Why the Taxman didn't come
Time Dollars ISBN 0-87857-985-0
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JCT: This is one of the most beautiful books on local currencies ever written. I urge everyone to get it as it will be a valuable addition to any monetary reform library.

Chapter 6

In 1830, John Marshall, then Chief Justice of the United States, decided that it was time, once and for all, to put Missouri out of the business of creating new kinds of money.

The case concerned a rather ingenious scheme that the state had dreamed up to meet its fiscal needs. Missouri had issued "salt certificates" in amounts ranging from 50 cents to $10, based on expected revenues from the state-owned salt springs. The state tried to characterize these as mere "salt coupons," like the ones people clip out of the Sunday papers today. After all, they were ultimately redeemable only in salt. In reality, however, the certificates circulated as money. And the governor was authorized to pledge the state's assets to acquire "a loan of silver or gold" in order to redeem these certificates.

This was not the first time that Missouri had engaged in a monetary experiment. Early in its history, the state had issued "wolf-scalp certificates" and "crow certificates" as rewards for killing wolves and crows in order to protect cattle herds and crops. The wolf-scalp and crow certificates were legal tender in Missouri for purposes of paying taxes.

Wolf scalps had escaped judicial scrutiny. But these salt certificates were more than Chief Justice Marshall, the great Federalist, could swallow. Marshall had authored the landmark decision of Marbury vs. Madison, declaring the Constitution, as interpreted by the Supreme Court, to be the final law of the land. He had reiterated that declaration in a series of other decisions. Having presided over the magnificent edifice of federal supremacy, he was not about to let a puny state mock it with salt certificates.

The question of money was a touchy one to begin with in the early days of the Republic. The Continental Congress that drafted the old Articles of Confederation was run out of Philadelphia by soldiers who had fought under George Washington only to be paid by state governments in worthless IOUs. A major economic depression had resulted from precipitate drops in the value of money that state-chartered banks had issued. The Founding Fathers were understandably leery of paper money, especially when issued by states.

And so, speaking for the court, Marshall reminded the state of Missouri that Article I, Section 8 of the Constitution of the United States gives Congress exclusive powers "to coin money and regulate the value thereof."

MISSOURI LEADS THE WAY

One hundred and thirty five years later, Missouri is at it again. IN the mid-1980s, the state enacted a law to use Time Dollars to provide relief for people who take care of the elderly family members at home. In a sense, Time Dollars are simply updated wolf-scalp or crow certificates - a way of paying citizens for performing a public service. So far, Missouri is the only state to commit its "full faith and credit" to the Time Dollar: if no Time Dollar participant is available to help a person who has earned this currency, the state will provide this help at its own expense.

This time, Missouri went even further. The passage of time has mooted Marshall's early decision: credit cards, state revenue bonds, any number of other devices, have rendered antique the notion that only the federal government can create money. That still leaves the Internal Revenue Service (IRS), however. In 1985, Missouri had the temerity to ask the agency to declare this money exempt from federal income tax.

The IRS is not generally known for generosity where federal revenues are concerned. It is especially wary of basing exemptions on broad conceptual grounds, as opposed to narrow interpretations of the statute. Yet, the IRS has concluded that credits earned under the Missouri law will not be treated as taxable income. It did so not once but three twice - first in a ruling by a regional office on a request from the state of Missouri, the second time, in a "private ruling" by the national office in response to a request from a settlement house in St. Louis.

These rulings apply only to the particular cases involved and might not hold in different circumstances. But they are highly significant nevertheless. At a practical level, they help people designing Time Dollar programs to avoid entanglements with the IRS. (This has been a concern in some social service quarters.)

The reasoning behind the exemption is even more important. Examining Time Dollars through the exacting lens of federal tax law, the IRS lawyers saw some crucial deferences between these and ordinary money that might elude the more casual mind. These differences, in turn, illuminates well as anything that has come along the nature of the social bonds that the Time Dollar movement is seeking to rebuild.

The IRS rulings are all the more remarkable if we recall the economic climate of the early 1980s and the hostility of the IRS toward barter. Unemployment and inflation had both reached double digits. The economy was so low that some economists were calling it a depression. The Federal Reserve had moved to curb inflation by restricting the supply of money, thereby stifling the economy even further. Federal spending on domestic programs was being slashed by a new president, Ronald Reagan. And the United States government was operating on a deficit of a mere $50 billion to $70 billion.

Back in the 1930s, when jobs and money were in short supply, many discovered barter to meet their needs. In the early 1980s, the middle class did the same. Paperbacks proliferated on drugstore counters carrying titles like "The Barter Way to Beat Inflation" and "How to Get on the Barter Bandwagon where CASH is a four-letter word." Barter clubs arose in which members bought and sold services and wares through computerized exchange pools. Several national barter franchises prepared public offerings; Sears, Roebuck and Company created Sears World Trade specializing among other things in barter and countertrade. Magazine articles noted that nearly one-third of international trade was done using barter rather than currency.

THEN THE IRS WOKE UP

Much of this happened because the IRS was asleep to the issue. Then the agency woke up and spoiled the fun. New regulations expanded the definition of barter and required full disclosure of all such exchanges on one's annual tax return. Even worse, credits received through a barter network were determined to be taxable income when received rather than when spent. That is, if someone paid you 2,000 barter credits in exchange for your used car, you were taxed when the credits were added to your account, even if you had not spent them. That made good sense from an accounting standpoint. But it was terrible news to anyone who held nothing except except some credits in a soon-to-be-defunct barter club.

Yet, despite its "jihad" against barter-based tax avoidance, the IRS made an exception for Time Dollars. In March 1985, the regional IRS office in St. Louis ruled that volunteers in a state program who qualified for hours of service by earning service credits would not be taxed on the value of those services. The ruling focused primarily on the charitable nature of the transaction and the public purpose it embodies. PEOPLE WHO RECEIVED THESE SERVICES FROM TIME DOLLAR WORKERS
WOULD HAVE RECEIVED THEM FREE FROM THE STATE ANYWAY. This made the transaction fundamentally different from commercial barter, which is simply another form of a market transaction that might have occurred for cash.

Then in June 1985, the national office of the IRS issued a "private letter" ruling regarding the Time Dollar program in St. Louis, which had been operating for several years. Grace Hill, a local settlement house, had been using Time Dollars to provide housekeeping and babysitting to residents of the community and also to provide more skilled services such as house painting. The computerized bookkeeping operated in the usual way. "When a volunteer performs a service" the ruling noted, the "taxpayer (Grace Hill) credits the hours spent to the volunteer's account and debits the hours to the service recipient's account."

Despite the obvious value of the services and the extensive record keeping involved, the IRS nonetheless concluded that these credits "have no monetary value" and service recipients do not incur a "contractual liability." The agency saw that these Time Dollars are fundamentally different from money. They provide recognition and a form of bonding, rather than a cash reward. "Credits posted to the volunteers' accounts serve merely as a means to motivate the volunteers," the IRS said. "The continued effectiveness of this taxpayers' program depends on the volunteers perceiving the value of their efforts to the community. Taxpayer hopes that knowledge of the hours they provide... will instill pride in the volunteers."

WHY TIME DOLLARS WEREN'T TAXED

The Time Dollar networks are different from commercial barter, the ruling said. They are simply a different form of the things neighbors do for one another. Commercial barter, by contrast, "does not include arrangements that provide solely for the informal exchange of similar services on a non-commercial basis." In commercial barter, the parties are bound by contract, and credits in a barter network are a "cash substitute." Here, by contrast, people who receive a service have no contractual - i.e., legal - obligation to repay. And people who give service get no contractual right to compensation: "The credits merely serve as a means to motivate the volunteers to continue their community service."

This ruling cut through a lot of academic fog that has grown up around the issue. A tax professor who authored one of the leading casebooks on federal taxation, for example, could not fathom how the IRS could deem Time Dollars not taxable. After all, he said, "benefit is benefit."

But the IRS did, and the practical importance of the ruling cannot be overstated. It is hard to imagine people lining up to volunteer, knowing that come April 15th, Uncle Sam was going to tax the Time Dollars they earned - even though they had gotten no money with which to pay those taxes. Even if the IRS valued the credits at only $5 per hour, a volunteer could easily owe several hundred dollars in taxes.

The conceptual basis of the rulings is even more important. The IRS went right to the heart of the difference between Time Dollars and money. The ruling that declared that these exchanges were not commercial barter implicitly recognized a distinction between the market and the nonmarket economy, with the important corollary that exchanges in the nonmarket economy are beyond the scope of the federal income tax laws. Not all exchanges among family members and neighbors are exempt, of course; certain trust arrangements between parents and children, for example, are blatant tax avoidance devices.

But the IRS did not see evidence of this in Missouri's Time Dollar program. It pointed out that, to the contrary, the care in question was charitable in motive and was openly reported to the state of Missouri. There was little danger that respite care syndicates would sweep the nation as a hot new form of tax avoidance.

TRUST RULES ALL EXPECTATIONS

The St. Louis ruling is even more impressive because it fleshes out a distinction that seems to elude most tax lawyers. The ruling noted that participants earning credits had no "contractual" rights to anything in exchange for their efforts. (The St. Louis program was not backed by the state.) Any expectations or increased sense of security people feel rests on their trust in the program, and particularly in their fellow members. They can't go to court to demand service from anyone,no matter how many Time Dollars they hold, because trust is all there is.

This goes to a fundamental different between contractual obligations and dealings between friends and family. With the latter, legal rights are of limited use. You have to choose between asserting them and maintaining the underlying relationship. Resorting to the courts means you are asserting the rights of a stranger against strangers, and often, that you are operating in a context of monetary values rather than ones of trust.

Shimone Bergman, regarded as the "father" of gerontology in Israel, responded with a glimmer of recognition when he heard a description of Time Dollars. Perhaps one of the earliest precedents, he said, is found in the scriptural commandment "Honor thy father and thy mother that they days may be long upon the land which the Lord thy God Giveth thee." Considering that Moses's followers would wander 40 years in the desert before being permitted to enter that land, the promised exchange was at best somewhat speculative in nature. A court would have thrown it out for want of mutuality or on any number of other grounds as altogether lacking in the requisite specificity.

Families and communities operate on a standard of reciprocity. That is a moral norm, not a legal one; the mechanism of enforcement is not the courts, but the sanctions that operate normally between people. The person who takes and takes and takes becomes, at some point, like the child who cried "wolf" once too often. Anthropologists tell us that the ostracism practiced by "primitive" legal systems may be more powerful than the forms of punishment to which "civilized" society resorts when it puts miscreants in prison and turns them into polished criminals.

THE GUARANTEE: GOD FAITH AND BEST EFFORT

Time Dollars draw from an ethical tradition, rather than the legal and commercial tradition that lies behind the Internal Revenue Code. The ethical norm was succinctly summed up centuries ago by Rabbi Ben Azzai, who said: "The reward of a good deed is a good deed." The only real guarantee is the good faith and best effort of the individuals and organizations involved.

Indeed, there can be no "contractual remedy" that substitutes for membership in family and community. These provide a kind of all-purpose insurance and all-purpose safety net that no commercial company would underwrite and no government could afford. That is the measure of security we have lost; that is the measure of genuine security that Time Dollars seeks to reestablish.

Income, said the IRS, belongs in the world of the market; altruism, empathy, and reciprocity belong to another world, which by and large is off-limits to the IRS. To be sure, IRS lawyers would warn that these regional rulings are not binding precedent. The possibility remains that as Time Dollar systems expand, and as the IRS feels continuing pressure to increase federal revenues to avert the need to raise tax rates, the agency could have a change of heart.

If the IRS really wants to decree that retirees will be taxed for driving their neighbors to the doctor, one is tempted to respond cheerily, "See you on Capitol Hill." But Congress wouldn't even have to act. This do-it-yourself currency even includes a do-it-yourself defence against the IRS.

People earning Time Dollars could simply give them to the tax-exempt membership organization sponsoring the program. They would in effect be saying, we trust the norm of reciprocity more than the world of contract. Should we ever be in need, we would rather place our trust in each other.

If you, the IRS, insist on distorting what we are doing by perverting Time Dollars into a taxable quid pro quo transaction, then we willingly surrender any "contractual right" valued by the market mentality. That part we give to ourselves is not for sale. We have an inalienable right to the private world of the family, of extended family, of community. We will render unto Ceasar,what which is Ceasar's. But no more. There is another domain you may not touch.