

# THE REAL SCANDAL AT THE IRS

The real scandal at the IRS is not that they have been abusing their administrative power to delay and obstruct the formation of American organizations with "patriot" or "tea-party" or "Constitution" in the name of the organization; or even that the IRS has obviously become a "State" mechanism through which the "State" can limit and hinder the organization and appearance of political opposition and philosophical or ideological difference! No, that's been obvious for a while. No, the real scandal at the IRS is not that they hinder and impede the use of the word "Constitution" in the name of your organization; it's that **the IRS hasn't conducted** its tax collection operations **under the Constitution in over 60 years!** **They don't use the Constitution in anything they do**, they literally despise it, and they dishonor and **violate it** every single day. The IRS no longer recognizes either the limits of power established thereunder, nor the extremely *limited* nature of the actual holdings of the Supreme Court in its controlling decisions on income tax, nor the extremely *limited* nature of the statutory liability for the payment of the income tax that actually exists in the written laws.

Now, everybody knows that the Supreme Court upheld the income tax law it tested in 1916 as being constitutional, as authorized under the newly enacted 16th Amendment, but, it is extremely important to understand **WHY** the high court ruled that way. Because today, the IRS wants you to believe that *what* the Supreme Court upheld in 1916, is what is being practiced today by the IRS in its collection operations, **and that is a lie**. It's just not true, - a bad assumption on your part, if you will, because while the court did uphold the income tax law they tested in 1916 as being constitutional, they also **rejected certain specific arguments** that were made by the government concerning just exactly *what* taxing powers the 16th Amendment actually authorizes for the government to exercise, and much like Justice Roberts in the *Sebelius* healthcare decision in 2011, the court found their own logic and rational in 1916 to uphold the income tax, **based on the specific language of the legislation they were testing**, and by giving proper consideration in their analysis to **ALL of the relevant and applicable parts of the Constitution** involved and affected.

There are very clear and **well delineated** limitations **explicitly stated** within their controlling decisions; where the Court **rejects** certain arguments advanced by the government in the case concerning the power to tax income directly and without apportionment. Today however, those limitations and rejections are completely ignored by the IRS in its fanatical pursuit of the *communistic direct* application of the income taxing power. Again, that *communistic* application of the income taxing powers, as a direct tax without apportionment, was specifically rejected by the Court in its decisions in 1916. I say "*communistic*" because the 2nd Plank of the Communist Manifesto calls for "*a heavy progressive or graduated income tax*", which is precisely what the IRS wants you to subserviently practice today without question. But I assure you, in 1916 the Supreme Court did **not** uphold that direct and *communistic* application of the income taxing powers that the IRS imposes on the American People today under the pretense of the adoption of the 16th Amendment!

So just exactly what did the court hold in 1916, and why is the income tax constitutional when it is so obviously, potentially, completely destructive of the American system of private property and the People's *Right to Work*. I would remind the reader here, that the government is supposed to be prohibited from taxing our *Rights*, and their *exercise*, meaning the government has **no** legitimate legal power to *take from the mouth of labor the bread it has earned by Right*, or to consume the hard-earned *fruits of our own labors* by taxing the People (or labors) **directly and without apportionment** (per Art. I, Sec. 2, cl. 3 and Art. I, Sec. 9, cl. 4 of the Constitution). The income tax, as enforced by the IRS today plainly violates these basic rights and fundamental prohibitions. **But, what does the law actually provide**, and is the IRS actually enforcing it (the written law), or something else entirely, like the *philosophy* of the 2nd Plank of the Communist Manifesto, instead ?

So, first we will briefly examine the controlling Supreme Court decisions, and the court's reasoning in upholding the tax, and then we will briefly review the written law as it exists. In 1916, in the *Brushaber v. Union Pacific R.R. Co.* case (one of the Supreme Court's controlling decisions on income tax), in considering the argument that the income tax legislation being tested by the Court in that case enacted a direct nonapportioned tax on all income derived from earnings in America by all persons, the U.S. Supreme Court held: "...it clearly results that **the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution to destroy another**; that is, they would result in bringing the provisions of the [16th] Amendment exempting a direct tax [on income] from apportionment **into irreconcilable conflict** with the general requirement that **all direct taxes be apportioned**. ... This result ... **would create radical and destructive changes in our constitutional system and multiply confusion.**" *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12 (1916).

Clearly, the *Brushaber* Court **rejected** here the argued contention that the (then) new income tax was (or is) a direct tax without apportionment, specifically pointing out that *that* interpretation and application of the legislation under the Amendment would have the improper and unacceptable legal effect **of using one provision of the Constitution to destroy another**, which "**would create radical and destructive changes in our constitutional system**" by **improperly using one law to destroy another**, and thereby strip the People of their constitutional protection from tyrannical direct taxation, and replace it with an omnipotent power granted the "State" to take as much as it wants, from whoever it wants, whenever it

wants. This of course, was **unacceptable** to the Court then, **as it should be now**, as it clearly does not constitute a proper application and use of the law; as **it is not legitimate to use one law or clause of the Constitution, to destroy another**. But this is precisely what the IRS argues today, *i.e.*: that the 16th Amendment destroys the people's protections under, and provisions of, Art. I, Sec. 2, Cl. 3 and Art. I, Sec. 9, Cl. 4, requiring **all** direct taxes to be apportioned! This is argued so that the income tax can be collected by the IRS in its daily *administration and operation*, **as though the tax were indeed a direct tax without apportionment**, which is still in actuality, **a prohibited application of the income taxing powers**.

The clear and unequivocal ruling of the Court in the *Brushaber* holding is that the Sixteenth Amendment granted **no new powers of taxation** to Congress to exercise: "*Moreover in addition the conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case 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.*" *Brushaber*, *supra*, at 16-17. So the income tax is an **indirect excise**.

The Court plainly states here that if the tax were ever to be applied as a direct tax, to the People or their labors, then the Court would be required to **"hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it", and prohibit such alleged direct application** of the federal tax by the I.R.S. But this is precisely what the IRS is doing today! And it is how the IRS has operated, for over 60 years, **without the called-for Court intervention requiring the apportionment of the tax**. Additionally, in 1916 the Court was clearly able to identify that the legislation being tested in that *Brushaber* case provided for the **indirect** "*collection of the tax at the source*", through a legislatively created and statutorily defined *duty*, laid on certain identified *persons*, who, acting as the statutorily defined "*Withholding Agents*" (IRC § 7701(a)(16)), have a legislative mandate to "*retain and pay the sum of the tax*" as federal **tax collectors, who have collected the tax from other persons**. The Court's decision plainly states "*The act provides for collecting the tax at the source; that is, makes it the duty of corporations, etc., to retain and pay the sum of the tax ... unless the owner to whom the interest is payable gives a notice that he claims an exemption.*" *Brushaber*, *supra* at 21.

The Supreme Court identified in this case that the tested legislation compelled certain *persons*, who are party to certain specific transactions, **to perform as federal tax collectors** within those **identified transactions**, and withhold money as tax from the specified payments made to the statutorily identified **subject "persons"**, who are specifically made subject to the collection of the tax by the provisions of the statutes, through the withholding of money as tax from their payments. Then, those federal *tax collectors* (who withheld the money) are required by law to pay over to the U.S. Treasury those **collected "income"** tax funds, because of course, as federal tax collectors, **they are made liable in the statutes for the payment to the U.S. Treasury of the collected tax**; just as a store is made **liable** as a *tax collector* in the State for the payment of the sales tax that it has collected from the sales of its products to its customers. Then of course, the *tax collector* (the "store") must pay over to the State Treasury the collected sales tax funds. But, the tax paid by the *collectors* **is not paid** from their own pocket or funds, unless they **first fail the duty to collect** the tax from the subject transactions. Through this **shifting of the burden** of the requirement to pay the tax, **from the citizen himself to the tax collector** (who has the legal duty to pay over the collected tax, but **not any duty** to pay tax out of his own pocket or even on his own income) both the income tax, and the entire *scheme* of taxation employed by the legislation in laying the tax, **are kept indirect, constitutional, and legitimate**, and, as an **indirect** tax, it is relieved of the constitutional requirement to apportion the tax. But, according to the Supreme Court in this controlling *Brushaber* case, any **direct application** of the income tax **to the wage earner, outside of this approved indirect withholding scheme, would require apportionment** in order to be constitutional.

This *scheme* of implementation for the *collection of the tax at the source*, of course has the legal effect of **making the tax collector the true "taxpayer"** within the taxing scheme and legislation, **not the person who earns the income** and is simply paid for his labors **by Right** (despite the *taxability* of his earnings). One should also carefully note that under this **indirect** taxing scheme the tax is withheld **only** where it is required by statute to be collected from the **statutorily specified** payments and or "*persons*", just as a sales tax is only collected by the stores on the sales of certain, **statutorily specified** products and goods. The identified legislative requirement *to retain* (collect) *and pay the sum of the* (income) *tax* is still defined in law today, just as it was in 1913 when the legislation was enacted, and if you're interested you can review that startlingly limited authority at **www.Tax-Freedom.com**, or at the law library under IRC §§ 7701(a)(16), 1441, 1442, 1443, and 1461, but suffice it to say that the *Withholding Agent*, the federal *tax collector* of the income tax (enacted in 1913), is only authorized and required under these defining statutes to deduct and withhold tax from **foreign persons**. Is this because the original income tax legislation was enacted as part of the *Underwood-Simmons Tariff Act* of Oct. 3, 1913? In short, the real scandal at the IRS is that they are now wrongfully enforcing on the American People the practice of *communism*, and its repugnant 2nd Plank, in place of properly enforcing the collection of a constitutional **indirect** income tax as actually authorized by the Supreme Court under the 16th Amendment in 1916. Much more detailed info available at: