

A Brief Introduction To The Fascinating Truth About The American Income Tax

(A rough "Cliff Notes" version of the first few chapters of [Cracking the Code- The Fascinating Truth About Taxation In America](#))

There is a persistent misunderstanding in America about the meaning of one of the key terms in our own federal Constitution. That term is "capitation", and it is the sole specifically-listed type of direct tax in the Constitution.

It's a funny thing that this term should be so poorly understood, and has seen little effort in the past to discern its meaning. Under the utterly explicit and still-controlling prescription of the Constitution, anything which qualifies as a capitation is subject to the rule of apportionment (by which the total to be collected with each imposition of the tax is divided among the states in proportion to their shares of the national population, and is then collected and remitted by the state governments). The reciprocal of this, of course, is that in order for the income tax we know and love (or any other tax, for that matter) to be administered WITHOUT apportionment, and yet still be valid, it CANNOT be a capitation. Before we discuss what the tax IS then, let's have a close look at what it CANNOT be...

*"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability. 2. **The Constitution of the United States provides that "no capitation, or other direct tax, shall be laid, unless in proportion to the census, or enumeration, therein before directed to be taken."** Art. 1, s. 9, n. 4. See 3 Dall. 171; 5 Wheat. 317."* Bouvier's Law Dictionary, 6th Edition (1856). (Emphasis added)

In a way, this simple definition from what was, in its time, the Congressional law dictionary of record more-or-less tells us all that we need to know. A capitation is an annual imposition on each person measured by his estate and ability. Some may split hairs on the meaning of "estate", but "ability" pretty clearly refers to ability to pay, and that pretty clearly means "revenue". On the other hand, the reference to a "poll tax" leads to some confusion as well, especially when more modern references are relied upon.

For instance, the entire definition of "capitation" offered by Black's Law Dictionary (fifth edition) is as follows:

"A poll tax (q.v.). A tax or imposition upon the person. It is a very ancient kind of tribute, and answers to what the Latins called "tributum", by which taxes on persons are distinguished from taxes on merchandise, called "vectigalia"."

Not very illuminating.

Turning to the definition of "poll tax" in the same collection, we find:

"A capitation tax; a tax of a specific sum levied upon each person within the jurisdiction of the taxing power and within a certain class (as, all males of a certain age, etc.) without reference

to his property or lack of it.

Poll taxes as a prerequisite to voting in federal elections are prohibited by the 24th Amendment and as to state elections such were held to be unconstitutional in Harper v. Virginia Bd. of Elections, 383 U.S. 663, 86 S. Ct. 1079, 16 L.Ed2d 169."

If one makes no further study of this subject, and relies on Black's for one's sense of it, one might conclude that a "capitation" is just a "poll tax" (that is, a "head tax"), and might even confuse it with a "voting tax"-- that is, a tax taken at the polling place before the right to vote can be exercised.

However, a capitation is NOT simply a "poll tax" (in fact, it would be proper to say that a "poll tax" is merely a variety of capitation), and a "poll tax" is not a "voting tax". (Furthermore, apportionment makes no sense whatever in regard to either a "voting tax" or a "head tax", being impossible as to the former, and superfluous as to the latter...) Nonetheless, since most have never made a study of this subject, sloppy presentations in prominent sources such as Black's have muddied the subject enough to make "capitation" a cognitive 'hiccup' term. Far too many who encounter the term, even while poring over the language of our fundamental law, simply skim past with no registration of its meaning or import.

So, just to clear up or forestall such confusion, let's examine the relevant observations of a couple of fellows who were pretty inarguably in a position to know what they were talking about. We'll start with Alexander Hamilton, one of the chief authors of the Constitution itself, from his argument in the first tax case argued before the United States Supreme Court:

"The following are presumed to be the only direct taxes. Capitation or poll taxes. Taxes on lands and buildings. General assessments, whether on the whole property of individuals, or on their whole real or personal estate; all else must of necessity be considered as indirect taxes."

In addition to his inclusion of general assessments on personal estates as being in the class of direct taxes, note also that Hamilton does NOT characterize "poll tax" as just an alternative name for "capitation"; more important still, as will become clearer in a moment, he specifically declares "poll taxes" to also be among the direct taxes subject to the apportionment rule.

Now let's turn to the singular expert on this subject, and the one whose work guided the framers in their use of terms in the taxing clauses, Adam Smith, author of 'On The Wealth Of Nations', perhaps the most important work ever written about economics and taxation:

"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"... "Capitation taxes, if it is attempted to proportion them to the fortune or revenue of each contributor, become altogether arbitrary. The state of a man's fortune varies from day to day, and without an inquisition more intolerable than any tax, and renewed at least once every year, can only be guessed at."... "Capitation taxes, so far as they

are levied upon the lower ranks of people, are direct taxes upon the wages of labour, and are attended with all the inconveniences of such taxes."..." In the capitation which has been levied in France without any interruption since the beginning of the present century, the highest orders of people are rated according to their rank by an invariable tariff; the lower orders of people, according to what is supposed to be their fortune, by an assessment which varies from year to year." (Bear in mind that Smith is using the common word 'wages', not the custom-defined legal term of the same spelling found in the modern revenue laws.)

Smith goes on to discuss the version of capitations imposed under the name of "poll taxes", as well, observing that in the first poll tax, for instance, many were taxed according to their supposed fortune, being *"assessed at three shillings in the pound of their supposed income"*.

Clearly, a general, indiscriminate tax on income read as "all that comes in", or on "every species of revenue", qualifies as either a "capitation" or a "poll tax" (or both) as each term is properly understood. Consequently, we know that any such tax must, under the provisions of the Constitution, be administered exclusively by the rule of apportionment.

I'll close this introductory discussion of "capitations" with the acknowledgment by the United States Supreme Court, in the second hearing of the case of *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429 (1895), that the understanding of that term that I have presented here is precisely the one which informed the Framers of the Constitution when choosing the wording "capitations and other direct taxes" in laying down the rule of apportionment. Declaring the meaning of the phrase "capitations and other direct taxes" in its ruling in the case, the court resorts to the authority of Albert Gallatin, Pennsylvania congressman, United States Senator and Representative, United States Minister to England and France, respectively, and the longest serving Secretary of the Treasury in American History, and says:

"...Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...' He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptance of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue;...'"

* * *

The Lincoln administration was aware of all that we have just discussed when, in 1862, it instituted the income tax we've since come to know so poorly, but loathe so well. The Lincoln administration knew the Constitution prohibits capitations and other direct taxes unless apportioned; it knew a tax that actually touched upon the "all species of revenue" which constitute the broad class

of receipts known as "income" in the common usage of that word WOULD be a capitation, and had under various names always been recognized and designated as a direct tax throughout history; and it also knew that apportioned direct taxes were really only suited to one-time debt-retirements and had traditionally been used exclusively for that purpose.

One-time debt-retirement was not what the Lincoln administration needed or wanted. Lincoln was looking to finance an ongoing war effort, and he needed the kind of tax that, once instituted, keeps on giving and giving without the inconveniences of repeated legislation and voting. In short, he wanted an excise, and that's what he imposed-- an excise on certain activities, measured by (and typically paid out of) the revenue they produced.

"...in Springer v. U. S., 102 U.S. 586 (1880), it was held that [the] tax upon gains, profits, and income was an excise or duty, and not a direct tax, within the meaning of the constitution, and that its imposition was not, therefore, unconstitutional."

United States Supreme Court, Pollock v. Farmer's Loan & Trust, 158 U.S. 601, 1895;

"...taxation on income was in its nature an excise entitled to be enforced as such,"
United States Supreme Court, Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916), quoting and reiterating language used in its ruling in Pollock v. Farmer's Loan and Trust.

*"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."*

(from the first income tax return form, emphasis added).

As F. Morse Hubbard, legislative draftsman for the United States Treasury Department put it in testimony before Congress in 1943,

"The income tax... ..is an excise tax with respect to certain activities and privileges which is measured by reference to the income [earnings] which they produce."

House Congressional Record, March 27, 1943, page 2580

Perhaps because of the appearance of the tax as falling on the revenue itself, the name "income tax" recommended itself; nonetheless, the tax is not, for reasons we have observed, any kind of general tax on income. Instead, it amounts, in its actual application, to a tax on only a specialized subset of the larger class of income, consisting exclusively of revenues attributable to the voluntary, profitable use of federal privilege, property or powers-- that is, revenues in which the federal government has a direct ownership interest, and to which it can therefore exercise a direct claim as a matter of right. The language of the original enactment is helpfully illuminating:

'An Act to provide Internal Revenue to support the Government and to pay interest on the

Public Debt'

Sec. 86. And be it further enacted, That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties;... ("Income" derived from less formalized federally-connected activities, such as investment in, or contracts with, federal entities is also taxed under other provisions in the act.)

It is thus, and only thus, NOT a tax attempting to burden any exercise of individual rights, a transgression which would drop it squarely into the category of a direct tax. As the Supreme Court observes in the case of Knowlton v. Moore, 178 U.S. 41 (1900), quoting the long-standing official French tax law definition as being illustrative of the distinctions drawn in the U. S. Constitution:

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

Many other rulings make the same, utterly fundamental point, which is self-evident, in any case. For a government to tax revenue simply as an exercise of power is for it to tax a person's exercise of the fundamental individual right to work or trade.

"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.' "

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).

On the other hand, to tax revenue proceeding from the voluntary, profitable exercise of the government's own property or powers (whether directly or by proxy through investment) is an indirect tax having nothing to do with the taxpayer's rights. Instead, such a tax merely involves an ownership claim to a piece of the privileged "action".

"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)

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

American Airways v. Wallace 57 F.2d 877, 880;

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

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

"PRIVILEGE: A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of others 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.

(I realize that working in the Post Office might not seem like the exercise of a "privilege" as we are accustomed to think of that word, but in a legal context, it is. Legally speaking, even something as mundane as being allowed to borrow my lawnmower for use in your landscaping business is a privilege-- something to which you have no inherent right and which I can withhold from you-- or tax-- at my pleasure. Besides, try going into competition with the Post Office delivering first-class mail on your own and see what happens...)

So, it is by confining itself exclusively to receipts proceeding from voluntary activities in combination with the federal government, either as a worker, investor, office-holder or relief beneficiary, that the "income tax" as practiced in America does not cross the line from an indirect tax to what would otherwise inescapably be a direct tax, and one which would require the mechanism of apportionment in its administration.

It is true that the external appearance of many of these activities is indistinguishable from those conducted as matters of private right. A doctor working for the federal government practices medicine in the same manner as a doctor in private enterprise does. A plumber in the civil service uses the same tools and skills as the one that comes to your home. An investor buying stock in a national bank or railroad, or other federal corporation or instrumentality, places those orders with his broker at the same time that he buys stock in Sears, and his dividend check may even combine the profits from all of these investments.

But beneath the superficial similarity of all of these common income-producing activities, those in the subset to which the tax applies share the distinction of being made possible only due to the

existence, and with the cooperation, of the federal government. In a very real and explicit sense, the aptly-named “income” tax in this country is, in fact, a “FEDERAL income tax”. A detailed, accurate and comprehensive study of the income tax law (such as that presented exclusively in [‘Cracking the Code- The Fascinating Truth About Taxation In America’](#)) makes clear that this distinction is thoroughly embedded in that law. In no respect whatsoever does the federal income tax purport to be anything but the limited, specialized tax that it must be, or to touch upon any revenue not distinguished as noted here-- decades of diligent efforts to obscure that fact in the public mind notwithstanding.

For instance, a close examination of the current statutory structure defining “wages”-- a term central to the measurement and reporting of “income”-taxable activities by paid-performers-of-services-- illustrates that the tax remains scrupulously adherent to its proper Constitutional limits. The term confines itself to remuneration paid to,

“...an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.”*

This definition also explicitly covers remuneration paid for service as officers of federal corporations, and implicitly covers other federal workers/office holders not listed, by virtue of the “includes” mechanism discussed briefly below and in detail in [CtC](#). [*“State”, as used here, has its own custom definition in the law.]

(NOTE: The language presented above is from the general “wage withholding” section of the internal revenue laws. The more narrowly focused FICA “income” surtaxes are also measured and reported using the term “wages”, but deploy a somewhat more elaborate structure to define the term, which is also discussed in detail in [CtC](#).)

Similarly, the statutory definition of the conduct of a “trade or business”, the receipts from which are to be reported and taxed as “income”, is:

“...the performance of the functions of a public office.”

By virtue of the statutory definition of “includes”-- another custom legal term deployed in the definitions of both of “wages” and “trade or business”, both of these terms are amenable to a narrowly limited potential expansion to cover other things of the same class (legal character) as those already listed, but nothing else. “Includes” is defined within the law as follows:

“Includes and including: The terms “includes” and “including” when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.” Rev. Act of 1938 §901(b) (Codified at 26 USC 7701(c))

The Department of the Treasury has helpfully clarified the meaning of this provision with the following regulatory language:

"The terms "includes and including" do not exclude things not enumerated which are in the same general class."

The principle involved in the "includes" mechanism is largely that described by the United States Supreme Court in *Gustafson v. Alloyd Co.* (93-404), 513 US 561 (1995):

"...a word is known by the company it keeps (the doctrine of noscitur a sociis). This rule we rely upon to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." Jarecki v. G. D. Searle & Co., 367 US 303, 307 (1961),"

clarified by the fact that:

"It is axiomatic that the statutory definition of the term excludes unstated meanings of that term." U.S. Supreme Court, Meese v. Keene, 481 U.S. 465 (1987)

It is clear that were the distinct, limited meaning of the "income" subject to the "income tax" to be eroded away, and the tax come to be applied to "all that comes in", it would be, and would have to be recognized as, a direct tax. The United States Supreme Court explicitly declares in its 1916 ruling in *Brushaber v. Union Pacific R. Co.*, 240 U.S. 1 (while specifically considering the limited meaning and effect of the 16th Amendment) that should the tax ever come to exceed its proper boundaries,

"the duty would arise to disregard form and consider substance alone, and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it."

But, of course, the law behind the tax never has exceeded those boundaries. This is why the very tax which is administered today, on the same activities as it is administered today-- without apportionment, and without any pretense of relief of the apportionment rule, such as is inaccurately ascribed to the 16th Amendment-- could be laid and administered for decades BEFORE that amendment, and yet be upheld by the United States Supreme Court.

For example, in *Gray v. Darlington*, 82 U.S. 63 (1872), the court had occasion to rule on a "capital gains" application of the tax, citing the following language from the 1867 statute,

"There shall be levied, collected, and paid annually upon the gains, profits, and income of every person, . . . whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation, . . . or from any other source whatever, . . . a tax of five per centum on the amount so derived over \$ 1000 . . . And the tax herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the 31st of December next preceding the time for levying, collecting, and paying said tax."

The court finds no issue with the tax generally, but merely holds that,

"The rule adopted by the officers of the revenue in the present case would justify them in treating as gains of one year the increase in the value of property extending through any number of years, through even the entire century. The actual advance in value of property over its cost may, in fact, reach its height years before its sale; the value of the property may, in truth, be less at the time of the sale than at any previous period in ten years, yet, if the amount received exceed the actual cost of the property, the excess is to be treated, according to their views, as gains of the owner for the year in which the sale takes place. We are satisfied that no such result was intended by the statute."

Again, in *Springer v. U. S.*, 102 U.S. 586 (1880), a test case of which the Supreme Court declares:

"The central and controlling question in this case is whether the tax which was levied on the income, gains, and profits of the plaintiff in error, as set forth in the record, and by pretended virtue of the acts of Congress and parts of acts therein mentioned [the act of June 30, 1864, as amended by the act of March 3, 1865-- the relevant language of which duplicated that quoted above in the Gray case], is a direct tax."

and:

"The plaintiff in error advises us by his elaborate brief 'that on the trial of the case below the proceedings were merely formal,' and that 'no arguments or briefs were submitted, and only such proceedings were had as were necessary to prepare the case for the Supreme Court.'"

the court concludes (as summarized in a later case) that,

"[The] tax upon gains, profits, and income [is] an excise or duty, and not a direct tax, within the meaning of the constitution, and that its imposition [is] not, therefore, unconstitutional."
United States Supreme Court, *Pollock v. Farmer's Loan & Trust*, 158 U.S. 601, 1895;

In the *Pollock* ruling itself, the most exhaustive judicial consideration of the federal taxing power undertaken in American history (and another ruling preceding the 16th Amendment), the Supreme Court observes first that when used in the generic sense of "all that comes in", a tax on income is inherently a direct tax:

"In England, we do not understand that an income tax has ever been regarded as other than a direct tax. In Dowell's History of Taxation and Taxes in England, admitted to be the leading authority, the evolution of taxation in that country is given, and an income tax is invariably classified as a direct tax."

and,

"At the time the constitution was framed and adopted, under the systems of direct taxation of many of the states, taxes were laid on incomes from professions, business, or employments..."

The court then proceeds to distinguish the tax laid by the federal income tax statutes as being only

on a special class of income amenable to taxation by excise (that is, the class we have been referring to as "income"):

*"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, **in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such.**"* (Emphasis added)

(Remember, as noted in the Brushaber decision, a tax does not qualify as an excise because the government chooses to call it one [form], but because its character-- both as to object and application-- is, in every particular, such a tax [substance].) The court goes on to point out that this excise on "income" is, in fact, what is taxed as such under the federal income tax structure:

*"If [the portion of the 1894 Revenue Act laying the tax on income from real estate] be stricken out, and also the income from all invested personal property, bonds, stocks, investments of all kinds, it is obvious that by far the largest part of the anticipated revenue would be eliminated, and **this would leave the burden of the tax to be borne by professions, trades, employments, or vocations;** and in that way what was intended as a tax on capital would remain, in substance, a tax on occupations and labor. We cannot believe that such was the intention of congress. We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations. But this is not such an act [because the real estate and personal property exactions were not, in fact, laid by apportionment in the act], and the scheme must be considered as a whole."* (Emphasis added)

The continued strict and scrupulous adherence of the "income" tax to the same proper and necessary boundaries is why the Supreme Court repeatedly declares over the years SINCE the 16th Amendment that the amendment did not create a new tax:

"The provisions of the Sixteenth Amendment conferred no new power of taxation..."
Stanton v. Baltic Mining Co., 240 U.S. 103 (1916);

did not extend the tax to anything it had not embraced before:

"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..."
Peck v. Lowe, 247 U.S. 165 (1918);

did not create authority for some hybrid tax which could fall upon any traditional or inherent object of a direct tax (such as a general income tax) but which was now simply not subject to the rule of apportionment:

"We are of opinion, however, that the confusion is not inherent, but rather arises from the conclusion that the 16th Amendment provides for a hitherto unknown power of taxation; that is, a power to levy an income tax which, although direct, should not be subject to the

regulation of apportionment applicable to all other direct taxes. And the far-reaching effect of this erroneous assumption will be made clear by generalizing the many contentions advanced in argument to support it..."

Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916),

and yet continues to uphold the tax as Constitutional, even while capitations and other direct taxes remain subject to the apportionment rule just as they always have been, as noted by the Brushaber Court quoted above, which goes on to observe that otherwise,.

"...one provision of the Constitution [would] destroy another; that is, [it] would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned."

Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916).

All these things are simultaneously true and in harmony with each other **because the limited nature of the tax has never changed**, the 16th Amendment notwithstanding; in fact, these things CAN ONLY be simultaneously true and in harmony with each other because the limited nature of the tax has never changed.

In 1988, in South Carolina v. Baker, 485 U.S. 505, the Supreme Court revisits the subject and observes that,

"The legislative history merely shows... ...that the sole purpose of the Sixteenth Amendment was to remove the apportionment requirement for whichever incomes were otherwise taxable." (Emphasis added.)

The court is recognizing that the 16th Amendment operates only on those "incomes" which already were, and always have been, inherently taxable under the "income" excise, and which had been so taxed-- without apportionment-- BEFORE the 16th amendment, until the application of the tax in certain cases was briefly interrupted by the Pollock loophole in 1895. Howard M. Zaritsky, Legislative Attorney of the American Law Division of the Library of Congress, helpfully summarizes all of this in his 1979 Report NO. 80-19A entitled "Some Constitutional Questions Regarding The Federal Income Tax Laws" which I will slightly paraphrase here:

"The Supreme Court has 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. Direct taxes are, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment."

So, what exactly DID the 16th Amendment do? It simply closed a "loophole" introduced into the administration of the federal income tax by the Supreme Court in its ruling regarding the taxation of "income" from invested personal property in the case of Pollock v. Farmer's Loan & Trust discussed above.

The Pollock ruling held that the application of the tax to the proceeds of investments and real estate leases functioned as a property tax rather than a federal income tax. The reasoning was that to tax such gains-- even when the investments and leases were in, or to, federal entities, as was involved in the case-- is to effectively tax the stock and land itself. Since both are personal property, such a tax was really a property tax and not, in this respect, an excise which could be applied without apportionment. With this ruling the court struck down ten sections of the recently reactivated federal income tax, which had been dormant since its last two-year implementation had expired in 1873.

The effect of this reasoning was to relieve the Robber-Baron class, which was heavily invested in money-making federal instrumentalities such as national banks and railroads and had numerous sweet-heart deals leasing property to the feds, from the burden of the tax. This didn't sit well with the growing and reactionary populist movement, which had little patience with the idea that a cadre of coupon-clipping fat cats-- widely, and accurately, perceived as pulling Washington's strings and benefiting handsomely thereby-- should escape the tax, while revenue tariffs, by which even the poorest Americans were affected, stood relatively high in order to make up the loss.

The populists demanded an amendment to the Constitution to close the loophole, and eventually succeeded with the 16th Amendment, which declares that what is otherwise inherently taxable under the federal income tax cannot be shielded therefrom by a resort to the source of the revenue involved. Treasury Department legislative draftsman F. Morse Hubbard usefully summarizes this sole and exclusive effect of the amendment in his 1943 testimony, saying,

"[T]he 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." (that is, "income otherwise taxable", as the Supreme Court reminds us some four-and-a-half decades later in the *South Carolina v. Baker* decision...)

Remember, as soon as Lincoln's 1862 act was passed, "income" acquired a fixed, limited and specialized definition for purposes of federal tax law (without which it would have been ruled unconstitutional for lack of apportionment in several cases arising before Pollock). Thus:

- The 1894 act that Pollock challenged only sought to tax "income" so defined.
- The Supreme Court ruling in that case only addressed the application of the tax to "income" so defined.
- The 16th Amendment only removed the apportionment requirement to "income" so defined-- and only that part of it comprising gains from invested personal property and real estate, because it was only that form of "income" that the Pollock court had concluded couldn't be

taxed other than by apportionment. All other forms of "income" have always been able to be taxed without apportionment, because of the particular legal character of the receipts which qualify for the tax and which were (and are) the only variety which the tax attempts to reach.

That is why the court can say that direct taxes remain subject to the rule of apportionment even after the amendment; that the provisions of the amendment conferred no new power of taxation; that the amendment does not extend the taxing power to new or excepted subjects; that the sole purpose of the amendment was to remove the apportionment requirement for whichever "incomes" were otherwise taxable; and that the "income" tax remains Constitutional even though capitations still require apportionment.

(A few lower courts have made confusing [or confused] declarations over the years to the effect that the 16th Amendment authorized a direct tax without apportionment. What is really meant is that under the reasoning of the Pollock court, the amendment removed the apportionment requirement from what is really a property tax.

However, since the "property tax" involved only applies to gains which otherwise qualify as "income" by virtue of their federal connections, such declarations are misleading when offered without context. Property which is taxable "directly" under the new protocol is not just any property, but only that producing benefits from a voluntarily-undertaken federal linkage. That's why we don't all get federal property-tax bills every year. In reality, the 16th Amendment resulted in an unapportioned direct tax only on receipts which are in every other respect within the class of those IN-DIRECTLY taxable.)

* * *

So how did all of this slip away from the American consciousness? Slowly, for one thing. At no time prior to 1942, eight decades after the federal income tax was first introduced, did more than 8% of American households ever file federal income tax returns in any given year. In most of those years, the percentage was far lower than even that small figure. As recently as 1936, only 3.9% of the entire American population filed returns, according to the Treasury Department's Division of Tax Research (Division Staff Memo: "Collection at Source of the Individual Normal Income Tax", 9 January, 1941).

Nonetheless, by 1943, thanks to the distractions of a world war, [the exhortations of Donald Duck™](#) (how many MANDATORY obligations must be sold to the public by cartoon animals?), and the adoption of a vague and confusingly-worded temporary measure called "The Victory Tax", the

percentage of households sending in payments declared to be of "income" taxes rose to 38. That same year, the Treasury Department introduced its masterwork: 'The Current Tax Payment Act of 1943', by which the practice of withholding tax deposits from "wages", which had been a feature of the very first federal income tax acts but had been abandoned early in the 20th Century, was re-introduced. The new version was a rare work of lawyerly art, and contributed enormously to the ongoing erosion of general understanding of the nature of the tax-- already well advanced at that point, thanks to the extended passage of time since the initial adoption of the vast bulk of the relevant law. In short, the understanding of the limits of the federal income tax also slipped away from American consciousness organically.

We have suffered heavily for our carelessness ever since, to the tune of trillions of dollars of wealth improperly extracted from us over the years. The fact that the tax is limited as it is, and doesn't actually apply to most receipts, doesn't mean that it does not, or cannot, affect most Americans. In fact, there is an elaborate bureaucratic and legal structure in place which inadvertently leads to the application of the tax outside its proper scope, by encouraging everyone making payments to others to substantively allege that the payments were connected with the conduct of a taxable activity, whether this is actually true or not.

By way of this structure, most UN-taxable receipts become presumptively taxable in the eyes of the law, and the recipients become presumptively required to file a tax return and pay a resulting tax. Of course, false presumptions can be corrected, and in this case, a quirky idiosyncrasy of the relevant law provides that the means by which an inaccurate presumptive transformation of untaxable receipts into taxable receipts is corrected itself involves the filing of a tax return.

Although this appears strange-- even contradictory-- at first glance, it really is not. Every legal action involves an allegation and an answer. The only way to prove that there is nothing to be answered for is by the making of the answer-- however much that dynamic has the character of a "Catch-22". There is simply no other way for the law to work, since to make no rebuttal in the face of an allegation is to admit to what is alleged, by default. So, Congress, recognizing the need, has specified that the making of the same type of tax return used to acknowledge the receipt of "income" when, and to the degree that, allegations to that effect are true is also the formal means of rebutting such allegations when they are not:

"And be it further enacted,...that any party, in his or her own behalf,...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ..the amount of his or her annual income,... liable to be assessed,... and the same so declared shall be received as the sum upon which duties are to be assessed and collected." Section 93 of The Revenue Act of 1862.

Knowing how these allegations are made, the details of the related provisions and specifications made by Congress, and the underlying principles of law involved in properly answering them requires a careful and thorough reading of '[Cracking the Code- The Fascinating Truth About Taxation In America](#)'. However, a general sense of these things, and of the manner in which the exploitive and obnoxious structure needing to be pro-actively addressed each year by most Americans came to be, can be had by reading the little parable that follows and then watching the short film you'll find linked at the end.

Getting Free Of The "Income" Tax Scheme Is As Easy As Falling Off A Bicycle (An Instructive Little Mental Exercise)

To get an idea of how today's "income" tax scheme works, try this little exercise. Keeping in mind the Constitutional limitations on the federal taxing power that we've just discussed, think of the federal government like a guy named Bob, who lives down the street from you in a town that is really big on bicycles. Bikes get used for commuting, deliveries, shopping, etc.. In fact, other than walking, bicycles are the exclusive form of transportation in your town.

Your neighbor Bob has a by-the-mile bicycle-renting business-- "Bob's Bicycles". Bob's Bicycles is far and away the biggest business in town. Part of this is because Bob does a lot of contract business. However, Bob doesn't just get paid by riders who have signed an agreement with him, or even just those using Bob's bikes. Bob gets something every time anybody in town does any riding at all, through an odd combination of circumstances that took many years to come together.

Here's how it happened...

Bob's Bicycles was launched long ago by the great grandfather of the present Bob (Bob IV). Great Grandpa Bob started out not only with a main location for his contract business-- he also had the bright idea of setting up spots around town where he parked some of his bikes for use by the more occasional rider, on an "honor system". Anyone could take and use one of these bikes, but they were expected to keep track of their mileage, and send Bob a "1040 Mileage Ridden/Rent Due Form" (and the appropriate rent), periodically. The initial design of the form was like this:

*I, _____, rode a Bob's Bicycle a total of _____ miles this year.
At Bob's rental rate of \$.15 per mile, I owe Bob \$_____*

use of the "1040 Mileage Ridden/Rent Due" form led to a little change in its design. Now it looked like this:

I, _____, rode a Bob's Bicycle a total of _____ miles this year.

Since Bob's rental rate is \$.15 per mile, I owe Bob \$_____

Under penalties of perjury, I declare the foregoing to be true, complete and correct to the best of my knowledge and belief,

_____ / /

(Great Grandpa Bob was a nice guy, and he was comfortable with his "honor system". But Great Grandpa Bob wasn't born yesterday.)

Over the years, things got a bit more complicated, just by an unfortunate coincidence of several misunderstandings. For one thing, Bob Jr. stopped personally distributing the "W-2, 1099 or K-1 Rider Reporting Forms", and hired a company to take care of this for him. Now, folks who had never even met Bob, and didn't know anything about him or his business, started getting "W-2, 1099 or K-1 Rider Reporting Forms" in the mail.

Along with the forms came prominent instructions advising the recipient to, *"Use this form to report the use of a bicycle by any person"*. The note that, *"When used on one of Bob's forms or notices, "bicycle" means "one of Bob's bicycles"*", got reworded into more complex 'legalese', and buried in a whole lot of new fine print on the back of the form.

Later, that clarifying note moved off the form entirely-- first being replaced by a cryptic reference to where the definition might be found in the "Bicycle Forms, Publications and Policies Guide" (conveniently available at each "Bob's" location around town), and then ultimately being dropped altogether under the principle that knowing what the forms are for is the responsibility of the person filling one out. Unsurprisingly, a lot of folks misunderstood, and began filling out and sending these reports to the address provided every time they saw anyone riding ANY bicycle.

Another thing contributing to complications with Great Grandpa Bob's program was Bob Jr's decision to stop painting his "honor system" bikes bright red. Pretty soon, even folks who remembered that "W-2, 1099 or K-1 Rider Reporting Forms" only related to Bob's bicycles were filling them out anytime they saw anyone riding a bike. This was only partly out of confusion.

"Bob's" had become a very successful business over the years, and was an important customer to every other company in town. People were eager to please Bob, and keep in his good graces; furthermore, although the fine print on the "W-2, 1099 or K-1 Rider Reporting Forms" had changed, those notices about Bob suing for his money hadn't. Bob maintained a really active PR department, and was well thought-of in the community in general, but he also had the most aggressive collections and legal operations in town. What with the subject of a report having a simple means of correcting any error, and in light of these other considerations, the simplest and safest course was just to fill out a report whenever anyone was seen on any bike.

* * *

It wasn't long before the town's kids were growing up with the impression that Bob had some kind of legal interest in bicycle usage in general. After all, once they got jobs, the company they worked for would automatically fill out a "W-2, 1099 or K-1 Rider Reporting Form" and send it to Bob, even when the kids rode their own bikes. If the rider didn't then send in the rent, Bob's collection agency would be all over them like ugly on an ape, with no questions asked.

By the time the grandkids of the first "Bob's Bicycles" customers were coming up, everyone had heard stories about riders who, having not paid Bob, were hauled into court and accused of "bicycle rent evasion". All that ever was alleged in these cases was that the accused rode a bicycle, and hadn't paid Bob. It appeared that if just these things alone were proven, dire consequences followed.

Bob, it seemed, could charge you rent for using your own stuff, and the legal system would back him up! By then it didn't occur to anyone-- including the defendants in these affairs-- that when used in a Bob's-bicycles-related legal action "bicycle" doesn't mean "any bicycle", but only means "one of Bob's bicycles", just as it does on a "W-2, 1099 or K-1 Rider Reporting Form". After all, by then almost no one alive could remember back to the beginning. By then, almost no one alive had ever read through Bob's "Bicycle Forms, Publications and Policies Guide", which had grown over the years to thousands and thousands of pages in length.

Further, by then Bob's Bicycles was so big, and so rich, and so diversified, that Bob III had a hand in everything that went on in town, and knew just how to spread all that rent money around. He had no trouble securing the support of the town fathers and other important and influential folks, and those movers and shakers-- just as ignorant of the truth as anyone else-- were happy to help Bob's PR department encourage everyone to just "pay their rent" without question. Paying rent to

Bob became something to be done not only unselfishly, but with pride. Paying rent to Bob was good for the community!

Over the years, every "Bob" has carefully kept the overall rent-burden tolerable. The nominal rates have often been high, but a big list of discounts and credits has grown in pace with the misunderstanding about who really owes rent to Bob.

When everyone had understood, and all the business done with Bob was knowingly voluntary, one simple rental rate was enough, and no elaborate discounting was needed. But as more and more people found themselves seemingly beholden to Bob, he realized that if he tried to take the same rate from the less-well-off that he could get away with from the well-to-do, somebody-- faced with a bill they couldn't handle-- might just start actually reading his "Bicycle Forms, Publications and Policies Guide", however difficult that had been made. Then the good thing Bob has grown accustomed to might fall apart. So, Bob's rental rates have grown increasingly "progressive". Bob, no dummy, is content to sacrifice on margin and make it up in volume.

In his best move ever, Bob instituted a "payroll deduction" program, under which the townsfolk are encouraged to anticipate how much riding they're going to do over the year, and then have part of their pay sent to Bob each week against the annual rent bill they figure will result. By virtue of this program, most folks never even really notice how much they're sending to Bob! (Bob is still chortling over this one, decades after thinking it up...)

Needless to say, Bob's "1040 Mileage Ridden/Rent Due" forms have gotten rather complicated. But whole industries have sprung up in town just to help people fill them out (for a fee, of course). The average person doesn't directly deal with paying Bob at all, anymore-- in fact, most get a "refund" from Bob each year, of what had been "over-deducted" under the "payroll deduction" program, and view it like a birthday present. All-in-all, Bob has succeeded in creating the "perfect storm" of misunderstanding.

* * *

Well, that's the story of Bob's Bicycles. Today, everyone in town plans all their affairs with Bob's piece-of-the-action factored in. Indeed, big chunks of the population do nothing but handle Bob's Bicycle-related activities. Most of the rest can't imagine a time without the business Bob does with their own businesses, or the charitable "giving-back-to-the-community" grants Bob makes out of the rent money he collects.

Great Grandpa Bob rests; probably with a smile on his face, 'cause the kids are doing all right. And deep within Bob's "Bicycle Forms, Publications and Policies Guide", the long-forgotten truth rests, too-- waiting for anyone willing to go to the trouble to take it out for a spin.

So, How About You?

Who Gave You YOUR Wheels?

* * *

Finally,

complete your introduction to the truth about the "income" tax by viewing the short film you'll find at

[It's Time To Learn The Truth About The Income Tax](http://www.losthorizons.com/ItsTimeToLearnTheTruth.wmv)

www.losthorizons.com/ItsTimeToLearnTheTruth.wmv

"Although all men are born free, slavery has been the general lot of the human race. Ignorant--they have been cheated; asleep--they have been surprised; divided--the yoke has been forced upon them. But what is the lesson?...the people ought to be enlightened, to be awakened, to be united, that after establishing a government they should watch over it....It is universally admitted that a well-instructed people alone can be permanently free."

-James Madison

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