

# **An Exposé Of Judicial And Executive Fraud In Administration Of The Income Tax**

*The truth, the lies, the reasons, and the bottom line.*

## **Introduction**

OVER RECENT DECADES, state and federal tax agencies, with the occasional assistance of some courts, have engaged in a massive subterfuge for the purpose of successfully misapplying the income tax on an enormous scale. The scheme has many facets, some more subtle and challenging to demonstrate or take in than others.

One of the simplest facets of the scheme to demonstrate is a systematic falsification of Supreme Court rulings on the subject of the income tax itself, and of the taxing clauses of the United States Constitution generally. This falsification involves outright lying-- even in official documents and proceedings-- about what has been expressly held by the high court on these subjects.

*Understand, “falsification” as used here doesn't mean “misinterpretation”. The falsifications considered here involve actually ascribing to the court declarations which it not only did not make, but which it expressly rejected as false.*

These falsifications have been created because what the Supreme Court DOES rule regarding the tax is inconvenient to modern government's desire for massive revenue. They are used as pretexts for assuming authority to administer the income tax in ways contrary to its actual nature, for the benefit of government treasuries and those who control them.

WE'RE GOING TO LOOK at what the Supreme Court actually says about the nature and limits of the income tax. We're also going to look at falsifications of these holdings by both the U.S. Internal Revenue Service and certain federal courts; at the reason these falsifications are so important to the revenue-hungry government; and at the harm they have done. Then we'll briefly look at the happier subject of events during the near decade-and-a-half since the overall subterfuge about the tax was first discovered and revealed.

## **The Truth**

IN 1916, THE US SUPREME COURT laid out the meaning and effect of the 16th Amendment in a unanimous ruling in the case of [\*Brushaber v. Union Pacific R. Co.\*, 240 U.S. 1 \(1916\)](#). The *Brushaber* ruling, which remains the settled law-of-the-land today, unambiguously confines the income tax to the objects and administrative rules of an indirect excise tax only.

The *Brushaber* court holds that the sole purpose and effect of the 16<sup>th</sup> amendment is to undo and overrule its conclusion in [\*Pollock v. Farmer's Loan & Trust\*, 158 U.S. 601 \(1895\)](#) that a tax on otherwise excise-taxable dividends and rent becomes a property tax in those particular applications. The *Pollock* court had reasoned that the linkage of dividends and rent to their personal property sources-- the stock or the real estate from which they are derived-- transforms the income excise on those gains into a property tax on the sources, which therefore required apportionment in its imposition.

The 16<sup>th</sup> Amendment, says the *Brushaber* court, severs (prohibits) the “source” linkage imagined by the *Pollock* court. This overruling of *Pollock* allows the by-then 51-year-old income tax to be revived and to resume application as the excise tax it always has been.

THE *BRUSHABER* COURT VERY EXPRESSLY RULES that the 16<sup>th</sup> Amendment does NOT accomplish its task by creating some kind of hybrid tax which can have the character of a [capitation or other direct tax](#) and yet not be subject to the apportionment rule-- a “non-apportioned direct tax”. This was, in fact, the exact contention of Frank Brushaber (against whom the court ruled), who reasoned from this faulty notion the confused conclusion that the post-amendment revival of the income tax created a Constitutional conflict.

Here is what the unanimous Supreme Court says (among much else in this very long, thoughtful and comprehensive ruling):

"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 \(1916\)](#) (emphasis added).

The court goes on to point out that the very suggestion of a non-apportioned direct tax is completely incoherent, 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. ... This result, instead of simplifying the situation and making clear the limitations on the taxing power, which obviously the Amendment must have been intended to accomplish, would create radical and destructive changes in our constitutional system and multiply confusion."

...and re-iterates its repeated pre-16<sup>th</sup> Amendment holdings that:

"[T]axation on income [is] in its nature an excise, entitled to be enforced as such..."

PRETTY CLEAR, YES? The unanimous *Brushaber* court flatly holds that the income tax was, is, and remains an excise tax, and that the 16<sup>th</sup> Amendment in no way whatever authorizes a “non-apportioned direct tax.”

Every possible authority agrees about what the *Brushaber* court says:

**"The Sixteenth Amendment does not permit a new class of a direct tax... 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. pp. 298, 301 \(1915-16\)](#) (emphasis added).

"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 ... an exception to the rule that direct taxes must be apportioned.**"

[Harvard Law Review, 29 Harv. L. Rev. p. 536, \(1915-1916\)](#) (emphasis added).

“[B]y the [*Brushaber*] ruling, it was settled that **the provisions of the Sixteenth Amendment** conferred no new power of taxation, but **simply prohibited** the previous complete and plenary power of **income taxation** possessed by Congress from the beginning **from being taken out of the category of indirect taxation to which it inherently belonged**, and being placed in the category of direct taxation subject to apportionment by a consideration of the sources from which the income was derived -- that is, by testing the tax not by what it was, a tax on income, but by a mistaken theory deduced from the origin or source of the income taxed.”

[\*Stanton v. Baltic Mining Co.\*, 240 U.S. 103 \(1916\)](#) (emphasis added).

**"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."

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

**"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."

...

**"[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..."**

[House Congressional Record, March 27, 1943, p. 2580](#), testimony of Former Treasury Department legislative draftsman F. Morse Hubbard, (emphasis added).

"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...**"

[Report No. 80-19A, 'Some Constitutional Questions Regarding the Federal Income Tax Laws'](#) by Howard M. Zaritsky, Legislative Attorney of the American Law Division of the Library of Congress (1979) (emphasis added).

"[T]he sole purpose of the Sixteenth Amendment was to remove the apportionment requirement **for whichever incomes were otherwise taxable**. 45 Cong. Rec. 2245-2246 (1910); *id.* at 2539; *see also Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 240 U. S. 17-18 (1916)"

[South Carolina v. Baker, 485 U.S. 505 \(1988\), fn 13](#) (emphasis added).

TO SUMMARIZE, THEN:

- The Supreme Court's words in the *Brushaber* ruling itself;
- The 1916 Cornell Law Quarterly and Harvard Law Quarterly reporting on the *Brushaber* ruling;
- The Supreme Court, referencing and reiterating the *Brushaber* ruling, in 1916, 1937 and 1988;
- The Treasury Department's tax legislation draftsman in 1943 and the Library of Congress' legislative attorney in 1979 discussing the *Brushaber* ruling...

...all agree that *Brushaber* rules the income tax to always have been, and to still remain, an indirect excise tax; that the 16th Amendment does not authorize any kind of non-apportioned direct tax; and that non-apportioned direct taxes remain Constitutionally prohibited.

Every institution of government knows what *Brushaber* says.

### **The Lies**

DESPITE THE UNIVERSAL CLARITY of what the *Brushaber* court says in what remains the settled law to this day regarding the meaning and effect of the 16<sup>th</sup> Amendment and the nature of the income tax, in 1980 a federal appellate court makes this bizarre and manifestly false pronouncement:

"[T]he income tax is a direct tax,... See *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, 19, 36 S.Ct. 236, 242, 60 L.Ed. 493 (1916) (the purpose of the Sixteenth Amendment was to take the income tax "out of the class of excises, duties and imposts and place it in the class of direct taxes")."

[United States v. Francisco, 614 F.2d 617, 619 \(8th Cir. 1980\)](#)

In 1984, another federal circuit court says *this*:

"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 \(5<sup>th</sup> Cir. 1984\)](#)

For decades the IRS has published and distributed in hard copy and, more recently, maintained on websites, the same lie, as in this example:

**Contention: The Sixteenth Amendment does not authorize a direct non-apportioned federal income tax on United States citizens.**

Some assert that the Sixteenth Amendment does not authorize a direct non-apportioned income tax and thus, U.S. citizens and residents are not subject to federal income tax laws.

**The Law:**

The courts have both implicitly and explicitly recognized that the Sixteenth Amendment authorizes a non-apportioned direct income tax on United States citizens and that the federal tax laws as applied are valid. In *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991), the court cited *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 12-19 (1916), and noted that the U.S. Supreme Court has recognized that the "Sixteenth Amendment authorizes a direct nonapportioned tax upon United States citizens throughout the nation."

[See an example of an IRS post of this false statement here, for instance](#) (last entry)

In fact, what is actually said by that *Collins* court cited by the mendacious IRS is even worse than what is quoted by the tax agency:

“For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct nonapportioned tax..., see *Brushaber v. Union Pac. R.R.*, , 240 U.S. 1, 12-19, 36 S.Ct. 236, 239-42, 60 L.Ed. 493 (1916).”

[United States v. Collins, 920 F.2d 619 \(10th Cir. 1990\)](#)

These lies-- by panels of actual US appellate court judges, in actual rulings by which actual Americans suffered actual and substantial harm-- are grossly, egregiously and staggeringly criminal, and so glaringly false as to raise the specter of dementia. This is the sort of behavior that should land these judges in prison, if not facilities for the criminally insane.

These lies are also fundamentally despotic in nature and purpose. This fact is ironically underscored by the 1984 date of the *Parker* ruling quoted above.

Like the other judicial lies about *Brushaber* and its law-of-the-land ruling concerning the nature of the income tax and the ongoing Constitutional prohibition of any kind of non-apportioned direct tax, the *Parker* court's falsehoods seek to exploit a dynamic George Orwell insightfully explained in his book, *1984*: "Who controls the past controls the future. Who controls the present controls the past." The object of all the judicial lies is to enable the perpetuation of the "ignorance tax" scheme by corruptly falsifying history.

All told, the behavior exposed above is nothing less than subversion. These judges-- and their present-day mimics, co-conspirators and enablers-- were and are oath-breaking enemies of the Constitution, engaged in a deliberate and sustained assault on the rule of law in America.

## The Reason For The Lies

AT THIS POINT YOU MUST BE WONDERING just what is going on. And you SHOULD be wondering, because it's not pretty.

But it IS pretty important. You see, excise taxes are *privilege taxes*.

As has been shown, the lies by some courts and by the tax agency are meant to hide the facts that the 16<sup>th</sup> Amendment DIDN'T authorize a non-apportioned direct tax and that, in concert with all other branches of government, the Supreme Court definitively holds that the income tax is an excise tax. The reason they don't want YOU to know this is because excise taxes are privilege taxes, and CANNOT fall on "all that comes in", or, in fact, on ANYTHING that comes in, if it doesn't proceed from the exercise of a privilege.

Of course, this sounds unbelievable. Needed proof will be shown in a moment, but first, think about this: If what I just said about excise taxes (or something just as significant in the same way) isn't true, why lie about the *Brushaber* ruling, the "non-apportioned direct tax" prohibition and the fact that the tax is an excise? Why say the tax exists because of authorization by the 16<sup>th</sup> Amendment, rather than acknowledge its 1862 origin, its administration for years before the *Pollock* decision interruption, and its mere resumption in 1913 as before, once *Pollock* was overruled by the amendment?

That is, if the rules or nature of an excise tax allow for the imposition of a tax the way you experience the income tax today, *why try to hide or evade the fact that the Supreme Court says it's an excise?* And why lie about its date of origin, and about the Supreme Court flatly holding that non-apportioned direct taxes are forbidden?

If the fact that the tax is an excise DIDN'T somehow hinder the application of the tax in the way the revenue-hungry government wants to see it applied, there would be no lying. This is clear enough, isn't it?

OKAY, SO THAT'S A BIT of prep against conditioned brain-freeze...

Here are the details about excise taxes:

"As was said in the *Thomas* case, 192 U. S. 363, supra, the requirement to pay [excise] taxes involves the exercise of privileges..."

[\*Flint v. Stone Tracy Co.\*, 220 U.S. 107 \(1911\)](#)

"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.”

[House Congressional Record, March 27, 1943, p. 2580](#), testimony of Former Treasury Department legislative draftsman F. Morse Hubbard, (emphasis added).

“Case law recognizes no distinction between a privilege tax and an excise tax. See *Bank of Commerce & Trust Co. v. Senter*, 260 S.W. 144, 148 (Tenn. 1924) (“Whether the tax be characterized in the statute as a privilege tax or an excise tax is but a choice of synonymous words, for an excise tax is an indirect or privilege tax.”); *American Airways, Inc. v. Wallace*, 57 F.2d 877, 880 (M.D. Tenn. 1937) (“The terms ‘excise’ tax and ‘privilege’ tax are synonymous and the two are often used interchangeably.”); see also 71 AM JUR. 2d State and Local Taxation §24, (“The term ‘excise tax’ is synonymous with ‘privilege tax,’ and the two have been used interchangeably. Whether a tax is characterized in the statute imposing it as a privilege tax or an excise tax is merely a choice of synonymous words, for an excise tax is a privilege tax.”) Thus, the excise tax now before us is, by more complete description, purportedly an excise upon a particular privilege, assessed according to the quantity of substance possessed in enjoyment of such privilege.”

[Waters v. Chumley, No. E2006-02225-COA-RV-CV Court of Appeals of Tennessee \(2007\)](#)

Here is a good definition of “privilege”:

“PRIVILEGE: A particular benefit or advantage enjoyed by a person, company, or class beyond the common advantages of other citizens. An exceptional or extraordinary power of exemption. A particular right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.”

[Black’s Law Dictionary, 6th Edition](#)

As an example, here's the Supreme Court discussing one kind of income-taxable privilege:

"The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..."

[United States v. County of Allegheny, 322 U.S. 174 \(1944\)](#)

THE “PRIVILEGE EXCISE” PRINCIPLE is very simple. For the government to be able to charge an indirect, non-apportioned fee (tax) for engaging in an activity, the activity must be one done by permission of the government, rather than anything done by right. This makes “the things done” for which the fee can be charged necessarily and inherently an exercise of privilege.

Payment of an excise tax is payment for the privilege of [x], in the most basic sense of that expression. The reciprocal, of course, is that such a tax can’t apply to things for which you don’t need government permission (like trading your labor for pay with anyone except the feds, or engaging in any other economic activity not involving federal stuff).

So, simply making money is not a privilege, and the courts are very clear on this:

“The right to follow any of the common occupations of life is an inalienable right, . . .”  
and,

“It has been well said that 'the property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property'. Smith, *Wealth of Nations*, Bk. I, c. 10.”

[Butcher's Union Co. v. Crescent City Co., 111 U.S. 746 \(1883\)](#)

”Included in the right of personal liberty and the right of private property- partaking of the nature of each- is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property”.

[Coppage v. Kansas, 236 U.S. 1 \(1915\)](#)

and, “[T]he Legislature has no power to declare as a privilege and tax for revenue purposes occupations that are of common right.”

“The right to engage in an employment, to carry on a business, or pursue an occupation or profession not in itself hurtful or conducted in a manner injurious to the public, is a common right, which, under our Constitution, as construed by all our former decisions, can neither be prohibited nor hampered by laying a tax for State revenue on the occupation, employment, business or profession. . . . Thousands of individuals in this State carry on their occupations as above defined who derive no income whatever therefrom. But, where an income is derived from any occupation, business, profession or employment, then the Legislature may lay thereon a tax...”

[Sims v. Ahrens, 167 Ark. 557, 271 SW 720 594, 595 \(Ark. 1925\)](#)

“Since the right to receive [commonly-defined] income or earnings is a right belonging to every person, this right cannot be taxed as privilege.”

[Jack Cole Company v. Alfred T. MacFarland, Commissioner, 337 S.W.2d 453 \(1960\)](#)

THE “PRIVILEGE” ELEMENT of the income tax is established independently of the legal character and constraints native to excises, as well. A tax on, or measured by, *unprivileged* receipts is a capitation, which is inherently-- and Constitutionally-- a direct tax:

“..Albert Gallatin, in his *Sketch of the Finances of the United States*, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...'

“He then quotes from Smith's *Wealth of Nations*, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptance of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at



the time, and that they, as well as he, by direct taxes, meant those paid directly from, and falling immediately on, the revenue;..."

[Pollock v. Farmer's Loan & Trust, 157 U.S. 429 \(1895\)](#)

Here is Adam Smith, the expert source relied upon by the Framers in their choice of terms in the Constitutional taxation provisions, describing some of the tax applications and practices encompassed by "capitations" (which are also known as "poll taxes", an expression which, in this context, has nothing to do with voting):

"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"... " In the capitation which has been levied in France without any interruption since the beginning of the present century, ... people are rated according to ... what is supposed to be their fortune, by an assessment which varies from year to year." ... "[I]n the first poll-tax [some] were assessed at three shillings in the pound of their supposed income,..."

[Adam Smith, 'An Inquiry into the Nature and Causes of the Wealth of Nations', Book V, Ch. II, Art. IV \(1776\)](#)

Here is the definition of "capitations" from the official law dictionary of Congress when the income tax was enacted in 1862:

"CAPITATION, A poll tax; an imposition which is yearly laid on each person according to his estate and ability."

[Bouvier's Law Dictionary, 6th Ed. \(1856\)](#). (The official law dictionary of Congress when the income tax was enacted.)

Capitations and other direct taxes must be apportioned:

"No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

[United States Constitution, Article 1, § 9, cl. 4](#)

...and as shown, the 16<sup>th</sup> Amendment didn't change that fact. Thus, we know by these legal facts also that the unapportioned income tax can't "fall indifferently upon every different species of revenue", but instead can only concern distinguished revenue-- which is to say, revenue proceeding from the exercise of privilege, as in all excise taxes.

### **The Bottom Line**

The receipts subject to the federal excise (the "income" in the federal income tax) are those produced through the exercise of certain federal privileges, and **no others**. *Just like the name says, it's a federal income tax.*

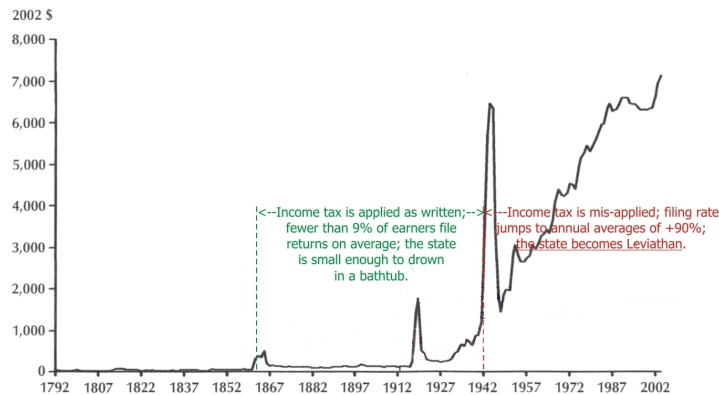
Now, can I get a big, SAY WHAT?!

...'Cause, yes, you've been fooled, and lied to, and screwed-- you and your parents and/or grandparents, for that matter, back to the early 1940s. That's when the scheme all the lying is meant to conceal began in earnest.

That scheme involves tricking Americans into legally characterizing all their payments and receipts as privilege-related-- and therefore taxable-- by reporting them, under one label or another, as "income" on tax forms, and failing to rebut that characterization by others. The lies about the nature of the tax shield the subterfuge from exposure by obscuring the relevance of the privileged-unprivileged distinction.

The effect of these lies and other crimes in facilitating the revenue and corresponding growth of the state is dramatic, as vividly shown in this graph charting the growth of the federal government:

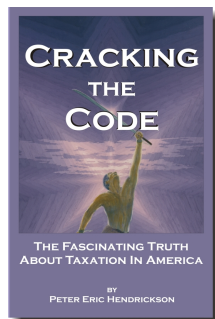
**Real Per Capita Federal Expenditures: 1792-2004**



Source: 'On the Size and Growth of Government' by Thomas A. Garrett & Russell M. Rhine, copyright 2006, Federal Reserve Bank of St. Louis.

### **The Happy Ending-In-Progress**

THE OVERALL DECEPTION ABOUT THE TAX was actually first laid bare in the 2003 book, [Cracking the Code- The Fascinating Truth About Taxation In America](#) (CtC).



Immediately upon publication of the book, readers began to recover amounts which had been improperly withheld or paid-in against potential tax liabilities they now realized did not arise. These

folks learned what the income tax *really* falls on, and that in the past they had unwittingly participated in misapplying the tax to their own unprivileged earnings. Being serious, law-respecting American grown-ups, they promptly resolved, “No more!”

The recovered amounts include all normal federal, state and local income taxes, as well as Social security and Medicare taxes. (The latter are just “income surtaxes”.)

Educated Americans not involved in “withholding” situations have simply stopped falsely assessing themselves a tax and cutting checks to the various governments for amounts not actually owed under the income excise-- their hard-earned money never leaves their own pockets in the first place.

All together, as best can be calculated, these now tens of thousands of American men and women have secured complete refunds of everything taken from them on more than two hundred thousand occasions, totaling more than \$2 billion. [Here are well over 1,000 documented examples](#) of these victories in standing up for the law as actually written and overcoming the corrupt deceptions meant to enrich Leviathan in defiance of the Constitutional rules controlling taxation.

SAD TO SAY, THE CORRUPT SCHEMERS responsible for the judicial and executive lies we have examined and exposed here haven't yet packed up and gone away. They still struggle to keep their gravy-train of personal wealth and state empowerment by way of the misapplied income tax chugging away.

But these villains have to be trembling in the disinfecting sunlight that now falls upon them, and with every American who learns what you have just learned, their struggle to keep their scheme alive grows more difficult and less effective. So,

**SHARE THIS INFORMATION FAST, FAR AND WIDE!!**

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NOTE: A concise introduction to the nature of the income tax, the history of the 16<sup>th</sup> Amendment and how the misapplication of the tax began in the early 1940s can be found [here](#). Everything every American needs to know about the tax overall can be found in [CtC](#).

