

1 The Sixteenth Amendment was proposed by Congress on July 12, 1909, when it passed the House, 44 Cong. Rec. (61st
2 Cong., 1st Sess.) 4390, 4440, 4441, having previously passed the Senate on July 5. Id., 4121. It appears officially in 36 Stat.
3 184. Ratification was completed on February 3, 1913, when the legislature of the thirty-sixth State (Delaware, Wyoming, or
4 New Mexico) approved the amendment, there being then 48 States in the Union. On February 25, 1913, Secretary of State
5 Knox certified that this amendment had become a part of the Constitution. 37 Stat. 1785. The several state legislatures
6 ratified the Sixteenth Amendment on the following dates: Alabama, August 10, 1909; Kentucky, February 8, 1910; South
7 Carolina, February 19, 1910; Illinois, March 1, 1910; Mississippi, March 7, 1910; Oklahoma, March 10, 1910; Maryland,
8 April 8, 1910; Georgia, August 3, 1910; Texas, August 16, 1910; Ohio, January 19, 1911; Idaho, January 20, 1911; Oregon,
9 January 23, 1911; Washington, January 26, 1911; Montana, January 27, 1911; Indiana, January 30, 1911; California,
10 January 31, 1911; Nevada, January 31, 1911; South Dakota, February 1, 1911; Nebraska, February 9, 1911; North Carolina,
11 February 11, 1911; Colorado, February 15, 1911; North Dakota, February 17, 1911; Michigan, February 23, 1911; Iowa,
12 February 24, 1911; Kansas, March 2, 1911; Missouri, March 16, 1911; Maine, March 31, 1911; Tennessee, April 7, 1911;
13 Arkansas, April 22, 1911 (after having rejected the amendment at the session begun January 9, 1911); Wisconsin, May 16,
14 1911; New York, July 12, 1911; Arizona, April 3, 1912; Minnesota, June 11, 1912; Louisiana, June 28, 1912; West
15 Virginia, January 31, 1913; Delaware, February 3, 1913; Wyoming, February 3, 1913; New Mexico, February 3, 1913;
16 New Jersey, February 4, 1913; Vermont, February 19, 1913; Massachusetts, March 4, 1913; New Hampshire, March 7,
17 1913 (after having rejected the amendment on March 2, 1911). The amendment was rejected (and not subsequently ratified)
18 by Connecticut, Rhode Island, and Utah.

19 **3.10.11.1 Legislative Intent of the 16th Amendment According to President William H. Taft**

20 The following speech was given in front of the U.S. Senate by President William H. Taft, in which he introduced the 16th
21 Amendment and clearly revealed its legislative intent. It is *very* revealing, in that it shows that the intent was to allow the
22 government to tax *only* its own employees but not private citizens.

23 **CONGRESSIONAL RECORD - SENATE - JUNE 16, 1909**

24 [From Pages 3344 – 3345]

25 The Secretary read as follows:

26 To the Senate and House of Representatives:

27 It is the constitutional duty of the President from time to time to recommend to the consideration of
28 Congress such measures, as he shall judge necessary and expedient. In my inaugural address,
29 immediately preceding this present extraordinary session of Congress, I invited attention to the
30 necessity for a revision of the tariff at this session, and stated the principles upon which I thought the
31 revision should be affected. I referred to the then rapidly increasing deficit and pointed out the
32 obligation on the part of the framers of the tariff bill to arrange the duty so as to secure an adequate
33 income, and suggested that if it was not possible to do so by import duties, new kinds of taxation must
34 be adopted, and among them I recommended a graduated inheritance tax as correct in principle and as
35 certain and easy of collection.

36 The House of Representatives has adopted the suggestion, and has provided in the bill it passed for the
37 collection of such a tax. In the Senate the action of its Finance Committee and the course of the debate
38 indicate that it may not agree to this provision, and it is now proposed to make up the deficit by the
39 imposition of a general income tax, in form and substance of almost exactly the same character as, that
40 which **in the case of Pollock v. Farmer's Loan and Trust Company (157 U.S., 429) was held by**
41 **the Supreme Court to be a direct tax, and therefore not within the power of the Federal**
42 **Government to impose unless apportioned among the several States according to population.**
43 [Emphasis added] This new proposal, which I did not discuss in my inaugural address or in my

1 message at the opening of the present session, makes it appropriate for me to submit to the Congress
2 certain additional recommendations.

3 Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money
4 into the Treasury to meet the present deficiency. The decision of the Supreme Court in the income-tax
5 cases **deprived the National Government of a power** which, by reason of previous decisions of the
6 court, it was **generally supposed that government had**. It is undoubtedly a power the National
7 Government ought to have. It might be indispensable to the Nation's life in great crises. Although I
8 have not considered a constitutional amendment as necessary to the exercise of certain phases of this
9 power, a mature consideration has satisfied me that an amendment is the only proper course for its
10 establishment to its full extent.

11 I therefore recommend to the Congress that both Houses, by a two-thirds vote, **shall propose an**
12 **amendment to the Constitution conferring the power to levy an income tax upon the National**
13 **Government** without apportionment among the States in proportion to population.

14 This course is much to be preferred to the one proposed of reenacting a law once judicially declared to
15 be unconstitutional. For the Congress to assume that the court will reverse itself, and to enact
16 legislation on such an assumption, will not strengthen popular confidence in the stability of judicial
17 construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect
18 by amendment in due and regular course.

19 Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money
20 into the Treasury to meet the present deficiency, but by putting on the statute book a law already there
21 and never repealed will simply be suggesting to the executive officers of the Government their possible
22 duty to invoke litigation.

23 If the court should maintain its former view, no tax would be collected at all. If it should ultimately
24 reverse itself, still no taxes would have been collected until after protracted delay.

25 It is said the difficulty and delay in securing the approval of three-fourths of the States will destroy all
26 chance of adopting the amendment. Of course, no one can speak with certainty upon this point, but I
27 have become convinced that a great majority of the people of this country are in favor of investing the
28 National Government with power to levy an income tax, and that they will secure the adoption of the
29 amendment in the States, if proposed to them.

30 Second, **the decision in the Pollock case left power in the National Government to levy an excise**
31 **tax, which accomplishes the same purpose as a corporation income tax** and is free from certain
32 objections urged to the proposed income tax measure.

33 I therefore recommend an **amendment to the tariff bill Imposing upon all corporations and joint**
34 **stock companies for profit**, except national banks (otherwise taxed), savings banks, and building and
35 loan associations, **an excise tax** measured by 2 per cent on the net income of such corporations. **This**
36 **is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a**
37 **general partnership liability enjoyed by those who own the stock.** [Emphasis added] I am informed
38 that a 2 per cent tax of this character would bring into the Treasury of the United States not less than
39 \$25,000,000.

40 The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain
41 (192 U.S., 397), seems clearly to **establish the principle that such a tax as this is an excise tax upon**
42 **privilege and not a direct tax on property**, and is within the federal power without apportionment
43 according to population. The tax on net income is preferable to one proportionate to a percentage of
44 the gross receipts, because it is a tax upon success and not failure. It imposes a burden at the source of
45 the income at a time when the corporation is well able to pay and when collection is easy.

Another merit of this tax is the federal supervision, which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

I recommend, then, first, the adoption of a joint resolution by two-thirds of both Houses, proposing to the States an amendment to the Constitution granting to the Federal Government the right to levy and collect an income tax without apportionment among the several States according to population; and, second, the enactment, as part of the pending revenue measure, either as a substitute for, or in addition to, the inheritance tax, of an excise tax upon all corporations, measured by 2 percent of their net income.

Wm. H. Taft

3.10.11.2 Understanding the 16th Amendment²⁹

by Otto Skinner

How can it be said that an "income" tax (or taxation **on** income) is an indirect excise tax which is not on the tangible fruit, but **on** the happening of an event; that the income is not the **subject of** the tax, but that it is an excise tax which is collected from certain activities and privileges which is measured by reference to the income which they produce? How can all this be said and still call it taxation **on** income? How can the Internal Revenue Code state that there is hereby imposed **on** the taxable income, if the income is not the **subject of** the tax; if the income is not the thing being taxed? How can it be said that taxes **on** personal property are subject to the requirement of apportionment, when the "income" tax is not apportioned? Isn't your income your personal property? (Of course it is.) How is it possible for the United States Supreme Court, the lower courts, the Congressional record, the original Constitution, the Sixteenth Amendment, and the Internal Revenue Code to each make one or more of the following statements without them collectively being terribly inconsistent? Without one statement being in irreconcilable conflict with another?

- A. The conclusion reached in the *Pollock Case* recognized the fact that taxation **on** income was in its nature an excise entitled to be enforced as such;¹
- B. The Sixteenth Amendment simply prohibited the power of income taxation from being taken out of the category of indirect taxation;²
- C. The Congress shall have power to lay and collect taxes on incomes ... without apportionment among the several States;³
- D. The Amendment contains nothing repudiating or challenging the ruling in the *Pollock Case*;⁴
- E. The requirement of apportionment is pretty strictly limited to taxes on real and personal property and capitation taxes;^{5,11}
- F. Indirect taxes are laid upon the happening of an event as distinguished from its tangible fruits;⁶
- G. The income is not the subject of the tax: it is the basis for determining the amount of tax;⁷
- H. Excise taxes are in the class of indirect taxes;^{1,2,8}
- I. Excise taxes are collected from the same activities as those reached by the States;⁹ and,
- J. There is hereby imposed on the taxable income;¹⁰

How can it appear that the so-called "income" tax is imposed **on** property (income), and yet say the income is not the **subject of** the tax? If the income (property) is not the thing being taxed, why does it appear that way in the Sixteenth Amendment and in the Internal Revenue Code?

²⁹ <http://www.ottoskinner.com/a-breakthrough.html>.