

lawfully or unlawfully, without the consensual recognition, express or implied, of an obligation to repay and without restriction as to their disposition, 'he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.'"⁴⁸

Deductions and Exemptions.—The authorization contained in the Sixteenth Amendment to tax income “from whatever source derived” does not preclude Congress from granting exemptions.⁴⁹ Thus, the fact that, “[u]nder the Revenue Acts of 1913, 1916, 1917 and 1918, stock fire insurance companies were taxed upon their income, including gains realized from the sale or other disposition of property accruing subsequent to March 1, 1913,” but were not so taxed by the Revenue Acts of 1921, 1924, and 1926, did not prevent Congress, under the terms of the Revenue Act of 1928, from taxing all the gain attributable to increase in value after March 1, 1913, that such a company realized from a sale of property in 1928. The constitutional power of Congress to tax a gain being well-established, the Court found Congress competent to choose “the moment of its realization and the amount realized”; and “[i]ts failure to impose a tax upon the increase in value in the earlier years . . . cannot preclude it from taxing the gain in the year when realized”⁵⁰ Congress is equally well-equipped with the “power to condition, limit, or deny deductions from gross incomes in order to arrive at the net that it chooses to tax.”⁵¹ Accordingly, even though the rental value of a building used by its owner does not constitute income within the meaning of the Amendment,⁵² Congress was competent to provide that an insurance company shall not be entitled to deductions for depreciation, maintenance, and property taxes on real estate owned and occupied by it unless it includes in its computation of gross income the rental value of the space thus used.⁵³

⁴⁸ *James v. United States*, 366 U.S. 213, 219 (1961) (overruling *Commissioner v. Wilcox*, 327 U.S. 404 (1946)).

⁴⁹ *Brushaber v. Union Pac. R.R.*, 240 U.S. 1 (1916).

⁵⁰ *MacLaughlin v. Alliance Ins. Co.*, 286 U.S. 244, 247, 250 (1932).

⁵¹ *Helvering v. Independent Life Ins. Co.*, 292 U.S. 371, 381 (1934); *Helvering v. Winmill*, 305 U.S. 79, 84 (1938).

⁵² A tax on the rental value of property so occupied is a direct tax on the land and must be apportioned. *Helvering v. Independent L. Ins. Co.*, 292 U.S. 371, 378–79 (1934).

⁵³ 292 U.S. at 381. Expenditures incurred in the prosecution of work under a contract for the purpose of earning profits are not capital investments, the cost of which, if converted, must first be restored from the proceeds before there is a capital gain taxable as income. Accordingly, a dredging contractor, recovering a judgment for breach of warranty of the character of the material to be dredged, must include the amount thereof in the gross income of the year in which it was received, rather than of the years during which the contract was performed, even though it