

The Fascinating Truth About The 16th Amendment

The income tax is just an excise; capitations still require apportionment; and you've been taken to the cleaners.

Introduction

AS THE FIRST AMERICAN IN HISTORY to secure a complete refund of all federal income taxes withheld-- including Social Security and Medicare taxes-- and the author of several books that have led to [many tens of thousands of other American men and women getting all THEIR money back year after year since 2003](#), I imagine I'm the last person from whom you'd expect to hear praises of the income tax. But that's what you're hearing.

The fact is, the income tax is not only a Constitutional tax, it is also a very desirable tax. Applied in strict adherence to its statutory design, the income tax is benignly-limited in scope. It is also a fit mechanism by which those who make money from the exploitation of public resources return to the common purse a portion of their private profits.

In this short paper, I am going to show you what the income tax really is and on what it really falls. I'm also going to show you how the tax has come to be widely misunderstood and how, since FDR's third term as president, that misunderstanding has been systematically cultivated and exploited by an insatiable state increasingly impatient with any level of restraint.

TO PUT IN A NUTSHELL what you are about to learn, the "income" tax is and always has been an excise on gains from certain federally-connected activities in which most Americans do not engage in meaningful (taxable) amounts, if at all. The law says this plainly, if only in places not commonly seen by most people.

Unfortunately, most Americans have been successfully conditioned over the last 75 years to believe the tax applies to all economic activity. Concurrently, most Americans have been induced to report payments of all kinds to government tax agencies using forms such as W-2s and 1099s which are actually prescribed-- again, in places most people don't know to look-- exclusively for the reporting of federally-connected tax-relevant payments.

These reporting-form allegations are taken as true if unrebutted, and it is on that basis that the income tax is ultimately applied, both to those who *have* engaged in taxable activities and those who *have not*, but aren't aware of the need to rebut the erroneous reporting-form allegations to the contrary. Because of the way this has all been designed, put in place and maintained, for most folks the "income tax" could be better called the "ignorance tax".

I realize that what I've just described sounds as unlikely as the proposition that everyone's emails and phone calls were being systematically vacuumed-up by the government without warrants would have sounded a few years ago. Please suppress your skepticism for the moment and indulge your curiosity (and don't forget that [thousand-plus-high stack of complete refunds](#), Social security taxes and all, that you looked at a few moments ago, which you also would have found very unlikely indeed).

Just read what follows. You'll end up recognizing the truth.

PLEASE READ CAREFULLY AND THOROUGHLY! In particular, click on links in the text such as those for "apportionment", "excise" and "capitation". Even if you are a legal specialist, I assure you that the legal meanings of these Constitutional terms are not what you think, just as the Constitutional term "income" doesn't mean what you think it does. You'll find something very worthwhile, and often very important, at every other link within the text, as well.

Read the "NOTES" at the end of the paper, also. Like the linked materials, the notes contain important documentation of everything you'll have read in the main paper, and will be very intriguing and entertaining to any legal scholar and historian, as well.

Enjoy.

The Fascinating Truth Versus The Comforting Myth

"The great enemy of the truth is very often not the lie-- deliberate, contrived and dishonest-- but the myth, persistent, persuasive and unrealistic. Belief in myths allows the comfort of opinion without the discomfort of thought."

-John F. Kennedy

"All governments are run by liars and nothing they say should be believed."

-I. F. Stone

MY FRIEND, ALL YOUR LIFE YOU'VE BEEN TOLD THAT THE 16TH AMENDMENT was a transformational event in the history of the United States Constitution by which an [unapportioned](#) direct federal tax on "all that comes in" was authorized. You've been told that the amendment reversed the preceding 137-year-old Constitutional tax structure prohibiting such taxes-- under which the American people had grown to be the freest, most prosperous, and most optimistic people in the history of the world-- in favor of a radically-different structure under which the scandal-ridden and deeply-distrusted denizens of Washington, DC were granted carte blanche to reach directly into every wallet, be it that of a Wall Street tycoon or that of the average working stiff.

Explanations as to why the rich and happy Americans of the early 20th Century would do such a thing to themselves have always been vague-- they typically amount to something about a populist or progressive impulse that swept the country in favor of sticking it to the "Robber Barons". Missing is any reason why such an impulse would embrace a universal tax reaching not just the robber barons, but their alleged victims in the working class, as well (along with every little shopkeeper, every mid-level success-story working out the American dream, and everyone else, too).

Also missing from these stories is any explanation of why the several states would ratify such a tax, under which they would inevitably lose power and significance in favor of their federal competitor. Further, these stories leave out the fact that there already WAS an income tax on the books and still in force at the time of the 16th Amendment, which had been successfully deployed over the preceding 52 years without Constitutional problem, save for a single instance in which the US Supreme Court had taken issue with its application to merely two single varieties of realized income.

These stories don't mention that, in fact, huge portions of our modern body of income tax law pre-date the 16th Amendment, even though this is plainly stated in [the preamble to the 1939 Internal Revenue Code](#), and even though Congress publishes [a comprehensive derivation table](#) explicitly identifying the [pre-16th-origins](#) of these still-current statutes.

The fact is, an awful lot is left out of these stories purporting to explain the seemingly inexplicable decision of the prosperous American people of the early 20th Century to chuck a system that had served them so well for so long-- *because they're just stories*. They're fiction, so they don't have to make sense. Those telling these stories want you to believe otherwise for reasons of their own, but the truth is, the 16th Amendment did nothing these story-tellers want you to imagine it did. Instead, the amendment merely overruled a Supreme Court decision that had briefly interrupted the application of the already-long-standing tax (the twice-heard case of *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429, and 158 U.S. 601, (both 1895)), while making no changes to its pre-amendment nature.

The Income Tax Was Established As An Excise On Privilege

From its inception the "income tax" has been an [excise](#) that applies only to gains from the profitable exercise of federal privileges (and therefore needn't be apportioned), as the *Pollock* court itself noted (here in Justice Field's separate concurring opinion):

"...in Springer v. U. S., 102 U.S. 586 , it was held that a tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional."

[Pollock v. Farmer's Loan & Trust, 157 U.S. 429 \(1895\)](#)

Nonetheless, in its *Pollock* ruling, the court embraced an argument that [when applied to excisable gains realized in the form of dividends and rent](#), the "income" tax was transformed into a property tax on the personal property sources (stock and real estate) from which the gains were derived. The tax on these fruits, said the court, amounted to a tax on the trees (even though the analogy is less than perfect, since the thing really being taxed is neither the fruit *nor* the tree, but rather the privileged activity that produced the "fruit", which might be described as "using government fertilizer to make one's orchard flourish").

It's important to note that the Pollock court ONLY applied its tree/fruit/property-tax-not income-tax reasoning to the application of the tax to rent and dividends. As the court put it in [its final ruling](#) (with emphasis added):

"The tax imposed by sections 27 to 37, inclusive, of the act of 1894, so far as it falls on the income of real estate, and of personal property [dividends], being a direct tax, within the meaning of the constitution, and therefore unconstitutional and void, because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid."

Everything else taxed as "income" is and always has been properly taxed without apportionment, because other than as to those two exceptions, the tax is and always has been unambiguously of the character of an [excise](#), both in how it operates and on what it falls.

The 16th Amendment Merely Says That Privileged Gains Can't Escape The Tax By Resorting To Pollock's "Source" Argument

The 16th Amendment says the Pollock court's conclusion was wrong (or, in any event, is overruled). The amendment provides that Congress can continue to apply the income tax to gains that qualify as "incomes" (that is, the subclass of receipts that had always been subject to the "income" excise due to being the product of an exercise of privilege) without being made to treat the tax as direct and needing apportionment when applied to dividends and rent by virtue of judicial consideration of the source:

"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 amendment doesn't transform the "income tax" into a direct tax, nor modify, repeal, revoke or affect the apportionment requirement for capitations and other direct taxes. It simply prohibits the courts from using the overruled reasoning of the Pollock decision to shield otherwise excisable dividends and rents from the tax. As Treasury Department legislative draftsman F. Morse Hubbard is quoted in a summary of the amendment's effect for Congress in [hearing testimony in 1943](#):

"[T]he amendment made it possible to bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty..."

This isn't Hubbard's personal opinion. Almost immediately after the amendment was declared adopted in 1913, and the income tax was revived after its 18-year hiatus since the Pollock decision, the application of the tax was again challenged (in Brushaber v. Union Pacific RR Co., 240 U.S. 1 (1916)). Frank Brushaber, a New Yorker with investments in the Union Pacific Railroad Company, based his suit on a series of contentions about the 16th Amendment. The Supreme Court took the case with the intention of settling all issues regarding the purpose and meaning of the amendment and declaring the ongoing nature of the income tax as affected thereby.

The lengthy, detailed and unanimous ruling issued by the court declares that the amendment has no effect on what is and what is not subject to the income tax, and does nothing to limit or diminish the apportionment provisions in the Constitution concerning capitations or other direct taxes. Here are three more good summaries of the Brushaber ruling to add to F. Morse Hubbard's:

"The Amendment, the [Supreme] court said, judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong."

[Cornell Law Quarterly, 1 Cornell L. Q. 298 \(1915-16\);](#)

"In Brushaber v. Union Pacific Railroad Co., Mr. C. J. White, upholding the income tax imposed by the Tariff Act of 1913, construed the Amendment as a declaration that an income tax is "indirect," rather than as making an exception to the rule that direct taxes must be apportioned."

[Harvard Law Review, 29 Harv. L. Rev. 536 \(1915-16\);](#)

"The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment..."

Legislative Attorney of the American Law Division of the Library of Congress Howard M. Zaritsky in his [1979 Report No. 80-19A](#), entitled 'Some Constitutional Questions Regarding the Federal Income Tax Laws'.

So, the class of what qualifies as "income" subject to the tax remains the same after the amendment as it had been before it. The 16th Amendment eliminated the "source" argument, but didn't change the limits on what was subject to the tax. If something didn't qualify as taxable without apportionment *prior* to Pollock and the amendment, it *still* doesn't qualify as taxable without apportionment. The Supreme Court reiterates this in ruling after ruling:

"[B]y the [Brushaber] ruling, it was settled that the provisions of the Sixteenth Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged, and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived -- that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed."

U. S. Supreme Court, Stanton v. Baltic Mining Co., 240 U.S. 103 (1916)

"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..."

U.S. Supreme Court, Peck v. Lowe, 247 U.S. 165 (1918);

"[T]he settled doctrine is that the Sixteenth Amendment confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income."

U.S. Supreme Court, Taft v. Bowers, 278 US 470, 481 (1929).

"[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable. 45 Cong. Rec. 2245-2246 (1910); id. at 2539; see also Brushaber v. Union Pacific R. Co., 240 U. S. 1, 240 U. S. 17-18 (1916)"

U.S. Supreme Court, So. Carolina v. Baker, 485 U.S. 505 (1988).

Summing it all up, the 16th Amendment comes down to this: The Pollock court had said, *"Congress has laid a tax on a big class of excisable objects (which it calls "incomes"), and it's all good. But when the tax is applied to dividend and rent "incomes", it actually functions as a property tax on their sources and therefore, in regard to those two "incomes", the tax has to be apportioned."*

The 16th Amendment simply says, *"Nix to that last bit."*

The Income Tax Remains An Excise, And Unapportioned Capitations Remain Prohibited

THE EASIEST WAY TO COMPREHEND THE LEGAL REALITY OF THE "INCOME TAX" TODAY in light of the actual meaning and effect of the 16th Amendment is to simply think of the Pollock decision as having gone the other way. Simply imagine that the Pollock Court had upheld the application of the tax to excisable dividends and rent without apportionment, and the 16th Amendment had never happened. What we would have had from that course of events is exactly what we have now-- federal authority for an indirect excise tax falling only on objects suitable to that type of tax, unthwarted by the argument that if applied to excisable dividends and rent, that excise tax becomes a property tax requiring apportionment.

But there's another easy way to grasp the legal reality of the "income" tax today in light of the actual meaning and effect of the 16th Amendment, too. That is to remember that the amendment caused no change to the apportionment rule for direct taxes (as declared in all those Supreme Court rulings and other authorities quoted above). This means that taxes on general revenues and/or the unprivileged activities which produce them-- Constitutionally designated as "[capitations](#)"-- remain subject to that rule.

Here is the Supreme Court again declaring the ongoing vitality of the apportionment rule (the 16th Amendment notwithstanding), and specifically distinguishing the income tax as an excise and not a capitation:

"If [a] 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. Whether the [income] tax is to be classified as an "excise" is in truth not of critical importance [for this analysis]. If not that, it is an "impost", or a "duty". A capitation or other "direct" tax it certainly is not."

U.S. Supreme Court, [Steward Machine Co. v. Collector of Internal Revenue](#), 301 U.S. 548 (1937) (Emphasis added; citations omitted.)

Thus, what the income tax DOES fall on, as the excise that it is, can be roughly but usefully perceived by remembering that it CAN'T fall on (or be measured by) the objects of a [capitation](#), among which are:

- "all that comes in";
- "every different species of revenue";
- "the fortune or revenue of each contributor";
- "the [common-meaning] wages of labour";
- "what is supposed to be one's fortune [per] an assessment which varies from year to year"; or
- "[an assessed percentage] of [one's] supposed [commonly-defined] income".

The Income Tax IS Only Written And Administered As An Excise On Privilege

NOW, HERE IS WHAT WILL BE THE MOST SURPRISING THING OF ALL, in light of what you have just learned about the nature of the tax and the rules to which it is subject: The "income tax" laws make no attempt to violate the excise and capitation rules!

Though the mechanisms by which it does so are a bit difficult to find, the tax law, as written, confines itself carefully and scrupulously to nothing but gains resulting from the exercise of federal privilege, just as any federal excise tax must do. It is not by accident or oversight that, for instance, the "wages" subject to the tax, or the phrase "trade or business" as used in the context of the tax, [are custom-defined in the law](#).

As written, the "income tax" laws leave unprivileged earnings and receipts untouched, never crossing the line into the realm of capitations. As written, the "income tax" remains a proper excise, and as such, doesn't apply to the earnings of most Americans.

This *shouldn't* be surprising (just as nothing else you've read here should be). But unfortunately, a mature scheme has been in place for about the last 70 years which is designed to trick those ignorant of the nuances of the law into inadvertently declaring their unprivileged earnings to be privileged, allowing the government to treat them as subject to the tax. You can learn all about how that works, how to keep from falling prey to this trick, and how to correct the ill effects of having fallen for this trick in the past, in '[Cracking the Code- The Fascinating Truth About Taxation In America](#)'.

SO, THAT'S IT, MY FRIEND! Now you know that the 16th Amendment never authorized an unapportioned general tax (and I suspect you're beginning to realize that for all of your working life you've probably been one of those Americans victimized by the misapplication of what the "income tax" really is).

Frankly, I imagine that you've always suspected this. After all, the 16th Amendment is a Constitutional amendment, the highest possible expression of the popular will possible, and the mythology about the amendment says it was intended to authorize a universal tax on everyone's revenue. And yet, 30 years goes by after its adoption in 1913 before more than a small fraction of Americans are affected in any way by the income tax!

Plainly, had the 16th Amendment actually been meant to authorize a universal tax, we would have seen income tax filings by every adult American no later than 1914 and every year from there forward. In reality though, [only 9.36% of all money-making Americans had occasion to file any kind of tax document in any year from 1913 to 1939, on average.](#)

This was a period at the very beginning of which even simple factory workers were making \$1,500 a year (with pay-rates climbing), and [during which the tax only exempted \\$1,000 of "income"](#). But back then everyone understood that the \$1,000 of exempted gains-- and the amounts above that to which the "income tax" applied-- were *different kind of gains* from the unprivileged variety received by factory workers and most everyone else. See a video presentation on this subject [here](#).

In fact, the very highest annual percentage of "income tax"-filing money-making Americans for the whole period (which included World War I and the "Roaring Twenties") was only 17.3%. It was not until the early 1940s, in the midst of World War II and after decades of relentless disinformation about the nature of the 16th Amendment and the meaning of "income" by corrupt elements of a revenue-hungry state, beneficiaries of misunderstanding in professions like tax law and accounting and "progressives" who had always wanted a universal tax that the percentage cracked 50%.

This campaign of disinformation was assisted by increasing state influence in schools, propaganda resources which included [exhortations by the likes of Donald Duck](#), and ten

years of deep mental softening during the rigors of the Great Depression. Needless to say, no such campaign would have taken place had the 16th Amendment actually authorized the general tax in which you are encouraged to believe. When was the last time you were regaled with appeals to “pay property taxes” by a cartoon animal in a state-financed film? Unfortunately, the campaign succeeded. You were invited to believe the Leviathan-serving mythology about the 16th Amendment, and you did. In thrall to that myth, you have made the income tax a reality in your own life, despite it likely having no actual legal application to your activities. In thrall to that myth, you have been actively declaring your unprivileged earnings to be the privileged kind to which the “income tax” that we really DO have actually applies. You can get a good idea of how that works by reading [the little story of 'Bob's Bicycles'](#).

I'LL LEAVE IT TO YOU TO DECIDE the significance of this truth about the “income tax amendment”. But if you wish, go to [losthorizons.com](#), where you'll find it all laid out in painstaking detail, including, among much else, exactly what this knowledge has meant for the tens of thousands of Americans who have been using it to reclaim complete authority over property they otherwise had lost (or would lose) to a tax which has proven to not apply to their activities and earnings (including the “Social Security” and “Medicare” versions of the tax). I'm not talking about some abstract legal claim. I'm talking about [checks in the mailbox-- refund checks of every penny withheld and every penny paid-in, plus interest in many cases](#).

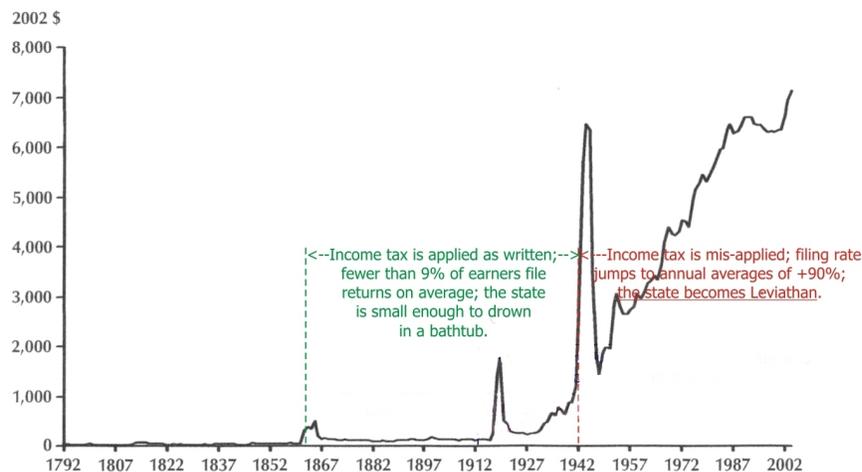
More important by far than the money, though, is the reclaiming of rightful authority over the power which attends control of that wealth. Individual control of that power is central to the Founders' Constitutional design for maintaining a limited government subject to the rule of law, because the Constitution does not enforce itself, and left undefended by grown-up American men and women, it is the natural course of things for liberty to yield and for government to gain ground.

The Founders' design relies on you acting on behalf of your own interests and retaining control of your own wealth and property. By doing so, you function as part of an invisible hand imposing restraint and discipline on the federal government, keeping it small, obedient

and respectful, as it is intended to be. Small, obedient and respectful government [results in freedom and prosperity for all Americans](#).

This "invisible hand" restraint operates just like Adam Smith's better-known economic "invisible hand" engine-of-prosperity. Like its counterpart, the restraint-engine is fueled by millions of decisions intended only to benefit each American individually, which nonetheless act organically to benefit all by keeping the state small and harmless to liberty. For nearly all of the 150 years or so during which the restraint-engine ran strong before sputtering into

Real Per Capita Federal Expenditures: 1792-2004



Source: 'On the Size and Growth of Government' by Thomas A. Garrett & Russell M. Rhine, copyright 2006, Federal Reserve Bank of St. Louis.

"idle" in the 1940s, the state remained in harness and the American people grew in prosperity while preserving their liberties.

A graphic comparison of the fed-state constrained by the Constitutional tax rules upheld by the Brushaber Court versus the fed-state since widespread understanding of those rules has been lost down the memory-hole

This "invisible hand" engine of freedom is, in fact, the ONLY mechanism whereby effective constraints can be laid on the state. Certainly the founding generation felt this way, as evidenced by the prescriptions regarding taxes within the federal charter.

Had the framers been willing to rely upon the political process to keep the state under control, no rules concerning the taxing power would have been seen as necessary. But they were not so naive. In fact, the framers were *so* conscious of the dangers inherent in a state

able to control how much of the people's fuel it would burn that in the first version of the United States Constitution, known as the Articles of Confederation, the fed-state was denied any ability to collect money on its own authority whatever.

Even the modest permission for federal self-fueling reluctantly granted in our current Constitution partakes of that same narrow-eyed view. In fact, the apportionment requirement for all capitations and other direct taxes-- by which the American people are insulated from any federal reach directly into their pockets, and any tax other than imposts, duties and excises on purely voluntary activities is made difficult and highly politically-accountable-- is the only provision that appears in the Constitution twice.

The Founders knew how a state gets out of control and dangerous to liberty. They provided against it with care.

AS I NOTED ABOVE, THOUGH, RESPONSIBILITY FOR KEEPING the framers' engine of freedom humming along is on you and me. In the absence of countervailing pressure from individual men and women, dangerous-- even ruinous-- state power automatically grows.

We're suffering from the effects of long years of individual irresponsibility today. Still, even as far gone to neglect as we are right now, all that is needed to set things right is for each of us to rise to our feet and do our part.

[Learn more](#), spread the word, and act, my friend. Liberty is just over the horizon.



NOTES

A nice example of the continuity of the tax from its origin in 1862 through the 16th Amendment can be seen in the United States Supreme Court's use of the ruling in the 1870 case of Stanwood v. Green, 1870 U.S. Dist. Lexis 279, to both clarify the IRS's present-day examination authority, and to emphasize the settled character of that authority due to it going back that far (and, in fact, to 1864) , in its 1978 ruling in United States v. LaSalle Nat'l Bank, 437 US 298:

"The interrelated nature of fraud investigations thus was apparent as early as 1864. Section 14 of the 1864 Act permitted the issuance of a summons to investigate a suspected fraudulent return. It also prescribed a 100% increase in valuation as a civil penalty for falsehood. Section 15 established the criminal penalties for such conduct. Four years later, when Congress created the position of district supervisor, that official received similar summons authority. Act of July 20, 1868, § 49, 15 Stat. 144-145; see Cong.Globe, 40th Cong., 2d Sess., 3450 (1868). The federal courts enforced these summonses when they were issued in good faith and in compliance with instructions from the Commissioner. See In re Meador, 16 F.Cas. 1294, 1296 (No. 9,375) (ND Ga. 1869); Stanwood v. Green, 22 F.Cas. 1077, 1079 (No. 13,301) (SD Miss. 1870) ("it being understood that this right upon the part of the supervisor extends only to such books and papers as relate to their banking operations, and are connected with the internal revenue of the United States")."

[United States v. LaSalle Nat'l Bank](#), 437 U.S. 298 (1978)

The language of that old ruling is itself very useful for purposes of this commentary, by the way. In ruling that Green can be compelled to produce books and records in response to a Bureau of Internal Revenue summons, the court says:

"...Messrs. Green will be directed to produce such books and papers as the supervisor may desire to examine, connected with their banking operations; it being understood that this right upon the part of the supervisor extends only to such books and papers as relate to their banking operations, and are connected with the internal revenue of the United States."

"It is said that this is an attempt at an unreasonable seizure and search into the private affairs of the citizens, against which they are protected by the constitution. [But t]here is no attempt to investigate any of the private affairs of the Messrs. Green, only an examination into so much of their business as relates to the operations of their banking house and is connected with the subjects of taxation; beyond this, he has no right to institute an inquiry." (Emphasis added.)

Now read that language again:

"[O]nly such books and papers as relate to their banking operations, and are connected with the internal revenue of the United States."

"[O]nly an examination into so much of their business as relates to the operations of

their banking house and is connected with the subjects of taxation; beyond this, he has no right to institute an inquiry."

The distinctions being drawn by this court are clear, bright, and remain the law today: While some of the business of these Americans MAY be connected with "the subjects" of taxation and the internal revenue of the United States, none is so "connected", and subject to tax-agency scrutiny simply because it is "business".

The United States didn't dream up its "income" excise all on its own. When the Lincoln administration was looking for a perpetual stream of revenue with which to finance its war to subjugate the Southern States and other projects, it borrowed from a tax structure which had long been in force in Great Britain and which was fully compatible with US Constitutional prescriptions and proscriptions.

William Blackstone had described this special tax as early as the 1760s. A bit more than 100 years later Stephen Dowell expanded on Blackstone's work and tracked the evolution of this perpetual tax measure as it operated on into the 1860s, fully-proven and highly-recommended to Lincoln's needs. Just a cursory glance at the British measure clearly indicates that it was the model for the United States version established here under the name "income tax".

Here's a discussion of this history, as presented by researcher Greg Sutton:

Blackstone and Dowell: The Income Excise Revealed

The history of the American implementation of "excises, duties and imposts" makes clear that the Founder's, and those who followed thereafter, closely abided by the prescriptions and proscriptions that had been developed under the English Common Law/Liberal indirect or benefit system of taxation. A case could be made that the American's actually followed it much closer than the British, thanks to the apportionment and uniformity requirements for direct and indirect taxes, respectively, and federalism in principle.

This system of indirect taxation was best described by Sir William Blackstone in his 'Commentaries on the Laws of England,' which was by far the most popular exposition of the English Common Law in America at the time (and would be until several decades into the twentieth century). Blackstone listed eight classifications of duties or excises that were typical for the period post 1688 Glorious Revolution to his time--1750-60's. These eight divisions included such taxes as customs or tariffs, excise duties on various and sundry commodities, salt duty, post-office or letter-carrier duty, stamp duties, duty upon houses and windows, carriage duty, auction duty, duties on all the various alcoholic beverages, and the office duty. This is just a short list.

American legislators had copied, or adapted, a good portion of these excises for their own statutes by the time of the Civil War. One of these excises, which wasn't used until the Civil War, and was the last and eighth on Blackstone's list, was the Office Duty. That's what it was called in Blackstone's day, but the Americans, one hundred or so years later, would choose to call it an Income Duty (or later, Tax) following the British name change to Income Tax during the Napoleonic Wars. Different name, same tax. And significantly, the same simple tax that today fills thousands of pages of the IRC with impenetrable legalese, that you have been told your whole life you'll never possibly understand, can actually be easily understood by reading what those who handsomely benefit from your ignorance have conveniently hidden from you by omission--Blackstone's eighth excise:

"The eighth and last branch of the king's extraordinary perpetual revenue is the duty upon offices and pensions; consisting in an annual payment of 1s. in the pound (over and above all other duties)(k) out of all salaries, fees, and perquisites, of offices and pensions payable by the crown. This highly popular taxation was imposed by statute 31 Geo. II. c. 22, and is under the direction of the commissioners of the land tax."

Footnote (k): "Previous to this, a deduction of 6d. in the pound was charged on all pensions and annuities, and all salaries, fees and wages of all offices of profit granted by or derived from the crown, in order to pay interest at the rate of three per cent. on one million, which was raised for discharging the debts on the civil list, by statutes 7 Geo. I. st. 1, c. 27; 11 Geo. I. c. 17; and 12 Geo. I. c. 2. ..." *

(*Common representation of this section of Blackstone today is for some reason in an abridged form, omitting the last portion of the first line ("exceeding the value of 100£. per annum.") and both the reference to footnote (k) and the footnote itself.)

Should the clear subject matter of this excise, as described by Blackstone, somehow escape you, don't despair. John Sinclair in the 1785 first edition of his 'The History of the Public Revenue of the British Empire' goes back further than Blackstone did in his general discussion of the ancient sources of revenue of the Crown of England. The third source that he lists is the "political" one:

"The sovereign of England was accounted the sole fountain of honour—of office, and of privilege. It will appear, in the progress of this work, that this prerogative yielded some profit to the exchequer; some monarchs disposing of offices for money; others making a sale of titles and honors; and **in general, all of them demanding pecuniary returns for any privileges they bestowed, either on corporate bodies or individuals.**" (Emphasis added.)

Further on in Sinclair's work he offers "a proposal for the payment of the public debts." Number seven of the various revenue sources listed is:

"That two shillings in the pound be made payable yearly out of the salaries and perquisites of all offices and places which are now in being, or shall at any time

hereafter be created, and to remain during the continuance of such offices and places respectively.”

If you’re still somehow scratching your head as to the nature of the Office Duty/Income Tax, Stephen Dowell in his 1888 ‘A History Of Taxation and Taxes in England’, Vol. III, picks up where Blackstone and Sinclair left off:

“That part of the old land tax which was collected from public offices and employment—in respect of any public office, or employment, or any salaries, gratuities, bounty monies, rewards, fees, profits, perquisites or advantages therefrom—had been extended, by Pitt, to ‘persons receiving annuities, pensions, stipends and other yearly payments charged upon the exchequer or any branch of the revenue, or secured to be paid by any person or persons otherwise than as a charge on lands,’ and, as thus extended, had been formed into a separate tax.”

Dowell is discussing the office duty component as expressed in Pitt’s Property and Income Tax, 1799-1802. Pitt’s tax, as a whole, did not perform up to expectations, with the self-assessment aspect of the direct portion of the tax taking the blame.

Dowell continues the story with Addington’s Property and Income Tax, 1803-06, which remedied the faults of Pitt’s tax by providing for ‘stoppage-at-source’, on the direct tax portions of the taxation measure. The evolving office duty, again labeled as an income tax and made a part of a comprehensive property and privilege tax statute, was expressed in Schedules C and E. Dowell helpfully summarizes them:

“Schedule C, the tax on fundholders, in respect of profits arising from annuities payable out of any public revenues...”

“Schedule E contained the charge on persons deriving income from any public office or employment of profit, and included also persons receiving any annuity, pension or stipend payable by the Crown or out of public revenue. The plan of this schedule was to make responsible for the payment of the tax those who paid the salary, annuity, pension or stipend, who in their turn, were to deduct the amount on paying the person entitled. This provision effectually prevented evasions, and therefore a wide sweep was given to the net, and by definition, the term ‘public office or employment’ was extended so as to include all offices in public institutions, and public foundations under any trustees or guardians of any county or municipal fund, tolls, or duties; those held under any corporation or any company or society, corporate or not corporate; and, generally, every other public office or employment of profit of a public nature.”

(It should be noted that Schedules A, B and D of Addington’s Tax were without question general direct taxes, but were not applicable within the American federal taxation scheme because they were of the type that could not be practically or fairly apportioned.)

Addington's Tax was an experiment in taxation that exceeded expectations, so it undoubtedly garnered attention from the international government finance crowd. In early 1815, during the later vestiges of the War of 1812, Treasury Secretary Dallas, who would be a likely member of this crowd, suggested an income tax in the nature of an excise because it had the potential to raise millions. Presumably, this tax would have been implemented had the war not abruptly ended. Was it Blackstone and the British reports of the collection amounts for Schedules C and E of the Addington Tax that informed Secretary Dallas of its potential?

Fast forward to the War Between the States and the Union government's urgent need for revenue. The same annual British reports, that once informed Secretary Dallas in 1815, were now informing Treasury Secretary Chase, Ways and Means Committee Chairman Stevens and Senate Finance Committee Chairman Sherman of the results of the British income tax which ran from 1842 to essentially now. (All British income tax legislation for the rest of the nineteenth century was just a repeat of Addington's 1806 income tax, Schedules A through E remained essentially the same in every edition, only the rates changed.) This information, along with Blackstone's eighth excise discussion and Sinclair's recommendation of taxation on the gainful exercise of political privileges, must have worked their same magic on the Lincoln administration and Congress, as it had on Secretary Dallas. How can Blackstone's "highly popular taxation" recommendation possibly be ignored when revenue is needed direly?

In fact, a non-apportioned income excise tax was appended to the 1861 apportioned direct tax, indicating Congress's willingness to utilize the tax from the get-go, but, by being appended to the direct tax it lacked clarity as to its nature as an excise. This was remedied by repealing outright the 1861 effort and replacing it with duties in the internal revenue act of 1862. The 1862 act provided for an Income Duty and Salary Duty, both in the nature of an excise and therefore not apportioned, and were implemented along with dozens of other excises and duties. Not surprisingly, the Income Duty (Sec. 90) was clearly just an Americanized rendition of Schedule C and, likewise, the Salary Duty (Sec. 86) was just a knock-off of Schedule E. Two years later the two would be merged into one statute, as both their subject matter (gainful exercise of government privilege) and rates were the same. (See these 1862 United States Income Duty statutes [here](#).)

This first American legislative expression of Blackstone's eighth excise would run successfully until 1872 when Congress allowed it to go dormant. Statistics from the Commissioner of Internal Revenue show that only a tiny fraction of the population was subject to the tax, yet it would raise a quarter of all revenue collected from internal taxation. The favorable British results were successfully duplicated and Blackstone's recommendation was once again validated.

Whereas the American income tax only saw a ten year stint, the British income tax ran continuously, during the second half of the nineteenth century. Dowell picked two periods, 1879-80 and 1884-5, for his then current (1888) study of the tax. As

mentioned previously, the tax utilized the same format established by the much earlier Addington Tax. Dowell reviews them in detail:

“Schedule C: The third branch, termed schedule C, touches income from any public revenue, imperial, colonial, or foreign, and under this schedule the amount received is charged. The assessment, as regards dividends from the Funds and other imperial revenue, is made by commissioners for the purpose, from information derived from official documents in their possession; and the tax is deducted from the dividends or other payments and paid into the Bank to the account of the revenue. As regards income from investments in colonial or foreign government securities, the plan of the tax is to require all persons entrusted with the payment of the income in this country to deliver accounts to the SPECIAL COMMISSIONERS—in order that they may make out the assessments and raise a charge.”

“Schedule E. A fourth branch, termed schedule E, touches persons in the employment of the state, or in other public employments of profit. The assessment and collection is easily effected, ad unguem, as regards official incomes in the strict sense of the term, in the departments concerned; while as regards other employments of profit in public corporations or companies, the treasurer or other such officer is required to do all acts requisite for the assessment of the officers of the corporation or company. The increase in the number of public companies renders this a growing schedule.”

Dowell also included in his review a tally for the five schedules. Schedule C returned 40 million and 41 million for the 1879--80 and 1884-5 periods, respectively. Schedule E returned 26 million and 29.5 million for the same time periods, respectively. Those government finance types must have rejoiced in these numbers!

And indeed they did! The American income tax was revived in 1894, during the Democratic Cleveland administration, in large part due to a non-partisan public finance policy admission, symbolized by the return to the states, in 1891, of all revenue collected as a result of the imposition of the 1861 direct tax, that apportioned direct taxes were so economically unequal in their application that the federal government must hereinafter rely solely on indirect taxation to meet its fiscal needs. For all the reasons that Blackstone refers to it as a very popular tax: it doesn't reach the private sector; it is amongst the easiest and least costly taxes to collect; it has the ability to raise lots of revenue quickly; it exhibits elasticity when rates are raised; and it provides much needed regulation of the political class, is precisely why a Democratic Congress embraced the income tax (duty) as a reliable and indispensable revenue source. This at a time when the economic down-turn of 1893 was playing havoc on the federal treasury. Unfortunately, the tax would succumb to a corrupt and specious argument oddly (some read this as corruptly) upheld by otherwise intelligent Justices of the Supreme Court, by a bare majority, in the Pollock decision of 1895.

This brief historical exercise provides ample proof of precisely what an excise on the gainful exercise of government privilege consists of and how it operates, no matter

the particular name given to it. You can be sure that nineteenth and early twentieth century American legislators and lawyers understood it exactly as described by Blackstone, Sinclair and Dowell, and would not confuse it with a direct tax or wish to abandon it for one (especially without apportionment). That's why the Pollock decision received so much open public derision, because it ignored over 150 years of both British and American Common Law precedent. And why the purpose of the 16th Amendment was to overturn the Pollock decision to return to Congress the power to tax privileged incomes, from whatever source derived (with all judicial liberties in that issue forever removed), that it had enjoyed all through the 1862-1872 era and had expected to enjoy in 1815 and 1894.

It will have been noticed that I don't directly quote the [Brushaber](#) ruling in the body of this article. This is largely because however sound a thinker Justice White certainly was, as a writer he left much to be desired. He tended to produce very long, very convoluted sentences, full of dependent clauses and touching on an excess of subjects. The summaries I present are much easier to take in, and are accurate.

Nonetheless, not wishing to risk being thought to have somehow "cherry-picked" summaries favorable to my argument, here are some relevant excerpts of the [Brushaber](#) ruling itself, beginning in its own summary of the 170+ page [Pollock](#) ruling:

"...the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class 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..."

Going on, the [Brushaber](#) court explains the [Pollock](#) court's reasoning in excepting dividend- and rent-realized gains:

"...unless and until it was concluded that to enforce [the income tax] 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. Nothing could serve to make this clearer than to recall that in the Pollock Case, in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from '[professions, trades, employments, or vocations](#)', its validity was recognized; indeed, it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past."

As Justice White observes, the [Pollock](#) court DIDN'T declare that the income tax WASN'T an excise in regard to the two excepted categories of dividends and rent. Rather, the court declared that in those two cases what was in *form* an "income" tax nonetheless in *substance* amounted to a tax on the "sources" by which the "income" was derived, meaning

that in those cases the tax was really a property tax, and therefore "direct" and requiring apportionment.

The [Brushaber](#) court then proceeds to declare that the 16th Amendment doesn't authorize a non-apportioned property tax (which would be a new kind of tax: a capitation or other direct tax which is free of the apportionment requirement). Rather, it simply overrules the [Pollock](#) Court's conclusion that because these two kinds of privilege-based (and therefore otherwise excise-taxable) gains are realized in connection with personal property any tax on them must be apportioned. Responding to litigant Frank Brushaber's argument to the contrary, the court says:

"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 advanced in argument to support it..."

The court goes on to discuss those many contentions argued to support the "new hybrid tax" error, and then returns to again directly address that central issue:

"But it clearly results that the [erroneous] 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 [purportedly] exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned."

A few lower court rulings over the decades have falsely described the [Brushaber](#) ruling as upholding a "direct, non-apportioned tax" in its conclusions concerning the 16th Amendment. The "universal tax" schemers love to cite them to make this assertion. See, for instance, [United States v. Collins](#), 920 F.2d 619, 629 (10th Cir. 1990); [Parker v. Comm'r](#), 724 F.2d 469 (5th Cir. 1984); [Lovell v. United States](#), 755 F.2d 517 (7th Cir. 1984)).

The most charitable explanation is that some jurists have always thought the [Pollock](#) reasoning was correct. They believe that the income tax, even when applied to dividends and real estate gains distinguished by being from privileged, and therefore excisable, activities, takes on the characteristics of a property tax (and therefore takes on the characteristics of a "direct" tax). Because the 16th Amendment provides for the application of the tax to these two classes of "income" without apportionment, these jurists insist it therefore authorizes what amounts to a "non-apportioned direct tax [on certain excisable items]."

However, even some of these frustrated contrarians are themselves conflicted in their expressions. See, for instance, the following language in which the quote-marks around "income" are those of the court, thus distinguishing "income" as a special subclass of

earnings even while making the false-- or in this case, at least confused-- assertion about the 16th Amendment:

"Before the Sixteenth Amendment Congress could not levy a direct tax without apportionment among the states. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S. Ct. 673, 39 L. Ed. 759, Id., 158 U.S. 601, 15 S. Ct. 912, 39 L. Ed. 1108. The Amendment allows a tax on "income" without apportionment, but an unapportioned direct tax on anything that is not income would still, under the rule of the Pollock case, be unconstitutional."

Commissioner v. Obear-Nester Glass Co., 217 F.2d 56, 58 (7th Cir. 1954)

Others of these stubborn lower courts simply lie about the state of the law without qualification, unfortunately. See a detailed analysis [here](#).

Like the Supreme Court, the Treasury Department has ALWAYS acknowledged the "income" tax is an excise:

"I hereby certify that the following is a true and faithful statement of the gains, profits, or income of _____, of the _____ of _____, in the county of _____, and State of _____, whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the 1st day of January to the 31st day of December, 1862, both days inclusive, and subject to an income tax under the excise laws of the United States."

[The "affirmation" on the first income tax return form](#) (emphasis added)

Note the language used here, which plainly calls only for a report of *"the gains, profits or income... ..subject to an income tax under the excise laws of the United States."* (At this point in time, "income" hadn't acquired the exclusive tax-context meaning of "the subclass of all receipts subject to the tax" that it would through statutory use over the next fifty years before becoming permanently fixed in that usage-bestowed meaning due to its appearance in the 16th Amendment.)

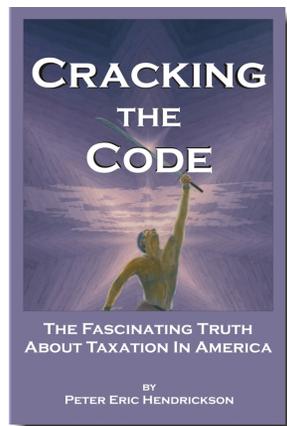
[Later versions of the form](#), such as the one we use today, avoid revealing this distinction so overtly. They leave it to the filer to either know the law sufficiently to be aware of the distinction, or to notice that the forms DON'T simply ask for reports of how much money was received, but instead ask only for how much "income" was received, either using that generic catch-all term for privileged gains or one or another of the custom-defined labels for subcategories of "income", such as "wages", or "self-employment income" gains from a "trade or business", and so on.

I SINCERELY HOPE THAT NOW THAT YOU KNOW THE TRUTH about the 16th Amendment (and have a much better idea of the true nature of the "income tax"), you will prolifically spread this file to everyone you know. I also hope that you will sign up for my free

newsletters (go to [this page](#) and subscribe to the group to do so-- leave all options in their default states). More than anything, I hope that you will join the community of educated Americans who have been enforcing the law of the land concerning the federal taxing powers since 2003.

As I said at the end of the article above, the Constitution doesn't enforce itself, and if Americans want liberty and the rule of law, they've got to stand up and lay it down, 'cause those who operate and profit from the state aren't going to lay it on themselves.

TO GET THE DEFINITIVE, DETAILED AND IN-DEPTH STUDY of the "income tax" subject, including how gains, profit and income that aren't "subject to an income tax under the excise laws of the United States" come to be treated that way, and what Congress has provided for remedying such errors, click on the image below and get the book that explains it all.



"Although all men are born free, slavery has been the general lot of the human race. Ignorant--they have been cheated; asleep--they have been surprised; divided--the yoke has been forced upon them. But what is the lesson?...the people ought to be enlightened, to be awakened, to be united, that after establishing a government they should watch over it....It is universally admitted that a well-instructed people alone can be permanently free."
-James Madison

BY THE WAY, even as the federal and state governments [honor the accuracy of what you have just read day-in and day-out](#), corrupt elements in the federal government that don't want to have to continue to do so are doing everything they can to suppress this information. For the disturbing details, see '[The Crime Of The Century](#)'.

© 2013 by Peter E. Hendrickson