

Income Tax

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This provision gave the United States government the right to collect taxes on income in spite of Article I, section 2, clause 3.

Many believe this form of direct taxation has created a deeper crisis in the American culture than any other form of taxes yet devised.

The History of the Sixteenth Amendment

The Founding Fathers had rejected income taxes and any other direct taxes unless they were apportioned to each state according to population. Nevertheless, a direct tax on incomes was levied during the Civil War and upheld by the Supreme Court on somewhat tenuous grounds. When another income tax law was enacted in 1893, the Supreme Court found it unconstitutional. After reviewing the two Pollock cases in 1895, the court declared that the act violated Article I, section 9 of the Constitution. Therefore, the collection of income taxes had to be suspended.

During the following decade, however, the complexion of the court changed somewhat and so did public sentiment. There was great social unrest and the idea of a tax to "soak the rich" began to take root among liberals in both major parties. Several times the Democrats introduced bills to provide a tax on higher incomes, but each time the conservative branch of the Republican party killed it in the Senate. The Democrats used this as evidence that the Republicans were the "party of the rich" and should be thrown out of power. This forced President Taft to acknowledge in political speeches that income taxes might be all right "in principle," but it was well known among his close

associates that he was strongly opposed to such a tax.

Finally, in April 1909, Senator Joseph W. Bailey, a conservative southern Democrat who was also opposed to income taxes, decided to further embarrass the Republicans by forcing them to openly oppose an income tax bill similar to those which had been introduced in the past. He therefore introduced his bill expecting it to get the usual opposition. However, to his amazement, Teddy Roosevelt and a growing element of liberals in the Republican party came out in favor of the bill, and it looked as though it was going to pass.

Not only was Bailey surprised, but Senator Nelson W. Aldrich of Rhode Island, the Republican floor leader, frantically met with Senator Henry Cabot Lodge of Massachusetts and President Taft to work out a strategy to demolish the Bailey tax bill. Their own party was split too widely to permit a direct confrontation, and so the strategy was to make a political end run. They decided to announce that they were in favor of an income tax but only if it were an amendment to the Constitution. Within their own circle they admitted that it might get the approval of the House and the Senate, but they were quite certain that it could be defeated in the

more conservative states -- three-fourths of which were required in order to ratify the amendment.

Thus, the Democrats were caught off guard when President Taft unexpectedly sent a message to Congress on June 16, 1909, recommending the passage of a constitutional amendment to legalize federal income tax legislation.

This strategy threw the liberals into an uproar. Right at the moment when their Bailey bill was about to pass, the Republicans were coming out for an amendment to the Constitution which would probably be defeated by the states.

Congressman Cordell Hull (later Secretary of State under Franklin D. Roosevelt) saw exactly what was happening. He took to the floor to excoriate the Republican leaders, saying:

"No person at all familiar with the present trend of national legislation will seriously insist that these same Republican leaders are over-anxious to see the country adopt an income tax.... What powerful influence, what new light and deep-seated motive suddenly moves these political veterans to 'about face' and to pretend to warmly embrace this doctrine which they have heretofore uniformly denounced?" (U.S. Congress, House, Congressional Record, 12 July 1909, p. 4404.)

He then went on to expose what he considered to be a political trick. However, he needn't have been so concerned. The slogan of "soak the rich" automatically aroused Pavlovian salivation among politicians both in Washington and the states. The Senate approved the Sixteenth Amendment with an astonishing unanimity of 77 to 0! The House approved it by a vote of 318 to 14.

When Congressman S.E. Payne of New York, who had introduced the amendment in the House, saw that this end run was turning into a winning touchdown for the opposition, he was horrified. He went to the floor and openly denounced the bill he had sponsored. Said he:

"As to the general policy of an income tax, I am utterly opposed to it. I believed with Gladstone that it tends to make a nation of liars. I believe it is

the most easily concealed of any tax that can be laid, the most difficult of enforcement, and the hardest to collect; that it is, in a word, a tax upon the income of the honest men and an exemption to a greater or less extent, of the income of rascals; and so I am opposed to any income tax whatever in time of peace.... I hope that if the Constitution is amended in this way the time will not come when the American people will ever want to enact an income tax except in time of war." (U.S. Congress, House, Congressional Record, 12 July 1909, p. 4390.)

The end run of the Republican leadership did indeed backfire. State after state ratified this "soak the rich" amendment, until it went into full force and effect on February 12, 1913.

Did It Soak the Rich?

Certain writers such as Kelly and Harbison (authors of *The American Constitution*) rejoiced that this amendment "shifted the growing burden of federal finance to the wealthy." (Kelly and Harbison, *The American Constitution*, p. 626.) Nothing could be further from the truth.

The wealthy, especially the super wealthy, had anticipated this very development and had created a clever device to protect their wealth. It was called a "charitable foundation." The idea was to consign the ownership of wealth, including stocks and securities, to a foundation and then get the Congress and the state legislatures to declare all such charitable institutions exempt from taxes. By setting up boards which were under the control of these wealthy benefactors, they could escape the tax and still maintain control over the disposition of their fabulous fortunes. Long before the federal income tax was in place, multi-millionaires such as John D. Rockefeller, J.P. Morgan, and Andrew Carnegie had their foundations set up and operating. The next step was to make certain that the new tax bill passed by Congress contained a provision specifically exempting their treasure

houses from taxation.

The tax bill which the Sixteenth Amendment authorized was introduced as House Resolution 3321 on October 3, 1913. It turned out to be somewhat of a legislative potpourri for tax attorneys, accountants, and the federal courts. In the ensuing years, millions upon millions of dollars would be spent trying to figure out exactly what this tax law and dozens which followed after it intended to provide.

Nevertheless, tucked away in the inward parts of the original bill was that precious key which safely locked up the riches of the super wealthy. Here are the magic words under paragraph G of section II:

"Provided, however, that nothing in this section shall apply ... to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes."

All of the foundations of the super-rich were designed to qualify under one or more of these categories.

How the Cute Little Monkey Grew into a Gorilla

When the first income tax was sent out to the people, the Congress chortled confidently that "all good citizens will willingly and cheerfully support and sustain this, the fairest and cheapest of all taxes." That was the cute little monkey part. After all, the first tax ranged from merely 1 percent on the first \$20,000 of taxable income to only 7 percent on incomes above \$500,000. Who could complain?

At first scarcely anyone did. Little did they know that before the tinkering was done in Washington, this system would be described by many Americans as the most unfair and expensive tax in the history of the nation. Within a few years it had become the principal source of income for the federal government.

In the beginning, hardly anyone had to file a

tax return because the tax did not apply to the vast majority of America's workaday citizens. For example, in 1939, twenty-six years after the Sixteenth Amendment was adopted, only 5 percent of the population, counting both taxpayers and their dependents, was required to file returns. Today, more than 80 percent of the population is under the income tax system.

Withholding Taxes

The collection process was greatly facilitated in 1943 by a device used by President Roosevelt to pay for the costs of World War II. It was called "withholding from wages and salaries." In other words, the tax was collected at the payroll window before it was even due to be paid by the taxpayer. Economists point out that this device, more than any other single factor, shifted the tax from its original design as a tax on the wealthy to a tax on the masses -- mostly the middle class. Investigations have disclosed that the truly wealthy pay relatively little or no income tax at all.

Some idea of how the little monkey grew into a gorilla is perceived from the fact that nearly half of all federal revenue is now raised by income taxes. Furthermore, the higher brackets are literally confiscatory -- but by "due process" under the Sixteenth Amendment. Rates have been as high as 94 percent in the upper brackets during wartime, and even in peacetime they are presently 50 percent of taxable income. Medium income people up through the upper middle class pay between 12 and 35 percent. Nevertheless, at all levels it has become sufficiently burdensome to discourage the attainment of basic economic advantages which most Americans are seeking.

Weaknesses of the System

The most damaging aspect of the Sixteenth Amendment is the fact that it vitiates the unalienable rights provided in the Fourth

Amendment. This is the amendment which protects privacy -- the privacy of the home, business, personal papers, and personal affairs of the private citizen. None of these elements of privacy is disturbed by a poll (head) tax because it is so much per person regardless of circumstances, but when the tax is based on income, the Internal Revenue Service is assigned the most unpleasant task of making certain that everyone pays his fair share. This is a physically impossible task without prying into the private papers, private business, and personal affairs of individual citizens. By any standards it is a miserable assignment. Furthermore, it is impossible to run audits and surveys of all taxpayers, so the audits seldom check more than 2 percent of them.

There are many things wrong with this approach. Worst of all, it puts the government tax collectors in the gorilla role and intimidates citizens who are unlucky enough to be audited, giving them the feeling that they are a "victim" of an unfair system.

The IRS also finds it difficult to avoid the attitude that each taxpayer is a cheater, even a criminal, who must somehow be cornered and caught. This has brought the structure of the entire income tax collection process into question.

For example, there is a well-known underground economy of monetary transactions which is conducted without any records. It is estimated that the losses in federal revenues from this "underground economy" are at least \$100 billion per year. Obviously this is not fair to those who are paying their share. Then there is an estimated \$65 billion per year which is earned income but not reported. This is considered unfair. There is a lot of padding of expense accounts, which is estimated to reduce the tax total by another \$18 billion. Other operations, both legal and illegal, jump the total up a few more billion.

There has also been extensive criticism of the prosecution of tax cases. The appeal is through a system of tax courts which are without juries. In

order to get a tax case into a regular court where there is a jury, the citizen must pay the tax and then sue the government.

Thousands of complaints have also poured into the IRS concerning the tactics used by some of its agents. Citizens feel they are treated as criminals rather than suspects who are innocent until proven guilty.

The Statement of a Former Commissioner of the IRS

T. Coleman Andrews served as Commissioner of the Internal Revenue Service for nearly three years in the early forties. Finally he resigned and made the following statement:

"Congress [in implementing the Sixteenth Amendment] went beyond merely enacting an income tax law and repealed Article IV of the Bill of Rights, by empowering the tax collector to do the very things from which that Article says we were to be secure. It opened up our homes, our papers and our effects to the prying eyes of government agents and set the stage for searches of our books and vaults and for inquiries into our private affairs whenever the tax men might decide, even though there might not be any justification beyond mere cynical suspicion.

"The income tax is bad because it has robbed you and me of the guarantee of privacy and the respect for our property that were given to us in Article IV of the Bill of Rights. This invasion is absolute and complete as far as the amount of tax that can be assessed is concerned. Please remember that under the Sixteenth Amendment Congress can take 100 percent of our income anytime it wants to....

"The income tax is fulfilling the Marxist prophecy that the surest way to destroy a capitalist society is by 'steeply graduated' taxes on income and heavy levies upon the estates of people when they die.

"As matters now stand, if our children

make the most of their capabilities and training they will have to give most of it to the tax collector and so become slaves of the government. People cannot pull themselves up by their own bootstraps anymore because the tax collector gets the boots and the straps as well.

"The income tax is bad because it is oppressive to all and discriminates particularly against those people who prove themselves most adept at keeping the wheels of business turning and creating maximum employment and a high standard of living for their fellow men.

"I believe that a better way to raise revenue not only can be found but must be found because I am convinced that the present system is leading us right back to the very tyranny from which those, who established this land of freedom, risked their lives, their fortunes and their sacred honor to forever free themselves." (Quoted in the Utah Independent, 29 March 1973.)

Seeking a Better Way

As we have pointed out earlier, the Founders were never in favor of a direct tax except in a dire emergency. Even then they warned that it should be assessed proportionately, according to the population of each state -- not according to wealth. Having failed to heed their advice, modern Americans now find themselves saddled with a monstrous system which is proving impossible to manage either fairly or efficiently. Both the Congress and private foundations are searching for a better way.

Some have suggested the adoption of a fiat tax by using the short income tax form, eliminating practically all deductions, and providing a ceiling of 20 percent as the top tax bracket. Others insist that the rights of the Fourth Amendment can never be fully restored until we abandon the income tax system, repeal the Sixteenth Amendment, and follow more traditional methods of raising revenue.

To restore the nation's fiscal sanity, it has been

suggested that several things should be done simultaneously:

1. Pass the Balanced Budget Amendment, which would outlaw deficit spending in peacetime.
2. Pass a "Sunset Law," which would eliminate every government agency or federal expenditure which exists outside the Constitution and cannot survive an amendment to justify its continuance.
3. Pass a fiscal reform amendment which would henceforth raise required revenue indirectly by a consumer tax (federal sales tax), and simultaneously repeal the Sixteenth Amendment.

Should federal revenue be raised by a consumer tax, it has been recommended that all goods be required to show the tax separately, so that it does not become a "hidden" tax. A shirt, for example, would show the price as \$12/15. This means the shirt is \$12, the tax is \$3, and the total price is \$15. It has also been suggested that only a minimal tax be assigned to "necessities," such as food and utilities, so that the tax does not impose an excessive burden on people in the lower income brackets.