

## **The Income Tax Is An Excise, And Excise Taxes Are Privilege Taxes**

*"[T]axation on income [is] in its nature an excise..."*

A unanimous Supreme Court in [Brushaber v. Union Pacific R. Co.](#), 240 U.S. 1 (1916), re-iterating its conclusion in *Pollock v. Farmer's Loan & Trust*, 158 U.S. 601 (1895).

*"I hereby certify that the following is a true and faithful statement of the gains, profits, or income of \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, and State of \_\_\_\_\_, whether derived from any kind of property, rents, interest, dividends, salary, or from any profession, trade, employment, or vocation, or from any other source whatever, from the 1st day of January to the 31st day of December, 1862, both days inclusive, and subject to an income tax under the excise laws of the United States."*

[The "affirmation" on the first income tax return form](#) (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."*

Former Treasury Department legislative draftsman F. Morse Hubbard in [testimony before Congress in 1943](#)

*"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)

*"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)

*"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](#)

For example:

*"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).

*"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)

*"[Although the Legislature may declare as privileges and tax as such for State revenue purposes those pursuits and occupations that are not matters of common right], the 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)

*"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) (Concurrent opinion)

*"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)

So, the receipts subject to the federal excise (the "income" in the federal income tax) are those produced through the exercise of certain federal privileges. Just like the name says, it's a *federal income tax*. Learn more [here](#).



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