

Pete Hendrickson explains income tax with case law

Black ink on white paper. From the master.

(latest email sent on Saturday)

I can't say why 'Comodo' was programmed to falsely block its users from getting to losthorizons.com in this way or on this occasion. (Or if it's the only browser or firewall software doing so.) But my greater concern is that people have been, and might continue to be, prevented from seeing and sharing this important article.

Therefore, I urge everyone to look on anything serving to discourage visiting losthorizons.com with a very skeptical and suspicious eye; and I am taking the (for me) unusual steps of both sending this extra email, and including the referenced article in its entirety, rather than just the first few paragraphs and a link. Please read carefully and share widely.

Plain Facts About The Income Tax That The Government, Your Tax Attorney, Your Favorite Pundit And Many Others Don't Want You To Know

Please read the following material carefully, including the notes at the end, and then share it widely. Links to documentation of every assertion and quote in the following material can be found in the more complete presentation at <http://losthorizons.com/Documents/The16th.htm>. All emphases are added.

HERE ARE SOME PLAIN FACTS about the nature of the income tax. Anything you've ever heard or had suggested to you about the tax which does not conform to each and every one of these facts is simply not true, no matter how or by whom it was said or suggested to you.

What you're going to see proven in the compilation below is that:

- 1. The income tax is an excise;
- 2. Excise taxes are taxes on *privilege*;
- 3. The preceding facts about the income tax cannot change, because a tax on UN-privileged activities (or the gains therefrom) is a capitation or other direct tax, and the Constitution prohibits capitations and other direct taxes (other than by apportionment); and
- 4. The prohibition on unapportioned capitations and other direct taxes has never changed, even by action of the Sixteenth Amendment.

Then we'll follow with some discussion of what these facts mean and why this is all very important to you and your kids. Here we go:

1. The tax is an excise:

"[The] tax upon gains, profits, and income [is] an excise or duty, and not a direct tax, within the meaning of the constitution, and [] its imposition [is] not, therefore, unconstitutional."

United States Supreme Court, *Springer v. U. S.*, 102 U.S. 586 (1880) (as summarized in *Pollock v. Farmer's Loan & Trust*, 158 U.S. 601, (1895))

"[T]axation on income [is] in its nature an excise..."

A unanimous United States Supreme Court in *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (1916)

"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

"The whole body of internal revenue law in effect on January 2, 1939... ..has its ultimate origin in 164 separate enactments of Congress. The earliest of these was approved July 1, 1862; the latest, June 16, 1938."

Preamble to the 1939 Internal Revenue Code

"The income tax... ..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."

Former Treasury Department legislative draftsman F. Morse Hubbard in testimony before Congress in 1943

2. Excise taxes are taxes on *privilege*:

"...the requirement to pay [excise] taxes involves the exercise of privilege."

United States Supreme Court, Flint v. Stone Tracy Co., 220 U.S. 107 (1911)

"The terms 'excise' tax and 'privilege' tax are synonymous and the two are often used interchangeably."

American Airways, Inc. v. Wallace, 57 F.2d 877, 880 (M.D. Tenn. 1937)

"PRIVILEGE: A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of other citizens. An exceptional or extraordinary power of exemption. A particular right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others."

Black's Law Dictionary, 6th Edition

"The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..."

United States Supreme Court, *United States v. County of Allegheny*, 322 US 174 (1944)

3. These facts about the tax cannot change, because a tax on UN-privileged activities (or the gains therefrom) is a capitation or other direct tax, and the Constitution prohibits capitations and other direct taxes (other than by apportionment):

"[A tax laid] according to what is supposed to be [an unprivileged payer's] fortune, by an assessment which varies from year to year [is a capitation]."

Adam Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', Book V, Ch. II, Art. IV (1776)

"Art. I. Sect. 9. "no capitation tax shall be laid, unless &c"

Mr Read moved to insert after "capitation" the words. "or other direct tax" He was afraid that some liberty might otherwise be taken to saddle the States with a readjustment by this rule, of past Requisitions of Congs - and that his amendment by giving another cast to the meaning would take away the pretext. Mr Williamson 2ded. the motion, which was agreed to, On motion of Col: Mason "or enumeration" inserted after, as explanatory of "Census" (Con. & S. C. only. no.)"

James Madison, Notes of the Constitutional Convention

"No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

United States Constitution, Article 1, Section 9

"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."

Bouvier's Law Dictionary, 6th Ed. (1856). (The official law dictionary of Congress when the income tax was enacted.)

"'[B]y direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...' [T]he framers of the [Constitution] had [Adam Smith's definition of 'capitation'] in view at the time, and ... by direct taxes, meant those paid directly from the falling immediately on the revenue;..."

United States Supreme Court, *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429 (1895)

"Direct taxes bear immediately upon persons, upon the possession and enjoyments of rights;"

United States Supreme Court, *Knowlton v. Moore*, 178 U.S. 41 (1900)

"The right to follow any of the common occupations of life is an inalienable right... It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property'. Smith, Wealth of Nations, Bk. I, c. 10."

United States Supreme Court, *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746 (1883)

"Included in the right of personal liberty and the right of private property- partaking of the nature of each- is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property"

United States Supreme Court, *Coppage v. Kansas*, 236 U.S. 1 (1915)

"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, 337 S.W.2d 453 (1960)

4. The prohibition on unapportioned capitations and other direct taxes has never changed, even by action of the Sixteenth Amendment:

"[The Sixteenth] 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 with respect to the privilege of carrying on any activity or owning any property which produces income."

Former Treasury Department legislative draftsman F. Morse Hubbard in testimony before Congress in 1943

"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)

(The Pollock court had reasoned that even though otherwise proper subjects of an excise tax, a tax on privilege-based dividends and rent was functionally a tax on the personal property from which the gains were derived-- the stock and real estate-- and therefore was really a direct tax. The Sixteenth Amendment says that the "source" can no longer be considered in this way. If something is "income" in the sense meant in the income tax-- that is, a gain from a privilege-based, and thus excisable activity-- it can be taxed as such without regard to the source from which it is derived.)

"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'

"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 [unapportioned-excise taxable] 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. 1240 U. S. 17-18 (1916)"

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

5. So, it really doesn't matter at all what the tax is called (whether "excise" or not). Nor does it matter what the State wants you to believe about it. The tax CAN only be Constitutionally-applied as an excise-- meaning to privileged activities, measured by the gains they produce. Were it to be applied to UN-privileged activities it would be a capitation or other direct tax and require apportionment.

In happy fact, the tax IS confined to privileged activities, as written-- scrupulously so. It's just that it is written by geniuses of legal deception, and defended by scoundrels who take full advantage of its deceptive design.

YOU'VE BEEN FOOLED, PEOPLE (and man, has it cost you in wealth and liberty and security)!

The income tax is what it always has been, both before and after the Sixteenth Amendment: a tax on federally-granted privilege. It is *not* a tax on money, or making or receiving money, or *anything* but profitably exercising a federally-granted privilege.

That the tax has been effectively applied to non-privileged things (like your earnings) is a consequence of a clever statutory design by which common, actually-untaxable gains *can be made to appear to be* of the privileged, taxable variety (and the willingness of an always-revenue-hungry state to exploit your ignorance of that design and how it works).

You have even been made to legally (if unknowingly and unintentionally) *agree* that your actually unprivileged, untaxable gains are of the taxable sort.

Do you remember in 'The Incredibles' how the insurance company where Mr. Incredible was working had things carefully set up so everyone who dealt with the company was thoroughly exploited by its convoluted procedures and fine print? That's how the tax laws are set up.

But when you learn what the exploiters hope you won't, everything changes.

[Tens of thousands of your neighbors](#) have learned. They've been getting all their money back for many years now.

The government hates this and [strives mightily with all manner of corrupt practices from the bowels of its deep and dark armory](#) to keep you from learning the liberating truth and cutting through the bs, too. Part of this effort has involved a lot of shooting, smearing, demonizing, and marginalizing the messenger and message, including by way of a handful of judicial proceedings deploying evasions calculated to give the appearance of opposition while actually constituting admissions, such as those discussed [here](#) and [here](#).

There are others who would rather you didn't know the truth, also. Pundits who make a living complaining about the size of the government; tax attorneys; CPAs; "tax reform" advocates; and even many folks who present themselves as "tax honesty crusaders" don't want you to know. Knowing the truth about the tax, you will no longer buy what they're selling, just as you will no longer lose up to half your hard-earned wealth to a dangerously over-fed State.

Go to <http://losthorizons.com/Documents/The16th.htm> now and get the whole story. Or turn out your pockets and go back into your coma... *copper-top*. You and your kids will end up eaten alive by Leviathan (or, more accurately, spoon-fed in ever-more pathetic and contemptible bits and pieces to its clients), and you'll have no one to blame but yourself.

NOTES: Any construction of any aspect of the tax which would produce a result inconsistent with the above facts is a manifest misconstruction. For instance, any construction of the nature of what is taxed, or the meaning or effect of "includes", or of "privileged", which brings all economic activity or its products into the class of taxable events or taxed objects is self-evidently incorrect.

This is so, however cleverly the misconstruction may be defended. Any construction with the effect of imposing or justifying an unapportioned capitation or other direct tax is manifestly unconstitutional, even if teasing or arguing out just where the mistakes are being made gives you a headache or is beyond your abilities altogether. You don't need to be able to argue, understand or defend the relevant physics or the geometry to be able to confidently say that the Earth is not flat.

The same principle discussed above applies to "tax honesty" arguments that the tax only falls on corporations, or foreigners, or citizens, or residents, or the use or receipt of Federal Reserve notes, or is interlinked with the UCC, or (to put it succinctly) *any* construction or argument that the tax is anything other than what it is revealed to be in '[Cracking the Code- The Fascinating Truth About Taxation In America](#)'. Such notions are just as incompatible with one or more of the facts shown above as is the myth that the tax falls on all economic activity, and thus just as self-evidently incorrect.

Some unscrupulous beneficiaries/defenders of the misapplication of the tax have argued that certain of the Supreme Court rulings cited and excerpted above, such as *Butcher's Union v. Crescent City* are not actually tax-specific cases. This is pure evasion masquerading as criticism.

Butcher's Union is not cited as evidence that the Supreme Court has specifically said that common occupations are not taxable other than by apportionment. The case *doesn't* say this, directly.

Indeed, it is often difficult or impossible to find court rulings which declare the obvious or uncontroversial directly. This is no surprise; after all, what would be the occasion for such a declaration? Has any court ever found itself needing to *hold* that the Sun rises in the East (so to speak)?

But *Butcher's Union* DOES acknowledge that common occupations are a matter of right. That fact (which we don't really need any court to tell us, but why not use it when it is there?) conjoins with *Knowlton v. Moore*'s observation that a tax on the enjoyment of a right is a direct tax, thus requiring apportionment as specified in Article 1, Sec. 9, and with all the Supreme Court rulings declaring that apportionment requirement to continue, even after the Sixteenth Amendment. Taken all together, these are a body of judicial acknowledgement that under the US Constitution

a federal tax on common economic activities engaged in by right (or the product thereof) can only be laid per the apportionment rule.

P. S. Do you think taking care of the misapplication of the tax doesn't matter? [Why It Matters](#).

P. P. S. By the way, the systematic exploitation of the income tax's confusing design to apply it to unprivileged activities only began in the 1940s. Do you want to see what happened when it did? [Click here](#).

P. P. P. S. This is a very important article with powerful truth-spreading potential. PLEASE share it widely, especially with folks outside the [CtC](#) community and especially with those in the media and the legal profession. Copy the whole thing, from the title through these words, and paste it into your emails to others. If you are only able to share a link, it is <http://losthorizons.com/MidEditionUpdate.htm#1>.