

## To the Bag

of the arbitration of sportsmen<sup>8</sup> (in the form of public opinion) in such a case would have been just as certain in New York in the 1800s as it is in Belarus today.

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## WHAT IS THE INCOME TAX ON?

To the *Bag*:

I was very much interested to read Erik Jensen's discussion of the role of prepositions in the Constitution (14 GREEN BAG 2D 163 (Winter 2011)), and in particular his argument that a capped tax on income is unconstitutional because it is not a tax "on" incomes, as permitted by the Sixteenth Amendment.

I take it I can stop paying Social Security now?

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## ACCESS TO EAGLES

To the *Bag*:

As a former resident of that land "out west," I enjoyed reading Professor Wexler's account of his trip to the National Eagle Repository.<sup>9</sup> However, the article contains an important legal error. Wexler asserts: "Applying to the Repository is the only way to legally get hold of any part of either eagle in the United States."<sup>10</sup>

This is not true. As the Tenth Circuit noted in *United States v. Winslow Friday*, "Native Americans whose needs cannot be satisfied

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<sup>8</sup> *Pierson*, 3 Cai. at 180 (Livingston, J., dissenting) (the case "should have been submitted to the arbitration of sportsmen, without poring over Justinian, Fleta, Bracton, Puffendorf, Locke, Barbeyrac, or Blackstone, all of whom have been cited: they would have had no difficulty in coming to a prompt and correct conclusion").

<sup>9</sup> Jay Wexler, *Eagle Party*, 14 GREEN BAG 2D 181, 183 (2011).

<sup>10</sup> *Id.* at 182.

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by the Repository may apply for a permit to ‘take’ a live eagle.”<sup>11</sup> Indeed, the Court dealt with that permitting system at length. Mr. Friday was criminally prosecuted for killing a bald eagle to use in a Northern Arapaho Sun Dance and attempted to defeat that prosecution on religious-freedom grounds, claiming that eagle parts from the Repository were inadequate for his religious needs. The availability of an alternative to the Repository was one of the Court’s reasons for permitting the prosecution to proceed.<sup>12</sup>

One of Mr. Friday’s complaints was that the permitting system for bald eagles was “not widely known,” and he even alleged that employees of the Fish and Wildlife Service were unaware of it.<sup>13</sup> The *Bag* should not perpetuate the error.

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## BIG NUMBERS

To the *Bag*:

After having finished reading the most recent issue of the *Green Bag*, I came to the last page, which invites readers to begin or renew a subscription. I had a nagging feeling that my subscription might be about to lapse, so I took more careful notice of this subscription information. Readers can subscribe for a period of one, two, three, or four years. Some journals and magazines, rags that they are, provide a discount for readers if they buy a multi-year subscription, but not the *Bag*. The *Bag* increases the price if a reader buys a multi-year subscription. One year is \$40, two years is \$80, three years is \$120, but four years is \$200. Why would the fourth year cost \$80, twice the rate of the first three years? A few options present themselves:

(1) The *Bag*, staffed as it is by those studied in the law, simply miscalculated the price for a four-year subscription and is providing further evidence for the maxim that lawyers are bad at math.

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<sup>11</sup> 525 F.3d 938, 944 (10th Cir. 2008) (citing 16 U.S.C. § 668a & 50 C.F.R. § 22.22).

<sup>12</sup> *Id.* at 953-955.

<sup>13</sup> *Id.* at 945, 957-958.