutive and concurrent sentences are exact opposites, Congress implicitly required one when it prohibited the other. This "ambiguity" is, in any event, beside the point, because this phraseology has no bearing on whether Congress meant § 924(c) sentences to run consecutively only to other federal terms of imprisonment.*

***Given the straightforward statutory command, there is no reason to resort to legislative history.*** *Connecticut Nat. Bank v. Germain, 503 U.S. 249, 254 (1992). Indeed, far from clarifying the statute, the legislative history only muddies the*

*waters. The excerpt from the Senate Report accompanying the 1984 amendment to § 924(c), relied upon by the Court of Appeals, reads:*

> *[T]he Committee intends that the mandatory sentence under the revised subsection 924(c) be served prior to the start of the sentence for the underlying or any other offense.*

*S.Rep. at 313-314. This snippet of legislative history injects into § 924(c) an entirely new idea -- that a defendant must serve the five-year prison term for his firearms conviction before any other sentences.* ***This added requirement, however, is "in no way anchored in the text of the statute."*** *Shannon v. United States, 512 U.S. 573, 583 (1994).*[9]

39. **1994 –** *Alvarez (In summary)* - U.S. argues successfully that, **because statute expressly provides for an exception to** "any," that it is not all inclusive, that a "delay" should not preclude a criminal defendant's confession or statement to state police from being used as evidence in federal case commenced thereafter. DOJ can use confession sought to be suppressed by criminal defendant.

> *"Respondent contends that he was under "arrest or other detention" for purposes of § 3501(c) during the interview at the Sheriff's Department, and that his statement to the Secret Service agents constituted a confession governed by this subsection.* ***In respondent's view, it is irrelevant that he was in the custody of the local authorities, rather than that of the federal agents, when he made the statement. Because the statute applies to persons in the custody of "any" law enforcement officer or law enforcement agency, respondent suggests that the § 3501(c) 6-hour time period begins to run whenever a person is arrested by local, state, or federal officers.***
>
> ***We believe respondent errs in placing dispositive weight on the broad statutory reference to "any" law enforcement officer or agency without considering the rest of the statute."*** [10]

40. Thus it can be seen that any rendition of the term "any property" which does not include ALL PROPERTY is inconsistent with the four cases cited above wherein the DOJ argued successfully that "any property" means all inclusively, ALL PROPERTY. There is no basis in law or statutory construction which allows the Secretary to exclude the value of labor from the term "any property" when Congress has not done so. The Secretary, in the Treasury Regulations, makes it clear that the cost is the value of "any money or property" and the Secretary by said regulations makes it clear that the value of labor cannot be excluded.

41. Moreover, the law and the regulations govern what the Secretary or his alleged Delegates can do with regard to the calculation of "Gross Income" as previously cited in 26 USC §§ 83(a), 212, 1001, 1011, and 1012.

> *"The regulations...now govern, and will continue to govern, the abbreviated application process. See Fort Stewart Schools v. FLRA, 495 U.S. 641, 654, 110 S.Ct. 2043, 2051, 109 L.Ed.2d 659 (1990).* ***No matter what an agency said in the past, or what it did not say, after an agency issues regulations it must abide by them."*** *Schering Corp. v. Shalala, 995 F.2d 1103 (D.C.Cir. 1993)*

---

[9] *U.S. v. Gonzales,* 520 U.S. 1, 4-6 (1997)

[10] *U.S. v. Alvarez-Sanchez,* 511 U.S. 350, 357 (1994)

42. It is certain that 26 USC § 83(a) applies to the calculation of an individual's compensation for labor the "excess" of which is to be included in "Gross Income", as can be seen from the following Court rulings:

> *Montelepre Systemed, Inc. v. C.I.R., 956 F.2d 496, 498 at [1] (CA5 1992): "**Section 83(a) explains how property received in exchange for services is taxed**."*
>
> *MacNaughton v. C.I.R., 888 F.2d 418, 421 (CA6 1989): "The Alves court stated that the plain language of section 83 belied this argument because the "**statute applied to all property transferred in connection with the performance of services**" and because no reference is made to the term "compensation." Id. The court further concluded in Alves that "if Congress had intended section 83(a) to apply solely to restricted stock used to compensate employees, it could have used much narrower language." Id. at 481-82. Upon consideration, **we agree with the interpretation advanced by the Alves court and, therefore, join the Ninth Circuit in holding that section 83 is not limited to stock transfers** which are compensatory in nature."*
>
> *Pledger v. C.I.R., 641 F.2d 287, 293 (CA5 1981): "The taxing scheme imposed by Congress more **accurately reflects what taxpayer received as compensation** than a scheme that taxes the taxpayer on merely a portion of the compensation."*
>
> *Alves v. C.I.R., 734 F.2d 478, 481 (CA9 1984): "The plain language of section 83(a) belies Alve's argument. **Section 83(a) applies to all property transferred in connection with the performance of services**. No reference is made to the term "compensation." Nor is there any statutory requirement that property have a fair market value in excess of the amount paid at the time of transfer. Indeed, **if Congress had intended section 83(a) to apply solely to restricted stock used to compensate its employees, it could have used much narrower language**. Indeed, Congress made section 83(a) applicable to all restricted "property," not just stock; to property transferred to "any person," not just to employees; and **to property transferred "in connection with . . . services," not just compensation for employment**. See Cohn v. Commissioner, 73 USTC 443, 446-47 (1979)."*
>
> *Klingler Electric Co. v. C.I.R., 776 F.Supp. 1158, 1164 at [1] (S.D.Miss. 1991): "**Section 83(a) applies to all property transferred in connection with the performance of services**."*
>
> *Robinson v. C.I.R., 82 USTC 444, 459 (1984); The legislative history of section 83 does not require the conclusion that the statute should be applied to tax-avoidance techniques only. To the contrary, the House and Senate reports specifically delineate transactions and transfers to which section 83 was not to apply and **do not exclude from its purview contractual provisions that were not tax motivated**."*
>
> *Cohn v. C.I.R., 73 USTC 443, 446 (1979): "Petitioners rest their entire case on the proposition that Elovich and Cohn and/or Mega were "independent contractors" and not employees of the Integrated and that, therefore, section 83 does not apply to the acquisition of the shares from Integrated. They rely on the legislative history surrounding the statute to support their proposition that section 83 was intended to apply only to restricted stock transferred to employees. **Respondent contends that the words "any person" in section 83(a) encompass independent contractors as well as employees**. We agree with Respondent. . . . We reject petitioner's argument. While restricted stock plans involving employers and employees may have been the primary impetus behind the enactment of section 83, **the language of the section covers the transfer of any property transferred in***

> ***connection with the performance of services*** *"to any person other than the person for whom the services are performed." (Emphasis added.) The legislative history makes clear that Congress was aware that the statute's* ***coverage extended beyond restricted stock plans for employees****. H.Rept. 91-413 (Part 1) (1969), 1969-3 C.B. 200, 255; S.Rept. 91-552 (1969), 1969-3 C.B. 423, 501. The regulations state that that section 83 applies to employees and independent contractors (sec. 1.83-1(a), Income Tax Regs.). There is no question but that, under the foregoing circumstances,* ***these regulations are not "unreasonably and plainly inconsistent with the revenue statutes." Consequently, they are sustained****. (cites omitted)"*
>
> *Concurring with Cohn, Alves, see Centel Communications Co. v. CIR, 920 F.2d 1335, 1342 (CA7 1990). Annotations / Public Law*

43. No Federal and/or STATE 1040 type returns, forms, schedules or worksheets accommodate § 83(a) in any way and therefore it is not possible for any Citizen or Tax Professional to complete a Federal and/or STATE 1040 type return and claim the rightful deductions for the value of one's labor as articulated by Congress in § 83(a). There are no federal and/or STATE returns, forms, schedules or worksheets which will assist any Citizen or Tax Professional to determine the amount of the "excess" which is the ONLY amount to be include in "Gross Income," pursuant to 26 USC § 83(a). All returns, forms, schedules and worksheets incorrectly assume that all compensation is included in "Gross Income" which is contrary to law and a violation of the Citizen's rights as articulated by Congress in § 83(a).

44. Anyone who reads this brief has been duly noticed hereby and anyone who thereafter denies a Citizen any of these rights for the purpose of converting them into a "taxpayer" or to exact amounts from them in excess of that which is provided by law (§ 83(a) included), is engaged in criminal conversion and United States law mandates that any associated Tax Professional or said Citizen, who is denied said rights, file a criminal complaint, pursuant to 18 USC § 4, against all who have participated in said criminal conversion for said violations of the law and denials.

45. Under law, to tax the FMV of services actually rendered, one must be deprived of the provisions of 26 USC §§ 83, 212, 1001, 1011, and 1012. The law (26 CFR 1.83-3(g)) embraces the FMV of labor as a cost ("***value of any money or property paid***"), despite the fact that it is property within which one has no basis. Property within which one has no basis is not excluded from cost under the law.

46. The IRS and the State exclude from cost one's services merely upon the fact that it is property within which one has no basis, but such exclusion is unauthorized under provisions which embrace ALL property as a cost. The IRS and the State must violate §§ 83, 212, 1001, 1011, and 1012 by not restoring the "adjusted basis" and allowing only the amount that remains ("excess") thereafter to be taxed as "realized gain," as required under 26 CFR 1.1001-1(a). To report as gross income the value of personal services the Petitioner must enter a false statement on a 1040 type return in violation of 18 USC § 1001.

**Questions relative to the IRC § 83(a) issue**:

47. Since § 83(a) is applicable to amounts now sought to be included in gross income, it is clear that someone is in violation of the law, but silence abounds. Does it apply, and, if so, how does it operate and how is the one to comply with § 83(a) in the future?

48. Where, under §§ 83 and 1012, and 26 CFR 1.83-3(g), does it provide that only property within which one has a basis is to be recognized as a cost or, that intangible personal property is excluded from that which is cost?

49. If such exclusions alluded to in # 48 above do not exist, can "income tax" approach such property's FMV, as contemplated under §83(a) and the regulations thereunder?

50. In consideration of these provisions, is the FMV of labor (contract value) appropriately termed "gain derived from labor"?

51. Is the FMV of labor excluded from gross income by law? (See § 83, 212, 1001, 1012; 26 CFR 1.83-3(g)). If so, by what authority?

52. Can a Court order the exclusion from cost of property within which one has no basis when such exception to cost cannot be found in statute or in regulation, especially when it constitutes the difference between paying a tax and not even being subject to it?

53. Can the United States claim in one case that "any property" means <u>all</u> property and in another case argue that "any property" lawfully excludes certain things not recorded, mentioned, or manifest in law?

54. Would such accounting offend the holdings in *Monsanto*, *Gonzales*, *Alvarez*, and *Rucker*? If not, upon what basis in law can it not be so offended?