January 1 of one year and the date when his return was due in the following year, the income for each six months from income from property as a tax on property, and that in any event the excise-tax principle should have been applied to rents and other investments under the Civil War acts. In other words, the making and holding of investments, while perhaps not technically a business, is, at least, a kind of activity or privilege which can properly be subjected to an excise tax measured by reference to the income derived therefrom.

The amendment also provided "That every corporation shall be subject to pay annually a special excise tax with respect to the carrying on of activities or privileges such as religious, charitable, and educational organizations, etc., were specifically exempted from the tax."

The tax imposed by this act was really an income tax in that it was based on net income, but was given the correct designation of "tax" in order to avoid setting up a discrimination in favor of carrying on or doing business; and it should be noted that the basis was net income. The tax therefore was dividends from other corporations subject to the tax. Such dividends were exempted not because they were dividends from investment income but because they represented income that had already been taxed. The sole test of taxation under this act was whether a corporation was engaged in carrying on a trade or business, and all the income (except dividends), including investment income as well as strictly business income, was included in computing net income. The court held that the fact that the tax was measured by net income and that income from nontaxable property or property not used in business was included in computing net income, did not prevent the tax from being constitutional. See excise tax which was constitutional. Pfaff v. Stone Tracy Co. et al. (1111) 290 U.S. 107.

So far as the objections raised in the Pollock case are concerned, the principle applied to corporations under title 990 with the approval of the Supreme Court might have been extended to individuals engaged in businesses. To tax the income of most individuals as well as of corporations could doubtless have been brought under the tax. And the field of income could have been completely covered by applying the principle that the ownership and management of investment property is an activity or privilege not subject to which Congress may impose an excise.

However that may be, Congress chose to remove the individual from the Constitution. The resolution embodying the proposed amendment (S. J. Res. 40, 36 Stat. 184; 61st Cong., 1st sess.) was defeated in the Department of State on July 51, 1909, a few days before the act of 1909 was approved by the President. The amendment was duly ratified and became effective as the sixteenth income tax but was a direct tax on lands and buildings. (See Foster and Abbott, op. cit., pp. 117-118.)

That the case is clearly indicated by the recent provision in the Revenue Act of 1942 which allows deductions for expenses incurred in the production of income from personal status (sec. 122). The effect of this provision suggests merely the declaration of a new policy but the recognition of a fundamental principle.