

To: The President's Advisory Panel on Federal Tax Reform
Re: Unneccessary burdens of existing income tax system; Unfairness of income tax system as enforced; Goals to achieve a lawful tax system.

PRESIDENT'S ADVISORY
PANEL
ON FEDERAL TAX REFORM
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Dear Panel Members,

I am submitting this text as the fourth part of a twenty one page report being sent to you from several members of the Lawmen organization. It is essentially pages 10,11, and 12, but I have included parts from pages 9 and 13 to help you put it in the proper sequence. I am convinced that when you put these sections together in order you will see that the main problem with our current system is the illegal enforcement (by a non-government organization) of a voluntary tax (the alleged 'income' tax) on private individuals. Aside from the other obvious problem of the IRC being poorly written, the lawful taxes contained therein are rarely discussed. In the book "Clear and Effective Legal Writing", the IRC is used repeatedly as an example of horrendously inept legal writing. You would do well to recommend the very simple act of forthrightly telling the American people that the 'income' tax is a voluntary tax not applicable to individuals, and there are no legal consequences for not 'volunteering'. The question now is, "Will you be honest and tell the truth?" I will be watching, like thousands of others, for that answer.

THE THIRD CONSIDERATION

THE INCOME TAX and THE 16TH AMENDMENT

Next, we get into some Supreme Court rulings and a discussion of direct vs. indirect taxes. These rulings are a part of our "common law".

POLLOCK v FARMERS' LOAN & TRUST CO., 157 US 429 (1895) made the following rulings: Quoting the Constitution – "No capitation, or other direct, tax shall be laid, unless in proportion to the census...." We discussed this previously. "If", ruled Chief Justice Marshall, "both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution, or

conformably to the constitution, disregarding the law, the court must determine which of these conflicting rules governs the case.” *And the chief justice added that the doctrine* “that courts must close their eyes on the constitution, and see only the law, would subvert the very foundation of all written constitutions.” Thus, the Constitution must govern the law.

Speaking of the 1894 tax, POLLOCK stated, “...that such tax is a direct tax, and VOID because imposed without regard to the rule of apportionment; and that by reason thereof the whole law is invalidated.” *Second, “That the law is invalid, because imposing indirect taxes in violation of the constitutional requirement of uniformity, and therein also in violation of the implied limitation upon taxation that all tax laws must apply equally, impartially, and uniformly to all similarly situated.”*

Comment: As the court ruled, there are two great classes of taxation authorized under the constitution, direct – under the rule of apportionment, and indirect – under the rule of uniformity. The corporate income tax is an indirect (excise) tax while the individual income tax is a direct tax, which must be apportioned. The two differ in nature, character, and application.

Since the 1894 tax and the present individual income tax are both done without apportionment, they are unconstitutional if they are direct taxes **AND IF THEY ARE MANDATORY**. The 1894 tax was ruled invalid, so how about our present day individual income tax. We will look at the Supreme Court’s rulings on the 16th Amendment and whether it had any effect on the Apportionment requirement. The IRS is obliged, therefore, to answer this question in specific detail and without evasive answers.

Pollock further stated: “As to the states and their municipalities, this (contributions to expense of government) is reached largely through the imposition of direct taxes. As to the federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows.” *And “If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the*

great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property.”

Comment: This ruling maintains the distinction between types of state and federal taxation as being important and necessary. Also notice the description of excise (indirect) taxes as taxes on “luxuries and consumption.” I mentioned previously that these indirect taxes fall on the sales of luxuries and consumer goods, which can be avoided. Also the ability to avoid these indirect taxes by not purchasing taxed products or by not seeking a corporate privilege, is necessary to the conditions required by Pollack. Also privileges, such as incorporation, are taxable because they are avoidable and are therefore voluntary. Where have we heard that word “voluntary” before? The IRS gives notice to you each time that it refers to “voluntary compliance”.

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

This case defines excise taxes, in case you wonder if the government can impose an excise tax on your salary or wages. “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.”

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.”

MERCHANTS’ LOAN & TRUST CO. v SMIETANKA, 255 US 509, 519 (1921):

*Now let’s zip forward to **Smietanka** in 1921, 8 years after the 16th Amendment was passed. It’s ruling is only 5 pages and is very clear.*

“The Corporation Excise Tax Act of August 5, 1909, was not an income tax law, but a definition of the word ‘income’ was so necessary in its administration...”

“It is obvious that these decisions in principle rule the case at bar if the word ‘income’ has the same meaning in the Income Tax Act of 1913 that it had in the Corporation Excise Tax Act of 1909, and that it has the same scope of meaning was in effect decided in *Southern Pacific v Lowe...*, where it was assumed for the purpose of decision that there was no difference in its meaning as used in the act of 1909 and in the Income Tax Act of 1913. There can be no doubt that the word must be given the same meaning and content in the Income Tax Acts of 1916 and 1917 that it had in the act of 1913. When we add to this, *Eisner v Macomber...* the definition of ‘income’ which was applied was adopted from *Stratton’s Independence v Howbert, supra*, arising under the Corporation Excise Tax Act of 1909... there would seem to be no room to doubt that the word must be given the same meaning in all the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act, and that what that meaning is has now become definitely settled by decisions of this Court.”

Comment: So the word ‘income’ has the same meaning after the 16th Amendment was passed as it did prior to passage in 1913. Since that time, has there ever been an overturning of this decision, which was definitely settled by that Supreme Court decision in 1921? If the IRS cannot show that the decision of the Court was overturned, then its claim fails.

All these rulings were made to establish the meaning of the word ‘income’ in the 16th Amendment. We’re not yet finished, because we need to look at what

the court said in **Stratton's**. We have, however, learned that it has the same meaning as applied to an EXCISE tax, and it pertains to corporations.

STRATTON'S INDEPENDENCE, LTD. v HOWBERT, 231 US 399 (1913):

Stratton's is very important in that it puts a firmer definition on the word income.

"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, with certain qualifications prescribed by the act itself."

"Moreover, the section imposes 'a special excise tax with respect to the carrying on or doing business by such corporation,' etc..."

"Corporations engaged in such business share in the benefits of the federal government, and ought as reasonably to contribute to the support of that government as corporations that conduct other kinds of profitable business."

"... the annual gains of such corporations are certainly to be taken as income for the purpose of measuring the amount of the tax."

Comment: So you see, the word 'income' only applied to corporations, acting in a corporate capacity, which freely entered into a contract with the federal government to incorporate and were free to not incorporate or to rescind their incorporation. It was an excise tax and was indirect and was imposed on a privilege or luxury.

Constitutionally yours,

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