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NRSTA - Virginia Chapter History of the 16th Amendment

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Strange as it may seem, the Sixteenth Amendment (which gave the American people the affliction of confiscatory income taxes) was never supposed to have passed. It was introduced by the Republicans as part of a political scheme to trick the Democrats, but it backfired.

Background

The Founding Fathers had rejected income taxes (or any other direct taxes) unless they were apportioned to each state according to population. Nevertheless, an income tax was levied during the Civil War and upheld by the Supreme Court on somewhat tenuous reasoning. When another income tax was enacted in 1893, the Supreme Court found it unconstitutional. In connection with the two Pollock cases reviewed in 1895, the Court declared that the act violated Article I, section 9 of the Constitution.

During the following decade, however, the complexion of the Court changed somewhat, and so did public sentiment. There was great social unrest and the idea of a tax to "soak the rich" began to take root among liberals in both major parties. Several times the Democrats introduced bills to provide a tax on higher incomes but each time the conservative branch of the Republican party killed it in the Senate. The Democrats used this as evidence that the Republicans were the "party of the rich" and should be thrown out of power, forcing President William Howard Taft to acknowledge in political speeches that income taxes might be all right "in principle", but it was well known among close associates that he was strongly opposed to such a tax.

The Bailey Bill

In April 1909, Senator Joseph W. Bailey, a conservative Democrat from Texas who was also opposed to income taxes, decided to further embarrass the Republicans by forcing them to openly oppose an income tax bill similar to those which had been introduced in the past. He introduced his bill expecting it to get the usual opposition. However, to his amazement, Teddy Roosevelt and a growing element of liberals in the Republican party came out in favor of the bill and it looked as though it was going to pass.

Not only was Bailey surprised, but Senator Nelson W. Aldrich of Rhode Island, the Republican floor leader, frantically met with Senator Henry Cabot Lodge of Massachusetts and President Taft to work out a strategy to demolish the Bailey tax bill. Their own party was split too widely to permit a direct confrontation, so the strategy was to pull a political end run. They announced that they favored an income tax but only if it were an amendment to the Constitution. Within their own circle, they discussed how it might get approval of the House and the Senate, but they were quite certain that it could be defeated in the more conservative states-three-fourths of which were required in order to ratify the amendment.

Thus, the Democrats were off guard when President Taft unexpectedly sent a message to Congress on June 16th, 1909, recommending the passage of a constitutional amendment to legalize federal income tax legislation.

The strategy threw the liberals into an uproar. At the very moment when their Bailey bill was about to pass, the Republicans were coming out for an amendment to the Constitution which would probably be defeated by the states.

Reaction to the Amendment

Congressman Cordell Hull (D-Tenn., and later Secretary of State under FDR) saw exactly what was happening. He took the floor to excoriate the Republican leaders. Said he:

"No person at all familiar with the present trend of national legislation will seriously insist that these same Republican leaders are over-anxious to see the country adopt an income tax...What powerful influence, what new light and deepseated motive suddenly moves these political veterans to 'about face' and pretend to warmly embrace this doctrine which they have heretofore uniformly denounced?" {1}

He went on to expose what he considered to be a political trick. He needn't have been so concerned. The slogan of "soak the rich" automatically aroused Pavlovian salivation among politicians both in Washington and the states. The Senate approved the Sixteenth Amendment with an astonishing unanimity of 77-0! The House approved it by a vote of 318-14.

When Republican Congressman Sereno E. Payne of New York, who had introduced the amendment in the House, saw that this end run was turning into a winning touchdown for the opposition, he was horrified. He went to the floor and openly denounced the bill he had sponsored. Said he:

"As to the general policy of an income tax, I am utterly opposed to it. I believe with Gladstone that it tends to make a nation of liars. I believe it is the most easily concealed of any tax that can be laid, the most difficult of enforcement, and the hardest to collect; that it is, in a word, a tax upon the income of honest men and an exemption, to a greater or lesser extent, of the income of rascals; and so I am opposed to any income tax in time of peace...I hope that if the Constitution is amended in this way the time will not come when the American people will ever want to enact an income tax except in time of war." {2}

The end run of the Republican leadership did indeed backfire. State after state ratified this "soak the rich" amendment until it went into full force and effect on February 12, 1913 (Ed.note: Mr. Bill Benson, in his book "The Law That Never Was" has since documented massive...and outcome changing...federal interference in the certification of the votes of the individual state legislatures. The votes for and against from Kentucky, for instance, were switched by then Secretary of State Philander Knox.)

Did it Soak the Rich?

Certain writers such as Alfred Hinsey Kelly and Winfred Audif Harbison (authors of "The American Constitution: Origins" [New York: Norton, 1970]) rejoiced that this amendment "shifted the growing burden of federal finance to the wealthy." {3} Nothing could be further from the truth!

The wealthy, especially the super-wealthy, had anticipated this development and had created a clever device to protect their riches. It was called a "charitable foundation". The idea was to co-sign the ownership of wealth, including stocks and securities, to a foundation and then get Congress and the state legislatures to declare all such charitable institutions exempt from taxes. By setting up boards which were under the control of these wealthy benefactors they could escape the tax and still maintain control over the disposition of these fabulous fortunes.

Long before the federal income tax was in place, multimillionaires such as John D. Rockefeller (who once said "I want to own nothing and control everything"), J.P. Morgan and Andrew Carnegie had their foundations set up and operating. The next step was to make certain that the new tax bill passed by Congress contained a provision specifically exempting their treasure houses from taxation.

The tax bill which the Sixteenth Amendment authorized was introduced as House Resolution 3321 on October 3, 1913. It turned out to be somewhat of a legislative potpourri for tax attorneys, accountants and the federal courts. In the ensuing years, untold millions of dollars have been spent trying to figure out exactly what this tax law, and those which followed it, were intended to provide. However, tucked away in its inward parts was that precious key which safely locked up the riches of the super wealthy. Here are the magic words under Section 2, paragraph G:

"Provided, however, that nothing in this section shall apply...to any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes."

All of the foundations of the super-rich were designed to qualify under one or more of these categories.

How the Cute Little Monkey Grew into a Gorilla

When the first income tax was sent out to the people, the Congress chortled confidently that "all good citizen will willingly and cheerfully support and sustain this, the fairest and cheapest of all taxes." That was the cute little monkey part. After all, the first tax ranged from merely 1% on the first \$20,000 of taxable income and was only 7% on incomes above \$500,000. Who could complain?(Ed. note: In 1994 "dollars" that \$20K is now over \$250K and the \$500K is today over \$6 million!)

At first, scarcely anyone did. Little did they know that before the tinkering was done in Washington, this system would be described by many Americans as the most unfair and expensive tax in the history of the nation. Within a few years, it had become the principal source of income for the federal government.

In the beginning, hardly anyone had to file a tax return because the tax did not apply to the vast majority of America's work-a-day citizens. For example, in 1939, 26 years after the Sixteenth Amendment was adopted, only 5% of the population, counting both taxpayers and their dependents, was required to file returns. Today, more than 80% of the population is under the income tax.

Withholding Taxes

The collection process was greatly facilitated in 1943 by a device created by FDR to pay the costs of WWII. It was called "withholding from wages and salaries". In other words, the tax was collected at the payroll window before it was even due to be paid by the taxpayer. Economists point out that this device, more than any other single factor, shifted the tax from its original design as a tax on the wealthy to a tax on the masses--mostly the middle class.

Investigations disclosed that the truly wealthy pay relatively little or no income tax at all.

Some idea of how the cute little monkey grew into a gorilla is perceived from the fact that nearly half of all federal revenue is now raised by income taxes. Furthermore, the higher brackets are literally confiscatory--but by "due process". of course, under the Sixteenth Amendment. Rates have been as high as 94% in the upper brackets during wartime, and even in peacetime they are presently 50%. (Ed.note: This piece was apparently written when the top rates were higher than in 1992. Not to worry, however: Watch for higher rates coming soon to an IRS office near you!) Medium income people up through the upper middle class pay between 12 & 35%. Nevertheless, at all levels it has become sufficiently burdensome to discourage the attainment of basic economic advantage which most Americans seek.

Weaknesses of the System

The most damaging aspect of the Sixteenth Amendment is the fact that it vitiated the

unalienable rights provided in the 4th Amendment. This is the amendment which protects privacy--privacy of the home, business, personal papers and personal affairs of the private citizen. None of these are disturbed by a poll (head or capitation) tax because it is so much per person regardless of the circumstances, but when the tax is based on income, the IRS is assigned the most unpleasant task of making certain that everyone pays his fair share. This task is physically impossible without prying into the private papers, private business and personal affairs of the individual citizens. By any standard, it is a miserable assignment. Furthermore, it is impossible to run audits and surveys of all taxpayers and so the audits seldom check more than 2% of them.

There are many things wrong with this approach. Worst of all, it puts the government tax collectors in the gorilla role and intimidates citizens who are unlucky enough to be audited with the feeling that they are "victims" of an unfair system.

The IRS also finds it difficult to avoid the attitude that each taxpayer is a cheat, even a criminal, who must somehow be cornered and caught. This has brought the structure of the entire income tax collection process into question.

For example, the underground economy of monetary transactions (which is conducted without records) is well known. It is estimated that losses in federal revenues from this underground economy are at least \$100 billion per year. (Ed. note: Probably closer to \$200-300 billion!) Obviously, this is not fair to those who are paying their share. Then there is an estimated \$65 billion per year which is lost because it is not reported. This is considered unfair. There is a lot of padding on expense accounts, which is estimated to reduce the tax total by another \$18 billion. Other operations, both legal and illegal, jumps the total up a few billion more.

There has also been extensive criticism of the prosecution of tax cases. The appeal is through a system of tax courts which are without juries. In order to get a tax case into a regular court where there is a jury, the citizen must pay the tax and then sue the government.

Thousands of complaints have also poured into the IRS concerning the tactics used by some of its agents. Citizens feel they are treated as criminals rather than suspects who are innocent until proven guilty.

Is there a better way? Here is one answer by a former head of the IRS.

A Former IRS Commissioner's Statement

T. Coleman Andrews served as commissioner of IRS for nearly 3 years during the early 1950s. Following his resignation, he made the following statement:

"Congress [in implementing the Sixteenth Amendment] went beyond merely enacting an income tax law and repealed Article IV of the Bill of Rights, by empowering the tax collector to do the very things from which that article says we were to be secure. It opened up our homes, our papers and our effects to the prying eyes of government agents and set the stage for searches of our books and vaults and for inquiries into our private affairs whenever the tax men might decide, even though there might not be any justification beyond mere cynical suspicion."

"The income tax is bad because it has robbed you and me of the guarantee of privacy and the respect for our property that were given to us in Article IV of the Bill of Rights. This invasion is absolute and complete as far as the amount of tax that can be assessed is concerned. Please remember that under the Sixteenth Amendment, Congress can take 100% of our income anytime it wants to. As a matter of fact, right now it is imposing a tax as high as 91%. This is downright confiscation and cannot be defended on any other grounds."

"The income tax is bad because it was conceived in class hatred, is an instrument of vengeance and plays right into the hands of the communists. It employs the vicious communist principle of taking from each according to his accumulation of the fruits of his labor and giving to others according to their needs, regardless of whether those needs are the result of indolence or lack of pride, self-respect, personal dignity or other attributes of men."

"The income tax is fulfilling the Marxist prophecy that the surest way to destroy a capitalist society is by steeply graduated taxes on income and heavy levies upon the estates of people when they die."

[As matters now stand, if our children make the most of their capabilities and training, they will have to give most of it to the tax collector and so become slaves of the government. People cannot pull themselves up by the bootstraps anymore because the tax collector gets the boots and the straps as well.]

"The income tax is bad because it is oppressive to all and discriminates particularly against those people who prove themselves most adept at keeping the wheels of business turning and creating maximum employment and a high standard of living for their fellow men."

"I believe that a better way to raise revenue not only can be found but must be found because I am convinced that the present system is leading us right back to the very tyranny from which those, who established this land of freedom, risked their lives, their fortunes and their sacred honor to forever free themselves..."{4}

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EDITOR'S NOTE:

There is a better way. If you think the current system is great, do nothing. I assure you that it will become even "greater" still. If, however, you believe that America is too precious to be further damaged, both economically or morally, by the present system, contact the NRSTA and participate. Your kids and grandkids will thank you.

Edited by Dick Bachert and Dave Emmith

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