

## **Garbage In Means Garbage Out**

*Regarding judicial gibberish so thickly and richly wrong one has to figure it's deliberate.*

I HAPPENED TO COME ACROSS a reference to the bizarre 1984 ruling by the Fifth Circuit Court of Appeals cited as [Parker v. Comm'r, 724 F.2d 469](#) the other day. This ruling is such a good example of judicial misdeeds that it merits some discussion.

The underlying case is of little interest. Parker had filed run-of-the-mill "tax protestor" returns. As described in the circuit court ruling:

[Parker's] 1977 return contained only his name, address, social security number and signature. The income and deduction portions of Parker's 1040 and 1040X Forms contained only asterisks or the entry "none" or "object, self-incrimination." Parker did not provide the information essential to a determination of tax liability but attached to his protest return excerpts from cases and other materials discussing the fifth amendment privilege against self-incrimination.

At trial, [Parker] conceded unreported income from wages, pension benefits, and long-term capital gains, but challenged the Commissioner's allowances for rental losses and medical expenses. He also opposed the [willful refusal to file] penalty. The Tax Court upheld the Commissioner's determinations, including the imposition of the penalty. Finding no error of fact or law we affirm.

The reason *Parker* is significant is that in response to Parker's contention on appeal that, "the IRS and the government in general, including the judiciary, mistakenly interpret the sixteenth amendment as allowing a direct tax on property (wages, salaries, commissions, etc.) without apportionment." the 5th Circuit appellate panel says:

"The Supreme Court promptly determined in *Brushaber v. Union Pacific Ry. Co.*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916), that the sixteenth amendment provided the needed constitutional basis for the imposition of a direct non-apportioned income tax."

Wow!

It's hard to think of any judicial declaration more squarely contrary to reality. That is, it's hard to think of a judicial declaration more dramatically and indisputably wrong.

Going straight to the *really* low-hanging fruit available for bitch-slapping this lunacy and the morons or scoundrels from whom it issued-- the words of the *Brushaber* court itself-- we find that the unanimous Supreme Court says *exactly the opposite* of the raving (or deliberate lie) by the *Parker* court:

*"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 \(1916\)](#)

After generalizing the many contentions advanced in argument to support the erroneous conclusion that the 16th Amendment provides for a power to levy an income tax which is both direct and not subject to the regulation of apportionment, the *Brushaber* court goes on to point out that the very suggestion of a non-apportioned direct tax is idiotic (okay, they don't use "idiotic"...), because that would cause:

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

*Ibid.*

Contemporary expert commentary on the *Brushaber* decision emphasizes the fact that it actually says the opposite of the bizarre and incorrect declaration of the *Parker* court:

*"The Amendment, the [Supreme] court said, judged by the purpose for which it was passed, does not treat income taxes as direct taxes but simply removed the ground which led to their being considered as such in the Pollock case, namely, the source of the income. Therefore, they are again to be classified in the class of indirect taxes to which they by nature belong."*

Cornell Law Quarterly, 1 Cornell L. Q. 298 (1915-16)

*"In Brushaber v. Union Pacific Railroad Co., Mr. C. J. White, upholding the income tax imposed by the Tariff Act of 1913, construed the Amendment as a declaration that an income tax is "indirect," rather than as making an exception to the rule that direct taxes must be apportioned."*

Harvard Law Review, 29 Harv. L. Rev. 536 (1915-16)

...as do later expert statements on the subject:

*"The income tax... ...is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of tax."*

...and,

*"[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..."*

Treasury Department legislative draftsman F. Morse Hubbard in Congressional testimony in 1943

*"The Supreme Court, in a decision written by Chief Justice White, first 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, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment..."*

Legislative Attorney of the American Law Division of the Library of Congress Howard M. Zaritsky in his 1979 Report No. 80-19A, entitled 'Some Constitutional Questions Regarding the Federal Income Tax Laws'

Twenty years after *Brushaber*, the Supreme Court reiterates its unequivocal holding that the 16th Amendment did NOT authorize a "direct, non-apportioned tax" of any kind or on anything in dismissing an argument that a federal tax on "income" (in this case under the provisions of the Social Security Act) can be construed as a direct non-apportioned tax:

*"If [a] tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Cf. Burnet v. Brooks, 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; Brushaber v. Union Pacific R. Co., 240 U. S. 1, 240 U. S. 12*

*Whether the [income] tax is to be classified as an "excise" is in truth not of critical importance [for purposes of this analysis]. If not that, it is an "impost", or a "duty". A capitation or other "direct" tax it certainly is not.*"

[Steward Machine Co. v. Collector of Internal Revenue, 301 U.S. 548 \(1937\)](#) (Emphasis added.)

SO, THE 5<sup>th</sup> CIRCUIT IS FLATLY WRONG in its declaration in Parker. Indeed, the *Parker* court is crazy wrong. The *Brushaber* court says the exact opposite of what *Parker* asserts, and in no uncertain terms, a fact universally recognized and repeated over subsequent decades by every possible authority.

However, despite being glaringly wrong on what the *Brushaber* court says, the *Parker* ruling has been blindly cited by several subsequent courts as authority for the flatly wrong-- indeed, crazy wrong-- prospect that the income tax is a non-apportioned direct tax. This misconstruction has then supported rulings which fail to recognize the tax as the excise it actually is, with all the implications thereof.

Garbage in, garbage out.

If we let this go on, we'll soon be buried in garbage.

-Pete Hendrickson

*"Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives."*

-James Madison

P. S. BY MANAGING TO MUSTER only a blatant lie as its pretended rebuttal of Alton Parker's assertion about the tax being improperly applied as a non-apportioned direct tax, the 5th Circuit panel actually admits the truth of that assertion. As the Supreme Court observes concerning the evidentiary significance of silence:

"Indeed, as Mr. Justice Brandeis declared, speaking for a unanimous court in the *Tod* case, supra, which involved a deportation: "**Silence is often evidence of the most persuasive character.**" 263 U.S. at 263 U. S. 153-154. And just last Term, in *Hale*, supra, the Court recognized that "[f]ailure to contest an assertion . . . is considered evidence of acquiescence . . . if it would have been natural under the circumstances to object to the assertion in question." 422 U.S. at 422 U. S. 176. [footnote 3]."

[Baxter v. Palmigiano, 425 U.S. 308 \(1976\)](#)

An outright lie is simply an amplification of this sort of evidentiary silence. It is a "doubling down" of evasive deceit.

The lie doesn't change what *Brushaber* actually says, or its supremacy as settled law. The lie simply demonstrates and emphasizes that government actors who attempt to administer the income tax as a non-apportioned direct tax do so without any actual authority for those actions and in defiance of the actual lawful nature of the tax.

P. P. S. IT IS AN UNFORTUNATE REALITY of our corrupt times that that nonsense like that of the *Parker* court goes into the record. Despite not even being a holding by the *Parker* court itself but just a lie about the holding of the *Brushaber* court, it is gratuitously treated as a precedent for subsequent flawed rulings.

Altogether these flawed rulings clog up the legal landscape like brambles in the forest. They lead to ever-more confusion in the law and often deep injustices.

The reason the nonsense arises and persists is two-fold. The first cause of bogus judicial rulings are the corrupt government attorneys who argue false contentions like the lies about *Brushaber* seen in *Parker*. These attorneys are under a duty to know and be honest about any authorities they cite, and plainly whoever briefed the *Parker* court with the *Brushaber* lie failed on one count or the other. (If the court came up with the lie on its own-- as sometimes happens when a court wants to steer a ruling in a certain way-- then the judge responsible is just acting in the capacity of another government attorney and this point remains the same.)

The other cause of the hugely-destructive proliferation of bogus judicial rulings are defendants and/or defense counsel who naively (or lazily) take *anything* said by any government attorney or any federal court since the early 1940s at face value. This should NEVER be done.

Here are two commentaries everyone should read: [On Judicial Incentives](#) and [Illusions Of Authority](#). Defending the rule of law requires understanding of how it is being assaulted, and these pages, like the material above, will do a lot toward providing that understanding. I will take it as a given that nothing need be provided in the way of incentive.



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