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2005 MAR 28 P 4: 57

The President's Advisory Panel on Federal Tax Reform
1440 New York Avenue NW Suite 2100
Washington, DC 20220

To Whom It May Concern:

Since you will not accept more than 5 pages per submittal we are sending this report incrementally to you.

You will be receiving pages 4, 5, and 6 from a gentleman named Dave. Others will be sending in their three (3) pages until you receive the full 21 page report on liability.

Thank you for your consideration in this matter.

Sincerely,



Arlene Frerichs

income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed. See, in this connection, *Maine v. Grand Trunk R. Co.* 142 U.S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163, as interpreted in *Galveston, H. & S. A. R. Co. v. Texas*, 210 U.S. 217, 226, 52 S. L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638.”

So now it can be seen that Property (a person's labor or wages), considered by itself, is not taxable.

The Sixteenth Amendment states, "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." If you are not aware of the definition of the word "income" given by the US Supreme Court, it will appear as though the 16th Amendment cancelled out the two taxing clauses in the main body of the Constitution.

In Brushaber, the Court stated the several contentions being made in the case and ruled:

"... 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 Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. ... This result, instead of simplifying the situation and making clear the limitations on the taxing power ... would create radical and destructive changes in our constitutional system and multiply confusion."

The High Court was faced with coming up with a resolution between the apparent conflict between the two taxing clauses in the main body of the Constitution and the 16th Amendment. It didn't have the power to overturn those two taxing clauses but it did have the power to overturn the 16th Amendment as

being unconstitutional. It chose to limit the authority of the 16th Amendment by placing limitations on the word "income" in the 16th Amendment. You will see in the following cases where the Court made this limitation as being an indirect tax (excise tax) placed on an activity or privilege of incorporation and consequent activities as a corporation, the size of such excise tax being measured by the size of the corporate profit. The word "income" was ruled as having no other meaning than as being an indirect (excise) tax, the same as was levied by the 1909 corporate tax act.

~~**A number of other cases came up after the 16th Amendment was allegedly passed in 1913, and they all remained consistent and only had to reconcile minor differences, such as mining as opposed to manufacturing. This is where the crux of the matter lies for us and the income tax. All these courts clearly ruled, especially *MERCHANT'S LOAN & TRUST CO. v SMIETANKA*, 255 US 509 (1921), that the word "income" had a specific legal meaning in the 16th Amendment. They further pointed to *STRATTON'S INDEPENDENCE, LTD. v HOWBERT*, 231 US 399 (1913) as the ruling that defined the word "income" in the 16th Amendment.**~~

Here is what STRATTON'S says:

"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."

In *U S v. WHITRIDGE*, 231 U.S. 144, 147 (1913), the Court ruled:

"As repeatedly pointed out by this court, the corporation tax law of 1909-enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment-imposed an excise or privilege tax, and not in any sense a tax upon property

or upon income merely as income. It was enacted in view of the decision of this court in Pollock v. Farmers' Loan & T. Co. 157 U.S. 429 , 39 L. ed. 759, 15 Sup. St. Rep. 673, 158 U.S. 601 , 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of a previous law (act of August 27, 1894, 28 Stat. at L. chap. 349, pp. 509, 553, 27 etc. U. S. Comp. Stat. 1901, p. 2260) to be unconstitutional because amounting in effect to a direct tax upon property within the meaning of the Constitution, and because not apportioned in the manner required by that instrument."

The important key is "upon the conduct of business in a corporate capacity".

So the court is saying that

- 1) income taxes are direct taxes because they tax the income of the individual,*
- 2) corporate income taxes are not taxes on the corporation's income but an excise tax measured by the size of the corporation's income, and*
- 3) any true federal income tax would be unconstitutional, if not apportioned.*

The only way they could levy a tax on corporations would be to levy an excise and not an income tax. Well ... Can they levy an excise tax, measured by the size of your earnings, on your salary? Do you have the same choice, that is required to levy an excise tax, that a corporation has, that is, to work or not to work? No. You have to work to feed yourself and your family, etc. and, in no way, is the right to work a privilege. Remember that government officials and their official literature state that the income tax is voluntary. Further, the head of the ATF officially testified, under oath before Congress in 1954, that the income tax was 100% voluntary. He was never charged with perjury nor did any member of Congress challenge his statement under oath.

Next, we'll deal more in these court cases and the 16th Amendment.