

Errors in many of the popular sources of information regarding the XVI Amendment to the Constitution are addressed in this article. In particular the World Almanac and Book of Facts has been chosen as the model offender in this regard.

Relevant Supreme Court Decisions on the XVI Amendment

[Document subtitle]

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The claims made in the *World Almanac and Book of Facts* regarding changes to the Constitution resulting from the 14th and 16th Amendments do not appear to be entirely correct. Specifically modifications to Article I section 2 and Article I Section 9.

The relevant part of Article I Section 2 is:

Representatives and Direct Taxes shall be apportioned among the several States”

The Almanac claims that: “*The previous sentence was superseded by Amendment XIV , section 2*”

But section 2 of the 14th Amendment states that:

Representatives shall be apportioned among the several States.....”

(Note the absence of “and Direct Taxes”

Nowhere does the 14th Amendment mention Direct Taxes. In the unanimous and defining *Bushaber vs Union Pacific* p.240 U.S. 13 decision (Jan. 24, 1916) we read: (Underlining mine)

“...it has never ... been questioned that... taxing power was subject, ... to the limitations of Art I., § 2, cl. 3, that "direct taxes shall be apportioned among the several states,"

The key word being “limitations”.

With respect to Article I Section 9 we read:

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

The Almanac claims that the above highlighted words were modified by the 16th Amendment.

But in the Bushaber decision cited above we read:

...to the limitations of Art I., § 2, cl. 3, that "direct taxes shall be apportioned among the several states ,and of Art. I, § 9, cl. 4, that "no capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

Again, the word "limitations" is operative here and the court is emphasizing Art. I, Section 9 clause 4..

In this decision the court brilliantly affirms that both of the original "Direct Tax" and apportionment clauses of the Constitution have never been modified and are thus intact and in full Constitutional force.

The XVI Amendment

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Regarding the contention that the 16th Amendment did modify the Constitution the Bushaber Court said:

But it clearly results that the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution to destroy another; that is, they would result in bringing the provisions of the Amendment exempting a direct tax from apportionment into irreconcilable conflict with the general requirement that all direct taxes be apportioned. P.240 U.S. 12

Subsequently, in Stanton vs Baltic Mining Co. Feb 21, 1916 240 US 103 the Court affirmed that the 16th Amendment did not change the Constitution.

The provisions of the Sixteenth Amendment conferred no new powers of taxation...

Rather, its provisions served to fix and clarify the word “income’ and bring it into legal conformity with its use in prior Revenue Acts.

This was confirmed two years later in So. Pacific v. Lowe, 247 U.S. 330

“...’income’ as used in the statute should be given a meaning so as not to include everything that comes in. The true function of the words ‘gains’ and ‘profits’ is to limit the meaning of the word ‘income’.”

And finally the Court noted that the word ‘income’ cannot be re-interpreted by the Congress or any Federal Agency to alter its basic meaning.

The Treasury cannot by interpretive regulations, make income of that which is not income within the meaning of the Revenue Acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the 16th Amendment.

SUMMARY

ARTICLE I

Sec. 2, Cl. 3 → Direct Taxes shall be apportioned.

Sec 9, Cl. 4 → No Direct Tax unless in proportion.

AMENDMENT XVI

Taxes on "Incomes" (*New word in Constitution - see Revenue Acts - Not Direct*) - without apportionment or census.

Clearly, the first italicized reference (Art. I Sec. 2 Cl. 3) overstates the modification made by the XIV Amendment.

The second italicized reference (Art.I, Sec. 9, Cl. 4) avers a change to the Constitution that in fact, never happened or was intended. It should be removed entirely.

And lastly, on page 467 the Almanac falsely claims:

"Income Taxes Authorized"

Section 116 of the Revenue Act of 1864 uses the term 'income', thus showing that income tax, properly understood, did not need authorization : "...*the gains, profits, and income of every person residing in the United States, or of any citizen of the United States ...*"

ADDENDUM

Apportionment: If the Federal Government imposed a direct tax of one Trillion Dollars it would be divided by the number of Representatives (435) giving \$2,298,850,574 tax obligation per representative.

North Dakota with 1 representative would owe \$2,298,850,574 while California with 53 representatives would be responsible for \$121,839,080,422 and so on.

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Article I, Sec. 2, Cl. 3 p. 461

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] *[The previous sentence was superseded by Amendment XIV, section 2.]* The actual Enumeration shall

Article I, Sec. 9, Cl. 4 p. 463

No Capitation, or other direct, Tax shall be laid, [unless in Proportion to the Census or Enumeration herein before directed to be taken]. *[Words in brackets modified by Amendment XVI.]*
No Tax or Duty shall be laid on Articles exported from any State.

XIV Amendment Section 2 p.467

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being [twenty-one] [*The words in brackets were changed by Amendment XXVI.*] years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

XVI Amendment p.467

AMENDMENT XVI.

Income taxes authorized.

[Proposed by Congress July 12, 1909; ratified Feb. 3, 1913.]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.