

03/08/2013

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Houghton Mifflin Harcourt
9400 South Park Center Loop
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RE:

The Americans:
Reconstruction to the 21st Century
ISBN 978-0-547-49117-2

I wish to call your attention to some serious errors in the above mentioned textbook published by your company:

In the review chapter where it discusses the Constitution of the United States, the text states that language which is no longer in effect is crossed out.

On page 84, in Article 1, Section 2, Clause 3, the words "... and direct Taxes..." is crossed out. This is incorrect. As will be explained, direct Taxes must still be apportioned among the several States. This has never changed.

On page 89, in Article 1, Section 9, Clause 4, the words "...or other direct , Tax..." and "...unless in Proportion to the Census or Enumeration herein before directed to be taken." are also incorrectly struck out as no longer applicable.

On page 100, the text incorrectly states that Amendment 16 modifies Article 1, Section 9. This is also untrue. In the sidebar "Constitutional Insight" it says that income tax is a direct tax, when the truth is that it is excise tax.

These errors seem to stem from widely held misconceptions of the meaning and implications of the 16th Amendment to the Constitution of the United States, a general ignorance of the Supreme Court decisions regarding it, the nature of the income tax itself, and the apparently deliberate promotion of these misunderstandings by the beneficiaries of the income tax.

Following the ratification of the 16th Amendment, the Supreme Court addressed the new amendment in *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (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 is, a power to levy an income tax which, although direct, should not be subject to the regulation 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 in argument to support it..."

“But it clearly results that the proposition and the contentions 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.”

Here the Court was pointing out that the 16th Amendment did not modify Article 1, Section 9. (To do so would require that it specifically stated that modification, as all other repeals or modifications to portions of the Constitution do.) The Amendment, therefore, cannot be construed to be in conflict with, nor to modify, other provisions of the Constitution, and has no effect on their meaning.

Much of the confusion surrounding the 16th Amendment is founded in reverse logic based on an erroneous conclusion: that private earnings or other private gains which are not the result of federally granted privilege are subject to federal taxation; and thus the 16th Amendment must provide that they are. Neither the former nor the latter are true:

“The terms ‘excise tax’ and ‘privilege tax’ are synonymous. The two are often used interchangeably” American Airways v. Wallace 57 F.2nd 877,880

“The right to follow any of the common occupations of life is an inalienable right...” Butcher’s Union Co. v. Crescent City Co., 111 U.S. 746 (1883)

“Since the right to receive income or earnings is a right belonging to every person, this right cannot be taxed as privilege.” Jack Cole Company v. Alfred T. MacFarland, Commissioner, 205 Tenn. 694,337 S.W.2nd 453 Supreme Court of Tennessee (1960)

“The income tax is not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax.” Morse Hubbard. Treasury Department legislative draftsman. House Congressional Record March 27th 1943, Page 2580.

It should be clear from the above that the tax on “income” referred to in the 16th Amendment is an excise, not a direct, tax on special privilege, the value of which is measured by the gains “derived” from the privilege. Since it is an excise tax on privilege, it is an indirect tax and not subject to regulation of apportionment. The fact that a vast majority of Americans mistakenly believe that their private earnings are subject to the tax, and unwittingly and unnecessarily pay it, does not change the actual nature of the income tax, nor the meaning of the 16th Amendment.

The 16th Amendment merely closed a “loophole” opened up by the U.S. Supreme Court in Pollock v. Farmer’s Loan & Trust, 157 U.S. 429 and 158 U.S. 601 (1895).

“The Brushaber court also seizes the opportunity reaffirm the core element of the “income” tax by pointing out that the *only* way to square the Sixteenth Amendment with

Article 1, Sections 2 and 9 of the Constitution was through a fixed, customized definition of what had been a legal term and was now a Constitutional term; “income”. Because a tax on “income” is *necessarily* an excise, whatever is thus taxed as “income” MUST be confined to such things to which an excise can properly be applied. As the court puts it, taxation on “income” is,

‘...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, in which case the duty would arise to disregard form and consider substance alone, and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it.’”

-Cracking The Code / The Fascinating Truth About Taxation In America, by Peter Hendrickson

The 16th Amendment only applies to gains of type already taxable, (federal privilege), without regard that they derive from the ownership of private property, such as stock investments in federal instrumentalities, as in the Pollock case.

“The Sixteenth Amendment, although referred to in argument, has no real bearing and may be put out of view. As pointed out in recent decisions, it does not extend the taxing power to new or excepted subjects, but merely removes all occasion, which otherwise might exist, for an apportionment among the several states of taxes laid on income, whether it be derived from one source or another.”

It is my hope that you understand that there is nothing “controversial” about this subject.. There is only correct information and incorrect information. The information I have provided you with is correct. Regrettably, the information contained in your textbook is incorrect.

Inasmuch as an embedded misconception of what the income tax really is can disastrously compromise the financial futures of impressionable high school students, it is imperative that you recall all of these textbooks, destroy them, and reissue them with the appropriate corrections.

I would very much like to know who the contributor is who provided the content in the textbook to which this letter refers. Please return that information to me at the address at the top of this letter. Thank you.

Sincerely,

Barry Sullivan



HOUGHTON MIFFLIN HARCOURT

Date: April 4, 2013

To: Barry Sullivan
1531 Washington Ave. 5A
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From: Ursula Szwaast
Executive Editor
Houghton Mifflin Harcourt
909 Davis Street
4th floor
Evanston, IL 60201

Re: *The Americans: Reconstruction to the 21st Century*

We appreciate your comments regarding alleged errors in the Constitution section of *The Americans: Reconstruction to the 21st Century*. We will evaluate the product, and if we find any inaccuracies, we will make the necessary changes at our earliest opportunity.

Thank you for your input.

Sincerely,

Ursula Szwaast

05/08/2013

Barry Sullivan
1531 Washington Ave. 5A
St. Louis, MO 63103

Ursula Szwest
Executive Editor
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RE:
The Americans
Reconstruction to the 21st Century
ISBN 978-0-547-49117-2

Dear Ms. Swast:

Thank you for your response to my letter advising you of substantive historical and legal errors in the above referenced text. (Copies of both my letter and yours are enclosed for your convenience.)

Of course I understand that your research into the errors I brought to your attention may take some time. Please note, however, that in my letter I also requested the identity of the contributor who provided the content to which my letter referred. I should hope that that information is readily available to you.

Please provide me with that information as soon as possible. It is critically important that we determine the cause of this misrepresentation of our Fundamental Law.

I would also appreciate a list of all the schools that have used these texts, so they may be notified to provide their students with the corrected information.

Thank you for your help in this matter.

Sincerely,

Barry Sullivan