Sixteenth Amendment

(1913)

WHAT IT SAYS

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

TAX PROTESTS AND PROTESTORS

In 1765 colonists objected when the British government imposed stamp taxes, and American tax protests have occurred periodically ever since then. Some protests have attempted to set limits on state and local taxes. For instance, California's Proposition 13, adopted by a referendum in 1978, put a cap on the state's annual increases in property taxes. Organized groups have lobbied Congress and endorsed candidates for office who promised to lower taxes. There have also been proposals to repeal the Sixteenth Amendment. Whether one agrees with these objectives or not, their advocates have proceeded in a legal manner.

The more extreme tax protesters have been willing to break the law by refusing to pay their taxes on the grounds that the federal income tax itself is illegal. These tax resisters offer numerous reasons for their risky actions. Some of them argue that the Constitution still prohibits direct taxes like the income tax because the Sixteenth Amendment was never properly ratified. They regard the discrepancies in spelling and capitalization by the various states during the ratification process as invalidating the amendment. Other tax protesters do not accept the Internal Revenue Service's tax codes as official law. Some argue that "income" really means corporate profits, not wages. Some claim that being forced to provide information on their income tax returns violates their Fifth Amendment right against self-incrimination. Some have convinced themselves that there are no laws requiring individuals to pay taxes, that filing taxes is a voluntary act, and that people can simply choose not to pay. A few tax protesters have attempted to revoke their U.S. citizenship—and with it their obligation to pay taxes—by not accepting Social Security and other government programs.

Although asserted passionately, and often in excruciating detail, these arguments have been rejected as bogus by the federal courts. Judges accept the Sixteenth Amendment as a fully legitimate part of the Constitution that grants the federal government the ability to require all citizens to pay taxes on their earnings. Nor have the courts allowed individuals to suspend their citizenship obligations by forsaking government services. Despite these rulings, ardent tax protesters refuse to accept the opinions of judges as the final word and insist on interpreting the statutes for themselves and asserting their rights as they understand them. Those who engage in tax evasion face stiff penalties. Judges have found many of the tax protest cases to be frivolous and have set large fines for wasting the court's time. The government has rosecuted tax protesters and forced them to pay back taxes with heavy penalties, or sent them to jail. The Internal Revenue Service reminds taxpayers that while they have the right to contest their tax liabilities in court, "no one has the right to disobey the law."

WHAT IT MEANS

In Article I, sections 2 and 9 the U.S. Constitution said that no direct taxes could be imposed unless made in proportion to the population, as measured by the census. This meant that rather than taxing individuals directly, Congress had to levy taxes in each state based on the state's population. During the Civil War, the federal government imposed an income tax to pay for the war's expense, but in *Pollock v. Farmer's Loan & Trust Co*. (1895), the Supreme Court later declared federal income taxes unconstitutional because they were direct taxes. This ruling limited Congress's power to tax to a complicated formula that would be difficult to impose. Congress therefore sent to the states the Sixteenth Amendment, which specifically gives Congress the power to impose a direct income tax. This amendment greatly expanded the scope of federal taxing and spending and has been the basis for all subsequent federal income tax legislation.

"Taxes are what we pay for civilized society."

—Justice Oliver Wendell Holmes Jr., dissenting opinion, *Compañía Generalde Tabacos de Filipinas v. Collector of Internal Revenue* (1927)

TAXATION AS A FORM OF REGULATION

Early in the twentieth century, when reformers were seeking to end child labor in the United States, they had difficulty finding a solution that would meet the Supreme Court's approval. At first, Congress used the commerce clause, with its control of interstate commerce, to ban the shipment of goods made by child workers. But the Supreme Court struck this plan down in the case of Hammer v. Dagenhart (1918) for exceeding congressional authority.

Then the opponents of child labor turned to the power of taxation. Congress enacted a steep tax on the profits of any manufacturer that hired children under certain ages. The Supreme Court struck down the law in the Child Labor Tax Case (1922). The amount of the tax was not the issue. Instead, what the court found objectionable was that Congress was using a tax to serve as a form of regulation. Taxes cannot be substitutes for penalties or regulations, the Court decided.

In later years, however, the Supreme Court has accepted high taxes on certain items that the community wishes to control, such as drugs, gambling, and some forms of weapons. In the case of United States v. Sanchez (1950), the Court decided that "it is beyond serious question that a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. . . . The tax in question is a legitimate exercise in the taxing power despite its collateral regulatory purpose and effect."

Sixteenth Amendment

Congress creates an income tax to fund the Civil War

1862

Congress creates the Commissioner of Internal Revenue and enacts the first national income tax to pay war expenses. (The Confederacy also adopts an income tax.) At first, a flat 3 percent tax was set on all incomes greater than $800. This is later modified to 5 percent for incomes between $600 and $5,000, and 10 percent for incomes greater than $5,000. After the war, in 1872, Congress repeals the income tax.

Another income tax is established

1894

In an effort to reduce tariff rates, which provide the federal government with most of its revenue, Congress institutes another income tax of 2 percent on incomes greater than $4,000. Opponents decry the tax because it "takes from the wealth of the thrifty and the enterprising and gives it to the shifty and the sluggard."

The Supreme Court strikes down the federal income tax

1895

The Supreme Court rules in *Pollock v. Farmer's Loan & Trust Co*. that the new federal income tax is unconstitutional because it violates Article I, sections 2 and 9 of the Constitution. These sections, known as the "rule of apportionment," specify that all federal taxes must be imposed based on the population of each state, rather than directly on the people.

Congress sets up the U.S. Tax Court

1924

Congress creates the U.S.Tax Court to give taxpayers a place to dispute decisions of the Internal Revenue Service involving payment of federal income, gift, or estate taxes. The Tax Court's decisions can be appealed to the federal courts of appeals and are subject to review by the U.S. Supreme Court. Today, there are nineteen tax court judges who are appointed by the President for terms of fifteen years.

Illegal gains are subject to the income tax

1927

In *United States v. Sullivan, the Supreme Court*, holds that financial gains made from illegal activities, such as drug sales or gambling, are taxable income under the Revenue Act of 1921. The Court finds that there is no reason to exclude revenues made from illegal businesses. The statute specifically requires payment from businesses of any kind and taxes are due as if the business were lawful.

TIMELINE

First income tax is levied under the Sixteenth Amendment

1913

Soon after the Sixteenth Amendment is ratified, Congress levies a 1 percent tax on personal incomes greater than $3,000 and a 6 percent tax on incomes above $500,000. These taxes affect only a very small portion of the population. At the same time, the Treasury Department devises the first Form 1040.

The Supreme Court defines "income"

1913

In *Stratton's Independence v. Howbert,* the Supreme Court defines income under the tax law as the "gain derived from capital, from labor, or from both combined" including both the dividends paid to corporate stockholders and the profit that is gained from selling assets.

Top tax rate hits 77 percent

1918

To raise additional taxes necessary to finance the First World War, Congress increases the top rate of the income tax to 77 percent, an all-time high. Modern federal tax rates vary between 10 and 38 percent.

Government institutes withholding taxes on wages and salaries

1943

To pay the rising costs of the World War II, Congress imposes income taxes on people with average incomes. So many people default, because they have not saved sufficiently to pay their taxes, that the government creates a new system for collecting income taxes by mandatory "withholding from wages and salaries." Employers are required to deduct the tax from employees' salaries before paying them.

The Internal Revenue Service is created

1953

The Bureau of Internal Revenue, first established in 1862, is reorganized and renamed the Internal Revenue Service (IRS). It remains the largest of the bureaus within the Department of the Treasury and is responsible for collecting federal taxes. The IRS deals directly with more Americans than any other institution, public or private.

The tax court fines "frivolous arguments"

2003

The U.S. Tax Court imposes financial penalties on taxpayers who pursue "frivolous cases" to delay the payment of their taxes. The IRS also rejects many claims raised by people who refuse to pay their taxes, such as filing returns with zeros on every line, or demanding a refund equal to the amount withheld from their earnings.