The Fifth Circuit Court Of Appeals' Evasion In *Parker v. Comm'r*,

IN RESPONSE TO APPELLANT Alton 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."

Parker v. Comm'r, 724 F.2d 469 (5th CA, 1984)

However, going straight to the words of the *Brushaber* court itself-- we find that the unanimous Supreme Court says *exactly the opposite* of the misrepresentation 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 5th CIRCUIT'S declaration in *Parker* is a blatant misrepresentation in response to Alton Parker's contention 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 *Brushaber* court says the *exact opposite* of the false statement to which the circuit court resorts in lieu of an actual rebuttal of Parker's contention, and does so in no uncertain terms-- a fact universally recognized and repeated over subsequent decades by every possible authority.