

16th Amendment Clarification!

16th Amendment to the U.S. Constitution reads, **"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."**

The 16th Amendment does NOT say, "without apportionment." The "apportionment" that was eliminated was the "apportionment among the several States," Up until the passage of the 16th Amendment, the congress could only levy a direct apportioned tax on the "several States" and those States were the source of "income." The proof of that is in the Pollock (1894), Brushaber (1916), and Stewart (1937) cases, when all those courts ruled that all direct taxes must be apportioned. The rule of "apportionment" was never abandoned in any of those cases, but was most vociferously reaffirmed in the STEWART case in 1937, 24 years after passage of the 16th Amendment.

BRUSHABER (1916) and STEWART (1937) corrected some assumptions that came out of HYLTON. Those can be seen in the following rulings:

"Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended, and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case, because of statements made in the opinions in that case, it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiation or challenging the ruling in the Pollock Case that the word 'direct' had a broader significance, since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution..."Brushaber v Union Pacific, 240 US 1, 19 (1916).

The 16th Amendment overturned the Pollock Decision by way of a constitutional amendment allowing income taxes on net income from real estate and personal property to be levied according to the rule of uniformity instead of the rule of apportionment.

"Indeed, in light of the history which we have given and of the decision in the Pollock Case, and the ground upon which the ruling in that case was based, there can be no escape from the conclusion that the (16th) Amendment was drawn for the purpose of doing away from the future with the principle upon which the Pollock Case was decided." Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 18 (1916).

"We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; (That of being able to tax people outside direct and indirect, as they are being taxed today - JTM) that is, a power to levy an income tax which, although direct, should not be subject to the regulations of **apportionment** applicable to all other direct taxes. And the far-reaching effect of this **erroneous assumption** will be made clear by generalizing the many contentions advanced in argument to support it..." I>Brushaber v. Union Pacific R. Co., 240 U.S. 1, 11 (1916)

Here the Brushaber Court states that it is an erroneous assumption to conclude that there is a hitherto unknown form of taxation. Brushaber confirms that all taxes fall into the four authorized taxation powers: direct apportioned taxes, and indirect by uniformity - excises, imposts, and duties. Was the apportionment requirement abrogated? It is impossible for the Court to change the Constitution. Did the amendment do away with the apportionment requirement? The Brushaber Court said that such a result would bring irreconcilable and radical and destructive changes in the Constitution.

It was reaffirmed in BRUSHABER and in STEWART that all taxes must of necessity, fall under the two all-embracing categories: direct and indirect. Read the following paragraph from Brushaber carefully:

"But it clearly results that the proposition and the contentions under it -(the 16th Amendment), if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the (16th) Amendment exempting a direct tax from apportionment into **irreconcilable conflict** with the general requirement that **all direct taxes be apportioned**. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion." *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1, 11 (1916)

"Indeed, from another point of view, the Amendment demonstrates that no such purpose was intended, and on the contrary shows that it was drawn with the object of maintaining the limitations of the Constitution and harmonizing their operation. We say this because it is to be observed that although from the date of the Hylton Case, because of statements made in the opinions in that case, it had come to be accepted that direct taxes in the constitutional sense were confined to taxes levied directly on real estate because of its ownership, the Amendment contains nothing repudiation or challenging the ruling in the Pollock Case that the word 'direct' had a broader significance, since it embraced also taxes levied directly on personal property because of its ownership, and therefore the Amendment at least impliedly makes such wider significance a part of the Constitution..."

Thus, instead of abrogating the necessity of apportionment, Brushaber reaffirmed the necessity for apportionment just as was stated in POLLACK.

Now, if you didn't carefully read the above paragraph from Brushaber, you might have missed a very important statement: ***"the tax authorized by the Amendment, being direct."*** And didn't the Court state in BRUSHABER (1916) and confirmed in CHAS. C. STEWARD MACH. CO. v. DAVIS, 301 U.S. 548 (1937) - 24 years AFTER the so-called ratification of the 16th Amendment): ***"If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty."***

The understanding of the clause, ***"collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration"***, can only be seen as a reasoned ruling by the High Court if all these other propositions are held to. First, the Amendment did away with the requirement of ***apportionment among the several states*** and did away with the requirement of ***census or enumeration***. The key to understanding how the Court's rulings were perfectly logical and without manifest flaw, is the Amendment's "whole purpose," i.e., to relieve the necessity of source from direct apportioned taxes.

BRUSHABER: "but that the whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived."

If the tax is apportioned, it is direct, and it therefore is relieved from the necessity of requirement of "sources," i.e., the several states. The Amendment DOES NOT relieve a direct tax from the requirement of "apportionment" when imposed on an individual. That is a false assumption that has long been carelessly put forth by the establishment. The requirement to apportion among the several states, was dismissed by the 16th

Amendment, and direct apportioned taxes could henceforth be levied on individuals directly, when apportioned.

"Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons..." POLLOCK v FARMERS LOAN & TRUST CO., 157 US 429, 436 - 441 (1895).

In EISNER v MACOMBER, 252 US 189, 205 - 206 (1920), among the many other consistent rulings, the High Court confirmed that the effects and limitations must be maintained.

"The 16th Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."

Some have also made arguments that there is some other taxing power that does not fall under the two all-embracing categories, but that was rejected in BRUSHABER (1916) and STEWART (1937).

"Although there have been, from time to time, intimations that there might be some tax which was not a direct tax, nor included under the words 'duties, imposts, and excises,' such a tax, for more than 100 years of national existence, has as yet remained undiscovered..."

In any case, considering the above rulings, it could hardly be argued that the 16th Amendment did away with "apportionment requirement" on direct taxes or affected any thing other than relieve direct apportioned taxes from the sources (the states).

So there remains left one other possibility; that the tax levied on the individual is an excise tax. It could hardly be argued that it might be an Impost or Duty.

FLINT v STONE TRACY, 220 US 107, 151 - 152 (1911):

"Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' Cooley, Const. Lim. 7th ed. 680."

The Court accepted the definition of "excise" as was listed in "Cooley, Const. Lim. 7th ed. 680." A person or his property does not fall under these definitions of an excise.

Knowlton v. Moore, 178 US 41, 47 (1900), "Direct Taxes bear upon persons, upon possessions and the enjoyment of rights."

Brushaber also addressed that contention.

Brushaber at page 16, "Moreover, in addition, the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class [240 U.S. 1, 17] of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent"

The Brushaber Court ruled that the adoption of "Direct Taxation" was adopted to prevent direct taxation of individuals and property of individuals.

The excise tax on corporate "income" was passed in 1909 and avoided the necessity of "apportionment" by taxing, not the income of the corporation, but the privilege of incorporation, measured by size of the corporate income. The "privilege" was a legitimate object of taxation. Private firms or individuals did not come under that tax on the "privilege".

"In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the 14th Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals." FLINT v. STONE TRACY CO., 220 U.S. 107, 162 (1911).

This ruling on the corporate excise tax was not affected by the 16th Amendment since the Amendment only applied to direct taxes when they were apportioned.

***"As has been repeatedly remarked, the corporation tax act of 1909 was not intended to be and is not, in any proper sense, an income tax law. This court had decided in the Pollock Case that the income tax law of 1894 amounted in effect to a direct tax upon property, and was invalid because not apportioned according to populations, as prescribed by the Constitution. The act of 1909 avoided this difficulty by imposing not an income tax, but an excise tax upon the conduct of business in a corporate capacity, measuring, however, the amount of tax by the income of the corporation. Flint v. Stone Tracy Co. 220 U.S. 107 , 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312; McCoach v. Minehill & S. H. R. Co. 228 U.S. 295, 57 L. ed. 842, 33 Sup. Ct. Rep. 419; United States v. Whitridge (decided at this term, 231 U.S. 144 , 58 L. ed. --, 34 Sup. Ct. Rep. 24."* STRATTON'S INDEPENDENCE, LTD. v. HOWBERT, 231 U.S. 399, 414 - 415 (1913).**

Two years after the passage of the Amendment, the Court also stated that the legislature cannot infringe on contracts without violating the letter and spirit of the Constitution. The Amendment would need to be viewed in light of such a ruling.

The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer, but also his associates." COPPAGE v. STATE OF KANSAS, 236 U.S. 1, 23 -24 (1915).

The radical confusion and destruction of the Constitution has thus come to pass as the BRUSHABER Court warned. We have millions of lawyers but are left without the "rule of law".

BRUSHABER v UNION PACIFIC R. CO., 240 US 1, 11 (1916): "But it clearly results that the proposition and the contentions [240 U.S. 1, 12] under it, if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. Moreover, the tax authorized by the Amendment, being direct, would not come under the rule of uniformity applicable under the Constitution to other than direct taxes, and thus it would come to pass that the result of the Amendment would be to authorize a particular direct tax not subject either to apportionment or to the rule of geographical uniformity, thus giving power to impose a different tax in one state or states than was levied in another state or states. This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must

have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion."

I ask you to also consider the logical impossibilities inherent in some assumptions that often are made.

1) If the Supreme Court ruled in several cases that the 16th Amendment granted no new taxation powers to the federal government (in one case, even the government made such admission), and brought no new subjects under the taxing authority of the federal government, then it could not be said that the 16th Amendment was the source of authority to claim that every individual was newly subjected to a direct un-apportioned tax. It could, however, be legitimately claimed that the 16th Amendment authorized a direct apportioned tax, relieved of the requirement of "sources" (the several states).

2) If, as the Supreme Court has ruled, that no new subjects were brought under the taxing powers, ("... It manifestly disregards the fact that by the previous ruling it was settled that the provisions of the 16th Amendment conferred no new power of taxation." *Evans vs. Gore*, 253 US 245, 263 (1920) and, "It was not the purpose or effect of that Amendment to bring any new subject within the taxing power." *Bowers vs. Kerbaugh-Empire*, 271 US 170, 174 (1926)) then it would be a logical impossibility that millions of new wage earners or non-incorporated business (See *Flint v. Stone Tracey*, 1911) were newly brought under the taxing powers by the 16th Amendment.

Material below is by Phil Hart, *Constitutional Income: Do You Have Any?* page 10, (Alpine Press, 2001).

Fact #1: "In examining the history of the debate and ratification of the 16th Amendment, this book will show that there is no evidence upon which the government can rely for their claim that the American People desired to have their wages and salaries taxed. No evidence can be found in the law journals of the time, not in the journals on political economy or economics, not in the Congressional Record nor other Congressional documents, nor in any of the newspapers of record of the time. In other words, the government's position that wages and salaries equals income within the meaning of the 16th Amendment is **'wholly without foundation.'**"

Fact #2: A tax on wages payable by the wage earner is a Capitation Tax. So says the premier authority on the issue, Adam Smith author of the timeless work *Wealth of Nations*. Ibid. pp. 141-145.

Fact #3: Capitation Taxes are direct taxes and are required by the Constitution to be apportioned among the 50 States. The 16th Amendment had nothing to do with Capitation Taxes. Ibid. pp. 250 - 253.

Fact #4: In the few hours just prior to the Senate's passage of the 16th Amendment the morning of July 5, 1909, the Senate twice by vote rejected two separate proposals to include direct taxes within the authority of the 16th Amendment. Ibid. pp. 193-200.

Fact #5: In briefs and argument before the Supreme Court in the case of *Brushaber v. Union Pacific Railroad*, both Brushaber and the Government claimed that the 16th Amendment provided for a direct tax exempted from the Constitutional apportionment rule. The High Court called this claim an **"erroneous assumption...wholly without foundation."** Ibid. pp. 204-210.

Fact #6: Just weeks after the Brushaber Case was decided, Mr. Stanton, in the case of *Stanton v. Baltic Mining Co.* again claimed (35 times) that the 16th Amendment created a new class of constitutional tax, that being a direct tax exempted from the apportionment rule. The High Court said in this case that the 16th Amendment created **"no new tax."** Ibid. pp. 212-220.

Fact #7: In the *Stanton and Brushaber Cases*, the Supreme Court ruled correctly by excluding direct taxes from the 16th Amendment. The intent of the American People and that of Congress was never to directly tax

the American People, but only to tax income severed from accumulated wealth. Ibid. pp. 244 - 270.

Fact #8: When the Supreme Court stated in the *Eisner, Stanton, and Doyle Cases* that "Income may be derived from capital, or labor or from both combined" all these cases dealt with corporations and had nothing to do with the "Are wages income?" question. Ibid. pp. 239-244 and 272-274.

Fact #9: The genesis of the 16th Amendment was the income tax plank of the Democrat Party's Presidential Platform of 1908 which clearly reveals the intent of that Amendment: "We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportional share of the burdens of the federal government." Ibid. p. 48.

Fact #10: There is not, and never has been, any delegation of authority from **We the People** to the government for the collection of an unapportioned direct tax on the wages and salaries of the American People. It has been a maxim of English Law since the Magna Carta of 1215, that the People must consent to all taxation. **"We are being taxed without our Consent!"**

Conclusion:

The IRS is guilty of the following minimum illegal activities:

- 18 U.S.C. 241: Conspiracy against rights. Collusion by all of the revenue agents to interfere with the First Amendment, free speech, right to assemble, and right to petition our government.
- 18 U.S.C. 242: Deprivation of rights under the color of law. I have clearly and repeatedly stated that I am being forced, if I comply with the IRS' demands, to go contrary to my religious beliefs by lying, and personally committing fraud.
- 18 U.S.C. 872: Extortion by officers or employees of the United States.
- 18 U.S.C. 876: Mailing threatening communications. This includes all the threatening notices regarding levies, liens, and idiotic letters that refuse to justify why they think I am liable for income tax.
- 18 U.S.C. 880: Receiving the proceeds of extortion. Any money collected from Americans through illegal enforcement actions and for which the contributors are not "liable" under the law is extorted money, and the IRS is in receipt of the proceeds of illegal extortion.
- 18 U.S.C. 1581: Peonage, obstructing enforcement. They are obstructing the proper enforcement of the tax laws, which require that they respect those who choose NOT to volunteer to participate in the federal donation program identified under subtitle A of the I.R.C.
- 18 U.S.C. 1583: Enticement into slavery. They are trying to enlist me to rejoin the ranks of other peons who pay taxes they aren't demonstrably liable for, which amounts to slavery, plain and simple.
- 18 U.S.C. 1589: Forced labor. Being forced to expend my personal time (valued at 100 silver dollars per hour and amounting to date of approximately 500 hours since 1980) responding to IRS demands for 1040 forms under the color of law, requesting answers to volumes of questions, (which have yet to be answered) answering the IRS' frivolous notices and other correspondence, and paying taxes on my labor that I am not liable for. (total taxes extracted fraudulently since 1980 unknown at this time, not counting interest and civil and criminal penalty.)
- It is another violation of law for the IRS to be using the U.S. Mail system to commit fraud.

TITLE 18

CHAPTER 63 1341

1341. Frauds and swindles

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Whoever, having devised or intending to devise any scheme or artifice **to defraud, or for obtaining money or property by means of false or fraudulent pretenses**, representations, or promises, or to

sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, **places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service**, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, **shall be fined under this title or imprisoned not more than 20 years, or both.** If the violation affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

TITLE 18

CHAPTER 63 1349

1349. Attempt and conspiracy

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Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Given the above IR Code discussion, case law, Congressional record, and laws violated, is it any wonder that Americans of average intelligence are questioning their legal and constitutional requirements to pay "income" taxes? All these issues and more have been presented respectfully, over the past 5 years, to the IRS, the President, the Vice President, every member of the House and Senate, the U.S. Attorney General, many State AG's, the media, including Rush Limbaugh, Bill O'Reilly, civil and religious leaders and countless tax "experts" and there have been NO answers forthcoming to date.

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