

dition precedent to the imposition of the tax liability, . . . [did] not prevent it from being a true income tax within the meaning of the Sixteenth Amendment.”²⁸ Subsequently, in *Helvering v. Northwest Steel Mills*,²⁹ this appraisal of the constitutionality of the undistributed profits tax was buttressed by the following observation: “It is true that the surtax is imposed upon the annual income only if it is not distributed, but this does not serve to make it anything other than a true tax on income within the meaning of the Sixteenth Amendment. Nor is it true . . . that because there might be an impairment of the capital stock, the tax on the current annual profit would be the equivalent of a tax upon capital. Whether there was an impairment of the capital stock or not, the tax . . . was imposed on profits earned during a definite period—a tax year—and therefore on profits constituting income within the meaning of the Sixteenth Amendment.”³⁰

Likening a cooperative to a corporation, federal courts have also declared to be taxable income the net earnings of a farmers’ cooperative, a portion of which was used to pay dividends on capital stock without reference to patronage. The argument that such earnings were in reality accumulated savings of its patrons that the cooperative held as their bailee was rejected as unsound because, “while those who might be entitled to patronage dividends have . . . an interest in such earnings, such interest never ripens into an individual ownership . . . until and if a patronage dividend be declared.” Had such net earnings been apportioned to all of the patrons during the year, “there might be . . . a more serious question as to whether such earnings constituted ‘income’ [of the cooperative] within the Amendment.”³¹ Similarly, the power of Congress to tax the income of an unincorporated joint stock association has been held to be unaffected by the fact that under state law the association is not a legal entity and cannot hold title to property, or by the fact that the shareholders are liable for its debts as partners.³²

²⁸ *Helvering v. National Grocery Co.*, 304 U.S. 282, 288–89 (1938). In *Helvering v. Mitchell*, 303 U.S. 391 (1938), the defendant contended the collection of fifty per cent of any deficiency in addition to the deficiency alleged to have resulted from a fraudulent intent to evade the income tax amounted to the imposition of a criminal penalty. The Court, however, described the additional sum as a civil and not a criminal sanction, and one which could be constitutionally employed to safeguard the government against loss of revenue. In contrast, the exaction upheld in *Helvering v. National Grocery Co.*, though conceded to possess the attributes of a civil sanction, was declared to be sustainable as a tax.

²⁹ 311 U.S. 46 (1940). See also *Crane-Johnson Co. v. Helvering*, 311 U.S. 54 (1940).

³⁰ 311 U.S. at 53.

³¹ *Farmers Union Co-op v. Commissioner*, 90 F.2d 488, 491, 492 (8th Cir. 1937).

³² *Burk-Waggoner Ass’n v. Hopkins*, 269 U.S. 110 (1925).