



STATE OF WEST VIRGINIA

Department of Revenue
State Tax Department

Joe Manchin III
Governor

Christopher G. Morris
State Tax Commissioner

July 2, 2008

Lynn G. Stalnaker
P.O. Box 408
Daniels, WV 25832

Legal Log #08-163

Re: Inquiry/request regarding personal income tax refund.

Dear Mr. Stalnaker:

This is in response to your letters, dated April 8, 2008, and June 24, 2008, regarding your West Virginia state personal income tax refund.

Your letter of April 8, 2008 stated that you are due \$216.00 from the state of West Virginia as a personal income tax refund.

Your letter additionally stated in part the following:

Therefore, pursuant to the Constitution of the United States of America, Article I, Section 10, No state shall...make any Thing but gold and silver Coin a Tender in Payment of Debts; (see Att. #1 & #1B) I hereby request the payment of \$216.00 owed to me by the State of West Virginia to be paid to me, not by a "check" from the State, nor in "Federal Reserve Notes", both of which will be worth less in value (of real money) by the time I receive it; but I want to be paid in "Lawful U.S. Dollars" (gold and/or silver dollar coin)—my preference being 216—2008 Silver Eagle Dollar Coins (see Attachment #8 & #8-A). Moreover, to clarify my request, see attachments #3 (Original Coinage Act of 1792), #4 (Bland-Allison Act of 1878) and (Public Law 93-110 of September 21, 1973) Attachment #5. For a historical background on "worthless" paper money, see Attachments #2 (Federalist Papers No. 44; Madison); #6, #7 & #7-A.

I understand that \$216.00 (two-hundred sixteen dollars) would be 216-one dollar coins and will weigh about 15 lbs., so I will pick it up, if you like, at the Capitol or a local West Virginia Tax Office in Beckley, West Virginia.

Your letter of June 24, 2008, stated in part the following:

My last communication was with the Deputy Commissioner Craig Griffith on June 10, 2008, who said they (Tax Department) could not comply with my request and that the State does not pay in gold or silver—he would give my information to the legal department.

Not knowing if, or when, anything will be done, I'm sending you all that same information plus a copy of my tax "audit" (first in 45 years of taxes) and a copy of my refund check. I have not cashed the check—I requested not to be paid in check. Moreover, the check is for two hundred ninety seven dollars (\$297.00), corrected due to the "audit". Therefore, I am now requesting, instead of two hundred sixteen dollars (\$216.00) the amount of two hundred ninety seven dollars (\$297.00) in lawful money (gold and/or silver coin). I will give you the check back at that time!

The Congress of the United States, within its constitutional authority (U.S. Const., Art I, §8), has established federal reserve notes as legal tender on an equal basis with other coins and currencies of the United States. The term "dollar" means money; it means the legal currency of the United States. See 54 Am. Jur. 2d, Money §11.

The issuance of paper money by the federal government is not an attempt to coin money out of a valueless material; it is a pledge of the national credit, and constitutes a promise by the government to pay dollars. It is not an attempt to make dollars. The federal government simply demands that its credit shall be accepted and received by public and private creditors. Under the prerogative of borrowing money on the credit of the United States, and of issuing circulating notes for the money borrowed, the power of Congress to define the quality and force of those notes as currency is as broad as the same power over metallic currency under the right to coin money and to regulate the value thereof. See 54 Am. Jur. 2d §§18, 19.

The above noted position is supported by the following:

31 U.S.C. § 5103. Legal Tender:

"All coins and currencies of the United States (including Federal Reserve Notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties and dues."

31 U.S.C. §5118. Gold clauses and consent to sue:

(a) In this section—

(1) "gold clause" means a provision in or related to an obligation alleging to give the obligee a right to require payment in—

(A) gold;

(B) a particular United States coin or currency; or

(C) United States money measured in gold or a particular United States coin or currency.

(2) "public debt obligation" means a domestic obligation issued or guaranteed by the United States Government to repay money or interest.

(b) The United States Government may not pay out any gold coin. A person lawfully holding United States coins and currency may present the coins and currency to the Secretary of the Treasury for exchange (dollar for dollar) for other United States coins and currency (other than gold and silver coins) that

may be lawfully held. The Secretary shall make the exchange under regulations prescribed by the Secretary.

(c)

(1) The Government withdraws its consent given to anyone to assert against the Government, its agencies, or its officers, employees, or agents, a claim—

(A) on a gold clause public debt obligation or interest on the obligation;

(B) for United States coins or currency; or

(C) arising out of the surrender, requisition, seizure, or acquisition of United States coins or currency, gold, or silver involving the effect or validity of a change in the metallic content of the dollar or in a regulation about the value of money.

(2) Paragraph (1) of this subsection does not apply to a proceeding in which no claim is made for payment or credit in an amount greater than the face or nominal value in dollars of public debt obligations or United States coins or currency involved in the proceeding.

(3) Except when consent is not withdrawn under this subsection, an amount appropriated for payment on public debt obligations and for United States coins and currency may be expended only dollar for dollar.

(d)

(1) In this subsection, "obligation" means any obligation (except United States currency) payable in United States money.

(2) An obligation issued containing a gold clause or governed by a gold clause is discharged on payment (dollar for dollar) in United States coin or currency that is legal tender at the time of payment. This paragraph does not apply to an obligation issued after October 27, 1977.

As can be clearly seen from the above quoted statutory language, the U.S. Congress has the authority to establish paper money as legal tender; and it has in fact exercised such power.

Therefore, your request for payment of your West Virginia state personal income tax refund, in the amount of \$297.00, in currency other than a check or Federal Reserve Notes, is hereby denied.

As you discussed in your June 24th letter, the Tax Department issued a check for \$297 to you, which includes the \$216 refund that you originally requested and an additional \$81 that was determined to be due to you after a review of your tax return. This check may be redeemed for legal United States currency at any financial institution, or other entity, that cashes checks. If you do not wish to cash the \$297 check that was sent to you, that is your choice. Please note that you have six months from the date of the check to redeem it. After that time, you will need to contact the State Treasurer's office to seek payment.

I trust this information will be of assistance to you.

Very truly yours,



Christopher G. Morris
West Virginia State Tax Commissioner