

ton v. Brady,⁹ the Court held the following taxes to have been levied merely upon one of the “incidents of ownership” and hence to be excises: a tax that involved affixing revenue stamps to memoranda evidencing the sale of merchandise on commodity exchanges, an inheritance tax, and a war revenue tax upon tobacco on which the hitherto imposed excise tax had already been paid and that was held by the manufacturer for resale.

Under this approach, the Court found it possible to sustain a corporate income tax as an excise “measured by income” on the privilege of doing business in corporate form.¹⁰ The adoption of the Sixteenth Amendment, however, put an end to speculation whether the Court, unaided by constitutional amendment, would persist along these lines of construction until it had reversed its holding in *Pollock*. Indeed, in its initial appraisal¹¹ of the Amendment, it classified income taxes as being inherently “indirect.” “[T]he command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived, forbids the application to such taxes of the rule applied in the *Pollock Case* by which alone such taxes were removed from the great class of excises, duties and imports subject to the rule of uniformity and were placed under the other or direct class.”¹² “[T]he Sixteenth Amendment conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged”¹³

Income Subject to Taxation

Building upon definitions formulated in cases construing the Corporation Tax Act of 1909,¹⁴ the Court initially described income as the “gain derived from capital, from labor, or from both combined,” inclusive of the “profit gained through a sale or conversion of capital assets”;¹⁵ in the following array of factual situations it subsequently applied this definition to achieve results that have been productive of extended controversy.

⁹ 184 U.S. 608 (1902).

¹⁰ *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).

¹¹ *Brushaber v. Union Pac. R.R.*, 240 U.S. 1 (1916); *Stanton v. Baltic Mining Co.*, 240 U.S. 103 (1916); *Tyee Realty Co. v. Anderson*, 240 U.S. 115 (1916).

¹² *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 18–19 (1916).

¹³ *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916).

¹⁴ *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399 (1913); *Doyle v. Mitchell Bros. Co.*, 247 U.S. 179 (1918).

¹⁵ *Eisner v. Macomber*, 252 U.S. 189, 207 (1920); *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170 (1926).