This page is www.lawyerdude.8k.com/brushaber.html 5770 is my file number

Related pages:

The pdf version with line numbering is www.lawyerdude.8k.com/brushaber.pdf
This page is #1 on my list of the worst cases: http://www.lawyerdude.8m.com/5097.html
This case with the links working is at Findlaw here: http://laws.findlaw.com/us/240/1.html Where you can find Cases citing this case: Supreme Court and Cases citing this case: Circuit Courts
This case is mentioned at my top 100 tax cases page: http://www.lawyerdude.8m.com/5273.html where I must fix the link to that it sends you here instead of Findlaw.

General navigational links:

Back to www.lawyerdude.8m.com
Back to Lawyerdude's discussion group: www.groups.yahoo.com/group/lawyerdude
Email lawyerdude: dlawyerdude@hotmail.com
Lawyerdude's links page: www.lawyerdude.8m.com/links.html
Back to lawyerdude's briefs: www.circuitlawyer.8m.com
Back to Lawyerdude's discussion group: www.groups.yahoo.com/group/lawyerude
Back to Lawyerdude's links: www.lawyerdude.8m.com/links.html
Back to "What's been uploaded lately by Lawyerdude": http://www.circuitlawyer.8m.com/5673.html
Back to Lawyerdude's Contemporary Constitutional Issues: http://www.circuitlawyer.8m.com/5693.html
The Steve 762 program to fight traffic tickets: http://www.circuitlawyer.8m.com/5695.html
Lawyerdude's latest briefs: http://www.circuitlawyer.8m.com/5690.html

U.S. Supreme Court

Brushaber v Union Pacific Railroad Co. (1916)

240 US 1, 36 S.Ct. 236, 60 Lawyer's Edition, page. 493
Frank R. Brushaber, Appellant
v.
UNION PACIFIC RAILROAD COMPANY.
No. 140.
Argued October 14 and 15, 1915.
Decided January 24, 1916.
[240 U.S. 1, 2] Messrs. Julien T. Davies, Brainard Tolles, Garrard Glenn, and Martin A. Schenck for appellant.
Mr. Henry W. Clark for appellee.
[240 U.S. 1, 5] Solicitor General Davis, Assistant Attorney General Wallace, and Attorney General Gregory for the United States.
[240 U.S. 1, 9]

How bad is the Justice White's convoluted garbled writing? The average sentence length is an astounding 60 words! The longest sentence is 244 words long! Lets compare this to Justice Douglas in Griffin v Illinois: 30 words per average sentence and 103 words in the longest sentence.

Historical Perspective by Lawyerdude

In 1912 Democrat Woodrow Wilson was elected. J Pierpont Morgan, the money manager of this country had died. Wilson persauded Congress to pass 3 bills: 1. The Federal Reserve; 2. A reduction in tariffs (which is why we needed the income tax - cause we eliminated this longstanding source of revenue; and 3. The freakin income tax. The 16the amendment was also passed in 1913. So now this shareholder is testing this new tax.

In 1916 we had not yet entered World War 1, although Europe had been fighting since June 28 beginning with the assassination of Archduke Franz Ferdinand, heir to the throne of Austro-Hungarian empire, in Sarajevo, Bosnia. When we entered the war in April 917 Wilson took over the railroads. However this opinion was argued in October 1915 and the dispute likely arose before World War 1 started in Europe. Incidentally the war in Bosnia of the late 1990's was much a repeat of World War I which began with the assassination of Franz Ferdinand in Sarajevo.

Lawyerdude's List of authorities cited herein:

Unless otherwise noted, the cases cited are on my list of the top 100 tax cases.

Lawyerdude says: Brushaber is founded on the following cases and authorities:

58 The most eminent of the text writers. 1 Kent, Com. 254, 256; 1 Story, Const. 955; Cooley, Const. Lim. 5th ed.
59 *480; Miller, Constitution, 237; Pom. Const. Law, 281; 1 Hare, Const. Law, 249, 250; Burroughs, Taxn.
60 502; Ordronaux, Constitutional Legislation, 225.
61 Hylton v. United States. (1796) Tax on carriages.
62 Veazie (1869)
63 Pollock(1895),
64 the 16th amendment (1913),
65 Stockdale: Not in the top 100.
66 Knowlton v. Moore, 178 U.S. 41 , 44 L. ed. 969, 20 Sup. Ct. Rep. 747;
67 Patton v. Brady, 184 U.S. 608, 622 , 46 S. L. ed. 713, 720, 22 Sup. Ct. Rep. 493;
68 Flint v. Stone Tracy Co. 220 U.S. 107, 158 , 55 S. L. ed. 389, 416, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312;
69 Billings v. United States, 232 U.S. 261, 282 , 58 S. L. ed. 596, 605, 34 Sup. Ct. Rep. 421
70 As to the proposition that
71 Marshall Field & Co. v. Clark, 143 U.S. 649 , 36 L. ed. 294, 12 Sup. Ct. Rep. 495;
72 Buttfield v. Stranahan, 192 U.S. 470, 496 , 48 S. L. ed. 525, 535, 24 Sup. Ct. Rep. 349;
73 Oceanic Steam Nav. Co. v. Stranahan, 214 U.S. 320 , 53 L. ed. 1013, 29 Sup. Ct. Rep. 671.
74
75

76 Mr. Chief Justice White delivered the opinion of the court:

77–78	**Here is what the court said in its confusing bad writing style in the left column below:**	**Lawyerdude's Comments are in this right column:**
79–85	As a stockholder of the Union Pacific Railroad Company, the appellant filed his bill to enjoin the corporation from complying with the income tax provisions of the tariff act of October 3, 1913 (II., chap. 16, 38 Stat. at L. 166). Because of constitutional questions duly arising the case is here on direct appeal from a decree sustaining a motion to dismiss because no ground for relief was stated.	Plain English translation: Rich stockholder does not want to pay taxes. The railroad says "Sorry, Mr. Brushaber, but we gotta pay taxes on your earning." The trial court ruled in favor of the railroad. How did Brushaber get here on "direct" appeal?
86–94	The right to prevent the corporation from returning and paying the tax was based upon many averments as to the repugnancy of the statute to the Constitution of the United States, of the peculiar relation of the corporation to the stockholders, and their particular interests resulting from many of the administrative provisions of the assailed act, of the confusion, wrong, and multiplicity [240 U.S. 1, 10] of suits and the absence of all means of redress which would result if the corporation paid the tax and complied with the act in other respects without protest, as it was alleged it was its intention to do.	Frank Brushaber said that the tax law, the statute, was unconstitutional.

To put out of the way a question of jurisdiction we at once say that in view of these averments and the ruling in ***Pollock v. Farmers' Loan & T. Co.*** 157 U.S. 429 , 39 L. ed. 759, 15 Sup. Ct. Rep. 673, sustaining the right of a stockholder to sue to restrain a corporation under proper averments from voluntarily paying a tax charged to be unconstitutional on the ground that to permit such a suit did not violate the prohibitions of 3224, Revised Statutes (Comp. Stat. 1913, 5947), against enjoining the enforcement of taxes, we are of opinion that the contention here made that there was no jurisdiction of the cause, since to entertain it would violate the provisions of the Revised Statutes referred to, is without merit. Before coming to dispose of the case on the merits, however, we observe that the defendant corporation having called the attention of the government to the pendency of the cause and the nature of the controversy and its unwillingness to voluntarily refuse to comply with the act assailed, the United States, as amicus curiae, has at bar been heard both orally and by brief for the purpose of sustaining the decree.

Read that terrible long garbled sentence. It says. “Okay, somebody said that you have no jurisdiction to sue the corporation. We say that you may indeed sue the corporation , Frank Brushaber.”

Aside from averments as to citizenship and residence, recitals as to the provisions of the statute, and statements as to the business of the corporation, contained in the first ten paragraphs of the bill, advanced to sustain jurisdiction, the bill alleged twenty-one constitutional objections specified in that number of paragraphs or subdivisions. As all the grounds assert a violation of the Constitution, it follows that, in a wide sense, they all charge a repugnancy of the statute to the 16th Amendment, under the more immediate sanction of which the statute was adopted.

The various propositions are so intermingled as to cause it to be difficult to classify them.

Lines	Court text	Commentary
124 125 126 127 128 129 130 131	We are of opinion, however, [240 U.S. 1, 11] 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, as follows:	This court says that the 16th amendment does **not** provide for a hitherto unknown power of taxation.
132 133 134 135 136 137	(a) The Amendment authorizes only a particular character of direct tax without apportionment, and therefore if a tax is levied under its assumed authority which does not partake of the characteristics exacted by the Amendment, it is outside of the Amendment, and is void as a direct tax in the general constitutional sense because not apportioned.	This is terrible writing. The court is saying exactly the opposite of what this paragraph says. Is that stupid writing or what? A sentence should stand on its own. A couple of words would have fixed this sentence.
138 139 140 141 142 143	(b) As the Amendment authorizes a tax only upon incomes 'from whatever source derived,' the exclusion from taxation of some income of designated persons and classes is not authorized, and hence the constitutionality of the law must be tested by the general provisions of the Constitution as to taxation, and thus again the tax is void for want of apportionment.	Here again in this paragraph the court is pointing out what is wrong with the presumptions of Frank Brushaber. The court should have stated itself affirmatively after each sentence.
144 145 146 147 148 149 150 151	(c) **As the right to tax 'incomes from whatever source derived' for which the Amendment provides must be considered as exacting intrinsic uniformity, therefore no tax comes under the authority of the Amendment not conforming to such standard, and hence all the provisions of the assailed statute must once more be tested solely under the general and pre-existing provisions of the Constitution, causing the statute again to be void in the absence of apportionment.**	One again the court is pointing out the mistaken averments of Brushaber.
152 153 154 155 156	(d) As the power conferred by the Amendment is new and prospective, the attempt in the statute to make its provisions retroactively apply is void because, so far as the retroactive period is concerned, it is governed by the pre-existing constitutional requirement as to apportionment.	The court is saying that this is what Brushaber says. The court is saying that Brushaber is mistaken.

Line	Text	Commentary
157	But it clearly results that the proposition and the contentions [240	Garbled. This should have been
158	U.S. 1, 12] under it, if acceded to, would cause one provision of the	edited by the court.
159	Constitution to destroy another; that is, they would result in bringing	
160	the provisions of the Amendment exempting a direct tax from	
161	apportionment into irreconcilable conflict with the general	
162	requirement that all direct taxes be apportioned. Moreover, the tax	
163	authorized by the Amendment, being direct, would not come under	
164	the rule of uniformity applicable under the Constitution to other than	
165	direct taxes, and thus it would come to pass that the result of the	
166	Amendment would be to authorize a particular direct tax not subject	
167	either to apportionment or to the rule of geographical uniformity, thus	
168	giving power to impose a different tax in one state or states than was	
169	levied in another state or states. This result, instead of simplifying the	
170	situation and making clear the limitations on the taxing power, which	
171	obviously the Amendment must have been intended to accomplish,	
172	would create radical and destructive changes in our constitutional	
173	system and multiply confusion.	
174	But let us by a demonstration of the error of the fundamental	Once again the court "demonstrates"
175	proposition as to the significance of the Amendment dispel the	error when it would better shed some
176	confusion necessarily arising from the arguments deduced from it.	light and show us what is right.
177	Before coming, however, to the text of the Amendment, to the end	
178	that its significance may be determined in the light of the previous	So now the court shifts gears.
179	legislative and judicial history of the subject with which the	
180	Amendment is concerned, and with a knowledge of the conditions	
181	which presumptively led up to its adoption, and hence of the purpose	
182	it was intended to accomplish, we make a brief statement on those	
183	subjects.	

184 That the authority conferred upon Congress by 8 of article 1 'to lay
185 and collect taxes, duties, imposts and excises' is exhaustive and
186 embraces every conceivable power of taxation has never been
187 questioned, or, if it has, has been so often authoritatively declared as
188 to render it necessary only to state the doctrine.

Lawyerdude says that this sweeping statement is false!

189 And it has also never [240 U.S. 1, 13] been questioned from the
190 foundation, without stopping presently to determine under which of
191 the separate headings the power was properly to be classed, that
192 there was authority given, as the part was included in the whole, to
193 lay and collect income taxes.

194 Again, it has never moreover been questioned that the conceded
195 complete and all-embracing taxing power was subject, so far as they
196 were respectively applicable, to limitations resulting from the
197 requirements of art. 1, 8, cl. 1, that 'all duties, imposts and excises
198 shall be uniform throughout the United States,' and to the limitations
199 of art I., 2, cl. 3, that 'direct taxes shall be apportioned among the
200 several states,' and of art 1, 9, cl. 4, that 'no capitation, or other
201 direct, tax shall be laid, unless in proportion to the census or
202 enumeration hereinbefore directed to be taken.'

How can a head tax be in proportion to the population? Does that imply that a head tax would be paid by a state to the federal government? This is what Attorney Jerry Arnowitz said in April 2003 in a post.

Lines	Text	Comment
203–211	In fact, the two great subdivisions embracing the complete and perfect delegation of the power to tax and the two correlated limitations as to such power were thus aptly stated by Mr. Chief Justice Fuller in ***Pollock v. Farmers' Loan & T. Co.*** 157 U. S. supra, at page 557: 'In the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises.'	
212–218	It is to be observed, however, as long ago pointed out in ***Veazie Bank v. Fenno*** (1869), 8 Wall. 533, 541, 19 L. ed. 482, 485, that the requirements of apportionment as to one of the great classes and of uniformity as to the other class were not so much a limitation upon the complete and all-embracing authority to tax, but in their essence were simply regulations concerning the mode in which the plenary power was to be exerted.	This could have been left out.
219–226	In the whole history of the government down to the time of the adoption of the 16th Amendment, leaving aside some conjectures expressed of the possibility of a tax lying intermediate between the two great classes and embraced [240 U.S. 1, 14] by neither, no question has been anywhere made as to the correctness of these propositions. At the very beginning, however, there arose differences of opinion concerning the criteria to be applied in determining in which of the two great subdivisions a tax would fall.	Two many pronouns and ambiguous adjectives.
227–232	Without pausing to state at length the basis of these differences and the consequences which arose from them, as the whole subject was elaborately reviewed in Pollock v. Farmers' Loan & T. Co. 157 U.S. 429 , 39 L. ed. 759, 15 Sup. Ct. Rep. 673, 158 U.S. 601 , 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, we make a condensed statement which is in substance taken from what was said in that case.	We now will summarize Pollock.

233 Early the differences were manifested in pressing on the one hand
234 and opposing on the other, the passage of an act levying a tax
235 without apportionment on carriages 'for the conveyance of persons,'
236 and when such a tax was enacted the question of its repugnancy to
237 the Constitution soon came to this court for determination. ***Hylton v.
238 United States***, 3 Dall. 171, 1 L. ed. 556. It was held that the tax
239 came within the class of excises, duties, and imposts, and therefore
240 did not require apportionment, and while this conclusion was agreed
241 to by all the members of the court who took part in the decision of the
242 case, there was not an exact coincidence in the reasoning by which
243 the conclusion was sustained.

244 Without stating the minor differences, it may be said with substantial
245 accuracy that the divergent reasoning was this: On the one hand,
246 that the tax was not in the class of direct taxes requiring
247 apportionment, because it was not levied directly on property
248 because of its ownership, but rather on its use, and was therefore an
249 excise, duty, or impost; and on the other, that in any event the class
250 of direct taxes included only taxes directly levied on real estate
251 because of its ownership.

Court says here that "Direct taxes" meant directly on real estate and only on real estate. Hmm. What is the basis for this assertion?

Court is saying that the carriage tax was an excise tax.

252 Putting out of view the difference of reasoning which led to the
253 concurrent conclusion in the Hylton Case, it is undoubted that it came
254 to pass in legislative practice that the line of demarcation between
255 the two great classes of direct taxes on the one hand and excises,
256 duties, and [240 U.S. 1, 15] imposts on the other, which was
257 exemplified by the ruling in that case, was accepted and acted upon.
258 In the first place this is shown by the fact that wherever (and there
259 were a number of cases of that kind) a tax was levied directly on real
260 estate or slaves because of ownership, it was treated as coming
261 within the direct class and apportionment was provided for, while no
262 instance of apportionment as to any other kind of tax is afforded.

Whoops. Now land and slaves were apportioned and these were direct taxes.

At the other end of the spectrum were excise taxes, duties, etc.

Seems that the government when smaller lacked the audacity to start taxing the labor of the white man.

263 Again the situation is aptly illustrated by the various acts taxing
264 incomes derived from property of every kind and nature which were
265 enacted beginning in 1861, and lasting during what may be termed
266 the Civil War period. It is not disputable that these latter taxing laws
267 were classed under the head of excises, duties, and imposts
268 because it was assumed that they were of that character inasmuch
269 as, although putting a tax burden on income of every kind, including
270 that derived from property real or personal, they were **not** taxes
271 directly on property because of its ownership.

They were excise in nature because "they were **not** taxes directly on property because of its ownership"

This logic is stupid. You slice off a portion of the land every year. In fact it has become worse. You certainly to excise when doing land tax!

272 And this practical construction came in theory to be the accepted
273 one, since it was adopted without dissent by the most eminent of the
274 text writers. 1 Kent, Com. 254, 256; 1 Story, Const. 955; Cooley,
275 Const. Lim. 5th ed. *480; Miller, Constitution, 237; Pom. Const. Law,
276 281; 1 Hare, Const. Law, 249, 250; Burroughs, Taxn. 502;
277 Ordronaux, Constitutional Legislation, 225.

278 Upon the lapsing of a considerable period after the repeal of the
279 income tax laws referred to, in 1894 [28 Stat. at L. 509, chap. 349],
280 an act was passed laying a tax on incomes from all classes of
281 property and other sources of revenue which was not apportioned,
282 and which therefore was of course assumed to come within the
283 classification of excises, duties, and imposts which were subject to
284 the rule of uniformity, but not to the rule of apportionment. The
285 constitutional validity of this law was challenged on the ground that it
286 did not fall within the class of excises, duties, and imposts, [240 U.S.
287 1, 16] but was direct in the constitutional sense, and was therefore
288 void for want of apportionment, and that question came to this court
289 and was passed upon in Pollock v. Farmers' Loan & T. Co. 157 U.S.
290 429 , 39 L. ed. 759, 15 Sup. Ct. Rep. 673, 158 U.S. 601 , 39 L. ed.
291 1108, 15 Sup. Ct. Rep. 912. The court, fully recognizing in the
292 passage which we have previously quoted the allembracing
293 character of the two great classifications, including, on the one hand,
294 direct taxes subject to apportionment, and on the other, excises,
295 duties, and imposts subject to uniformity, held the law to be
296 unconstitutional in substance for these reasons: Concluding that the
297 classification of direct was adopted for the purpose of rendering it
298 impossible to burden by taxation accumulations of property, real or
299 personal, except subject to the regulation of apportionment, it was
300 held that the duty existed to fix what was a direct tax in the
301 constitutional sense so as to accomplish this purpose contemplated
302 by the Constitution. (157 U.S. 581 .)

303 Coming to consider the validity of the tax from this point of view,
304 while not questioning at all that in common understanding it was
305 direct merely on income and only indirect on property, it was held
306 that, considering the substance of things, it was direct on property in
307 a constitutional sense, since to burden an income by a tax was, from
308 the point of substance, to burden the property from which the income
309 was derived, and thus accomplish the very thing which the provision
310 as to apportionment of direct taxes was adopted to prevent. As this
311 conclusion but enforced a regulation as to the mode of exercising
312 power under particular circumstances, it did not in any way dispute
313 the all-embracing taxing authority possessed by Congress, including
314 necessarily therein the power to impose income taxes if only they
315 conformed to the constitutional regulations which were applicable to
316 them.

"to burden an income by a tax was, from the point of substance, to burden the property from which the income was derived" and therefore it was a direct tax.

Moreover, in addition, the conclusion reached in the Pollock Case did not in any degree involve holding that income taxes generically and necessarily came within the class [240 U.S. 1, 17] of direct taxes on property, but, on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone, and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. Nothing could serve to make this clearer than to recall that in the Pollock Case, in so far as the law taxed incomes from other classes of property than real estate and invested personal property, that is, income from 'professions, trades, employments, or vocations' (158 U.S. 637), its validity was recognized; indeed, it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past. Id. p. 635. The whole law was, however, declared unconstitutional on the ground that to permit it to thus operate would relieve real estate and invested personal property from taxation and 'would leave the burden of the tax to be borne by professions, trades, employments, or vacations; and in that way **what was intended as a tax on capital would remain, in substance, a tax on occupations and labor**' (id. p. 637),-a result which, it was held, could not have been contemplated by Congress.

This is the text of the 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.'**

The court here says “Hey, income taxes are merely an excise tax” sorta.

Rehashing Pollock: “income from 'professions, trades, employments, or vocations' (158 U.S. 637), its validity was recognized; indeed, it was expressly declared that no dispute was made upon that subject, and attention was called to the fact that taxes on such income had been sustained as excise taxes in the past.” Hmm.

“what was intended as a tax on capital would remain, in substance, a tax on occupations and labor”

347 It is clear on the face of this text that it does not purport to confer
348 power to levy income taxes in a generic sense,-an authority already
349 possessed and never questioned, [240 U.S. 1, 18] -or to limit and
350 distinguish between one kind of income taxes and another, but that
351 the whole purpose of the Amendment was to relieve all income taxes
352 when imposed from apportionment from a consideration of the
353 source whence the income was derived. Indeed, in the light of the
354 history which we have given and of the decision in the Pollock Case,
355 and the ground upon which the ruling in that case was based, there
356 is no escape from the conclusion that the Amendment was drawn for
357 the purpose of doing away for the future with the principle upon
358 which the Pollock Case was decided; that is, of determining whether
359 a tax on income was direct not by a consideration of the burden
360 placed on the taxed income upon which it directly operated, but by
361 **taking into view the burden which resulted on the property from**
362 **which the income was derived**, since in express terms the
363 Amendment provides that income taxes, from whatever source the
364 income may be derived, shall not be subject to the regulation of
365 apportionment.

The court says that congress already possessed the power to levy an income tax. So? I agree. The disagreement is with regard to what is "income" if not "gain" which excluded wages.

There arises in this case the strong feeling that "income" derives from property!

but by taking into view the burden which resulted on the property from which the income was derived, since in express terms the Amendment provides that income taxes, from whatever source the income may be derived

366 From this in substance it indisputably arises, first, that all the
367 contentions which we have previously noticed concerning the
368 assumed limitations to be implied from the language of the
369 Amendment as to the nature and character of the income taxes
370 which it authorizes find no support in the text and are in irreconcilable
371 conflict with the very purpose which the Amendment was adopted to
372 accomplish. Second, that the contention that the Amendment treats
373 a tax on income as a direct tax although it is relieved from
374 apportionment and is necessarily therefore not subject to the rule of
375 uniformity as such rule only applies to taxes which are not direct,
376 thus destroying the two great classifications which have been
377 recognized and enforced from the beginning, is also wholly without
378 foundation since the command of the Amendment that all income
379 taxes shall not be subject to apportionment by a consideration of the
380 sources from which the taxed income may be derived [240 U.S. 1,
381 19] forbids the application to such taxes of the rule applied in the
382 Pollock Case by which alone such taxes were removed from the
383 great class of excises, duties, and imposts subject to the rule of
384 uniformity, and were placed under the other or direct class.

This is a long, hard to read sentence. Basically it says that Frank Brushaber was wrong in his classification of this tax.

385 This must be unless it can be said that although the Constitution, as
386 a result of the Amendment, in express terms excludes the criterion of
387 source of income, that criterion yet remains for the purpose of
388 destroying the classifications of the Constitution by taking an excise
389 out of the class to which it belongs and transferring it to a class in
390 which it cannot be placed consistently with the requirements of the
391 Constitution. Indeed, from another point of view, the Amendment
392 demonstrates that no such purpose was intended, and on the
393 contrary shows that it was drawn with the object of maintaining the
394 limitations of the Constitution and harmonizing their operation. We
395 say this because it is to be observed that although from the date of
396 the Hylton Case, because of statements made in the opinions in that
397 case, it had come to be accepted that direct taxes in the
398 constitutional sense were confined to taxes levied directly on real
399 estate because of its ownership, the Amendment contains nothing
400 repudiation or challenging the ruling in the Pollock Case that the
401 word 'direct' had a broader significance, since it embraced also taxes
402 levied directly on personal property because of its ownership, and
403 therefore the Amendment at least impliedly makes such wider
404 significance a part of the Constitution,-a condition which clearly
405 demonstrates that the purpose was not to change the existing
406 interpretation except to the extent necessary to accomplish the result
407 intended; that is, the prevention of the resort to the sources from
408 which a taxed income was derived in order to cause a direct tax on
409 the income to be a direct tax on the source itself, and thereby to take
410 an income tax out of the class of excises, duties, and imposts, and
411 place it in the class of direct taxes. [240 U.S. 1, 20] We come, then,
412 to ascertain the merits of the many contentions made in the light of
413 the Constitution as it now stands; that is to say, including within its
414 terms the provisions of the 16th Amendment as correctly interpreted.
415 We first dispose of two propositions assailing the validity of the
416 statute on the one hand because of its repugnancy to the
417 Constitution in other respects, and especially because its enactment
418 was not authorized by the 16th Amendment.

419 The statute was enacted October 3, 1913, and provided for a general
420 yearly income tax from December to December of each year.
421 Exceptionally, however, it fixed a first period embracing only the time
422 from March 1, to December 31, 1913, and this limited retroactivity is
423 assailed as repugnant to the due process clause of the 5th
424 Amendment, and as inconsistent with the 16th Amendment itself. But
425 the date of the retroactivity did not extend beyond the time when the
426 Amendment was operative, and there can be no dispute that there
427 was power by virtue of the Amendment during that period to levy the
428 tax, without apportionment, and so far as the limitations of the
429 Constitution in other respects are concerned, the contention is not
430 open, since in ***Stockdale v. Atlantic Ins. Co.*** 20 Wall. 323, 331, 22
431 L. ed. 348, 351, in sustaining a provision in a prior income tax law
432 which was assailed because of its retroactive character, it was said:

433 'The right of Congress to have imposed this tax by a new statute,
434 although the measure of it was governed by the income of the past
435 year, cannot be doubted; much less can it be doubted that it could
436 impose such a tax on the income of the current year, though part of
437 that year had elapsed when the statute was passed. The joint
438 resolution of July 4th, 1864 [13 Stat. at L. 417], imposed a tax of 5
439 per cent upon all income of the previous year, although one tax on it
440 had already been paid, and no one doubted the validity of the tax or
441 attempted to resist it.' [240 U.S. 1, 21] **The statute provides
442 that the tax should not apply to enumerated organizations
443 or corporations, such as labor, agricultural or
444 horticultural organizations**, mutual savings banks, etc., and
445 the argument is that as the Amendment authorized a tax on incomes
446 'from whatever source derived,' by implication it excluded the power
447 to make these exemptions. But this is only a form of expressing the
448 erroneous contention as to the meaning of the Amendment, which
449 we have already disposed of. And so far as this alleged illegality is
450 based on other provisions of the Constitution, the contention is also
451 not open, since it was expressly considered and disposed of in ***Flint
452 v. Stone Tracy Co.*** 220 U.S. 108, 173 , 55 S. L. ed. 389, 422, 31
453 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312

This democrat tax was enacted as soon as possible after ratification of the 16th amendment in 1913.

The statute provides that the tax should not apply to enumerated organizations or corporations, such as labor, agricultural or horticultural organizations, mutual savings banks,

454 Without expressly stating all the other contentions, we summarize
455 them to a degree adequate to enable us to typify and dispose of
456 all of them.

457 1. The statute levies one tax called a normal tax on all incomes of
458 individuals up to $20,000, and from that amount up, by gradations, a
459 progressively increasing tax, called an additional tax, is imposed. No
460 tax, however, is levied upon incomes of unmarried individuals
461 amounting to $3, 000 or less, nor upon incomes of married persons
462 amounting to $4,000 or less. **The progressive tax and the**
463 **exempted amounts, it is said, are based on wealth alone, and**
464 **the tax is therefore repugnant to the due process clause of the**
465 **5th Amendment.**

Brushaver says that wealth based discrimination is unconstitutional. The court say Brushaber is wrong here. He says “due process”. Strange. Equal protection seems more logical.

466

467 2. The act provides for collecting the tax at the source; that is, makes
468 it the duty of corporations, etc., to retain and pay the sum of the tax
469 on interest due on bonds and mortgages, unless the owner to whom
470 the interest is payable gives a notice that he claims an exemption.
471 This duty cast upon corporations, because of the cost to which they
472 are subjected, is asserted to be repugnant to due process of law as a
473 taking of their property without compensation, and we recapitulate
474 various contentions as to discrimination against corporations and
475 against individuals, [240 U.S. 1, 22] predicated on provisions of the
476 act dealing with the subject. (a) Corporations indebted upon coupon
477 and registered bonds are discriminated against, since corporations
478 not so indebted are relieved of any labor or expense involved in
479 deducting and paying the taxes of individuals on the income derived
480 from bonds.

(b) Of the class of corporations indebted as above stated, the law further discriminates against those which have assumed the payment of taxes on their bonds, since although some or all of their bondholders may be exempt from taxation, the corporations have no means of ascertaining such fact, and it would therefore result that taxes would often be paid by such corporations when no taxes were owing by the individuals to the government.

(c) The law discriminates against owners of corporate bonds in favor of individuals none of whose income is derived from such property, since bondholders are, during the interval between the deducting and the paying of the tax on their bonds, deprived of the use of the money so withheld.

(d) Again, corporate bondholders are discriminated against because the law does not release them from payment of taxes on their bonds even after the taxes have been deducted by the corporation, and therefore if, after deduction, the corporation should fail, the bondholders would be compelled to pay the tax a second time.

(e) Owners of bonds the taxes on which have been assumed by the corporation are discriminated against because the payment of the taxes by the corporation does not relieve the bondholders of their duty to include the income from such bonds in making a return of all income, the result being a double payment of the taxes, labor and expense in applying for a refund, and a deprivation of the use of the sum of the taxes during the interval which elapses before they are refunded. [240 U.S. 1, 23] 3. The provision limiting the amount of interest paid which may be deducted from gross income of corporations for the purpose of fixing the taxable income to interest on indebtedness not exceeding one half the sum of bonded indebtedness and paidup capital stock is also charged to be wanting in due process because discriminating between different classes of corporations and individuals.

4. It is urged that want of due process results from the provision allowing individuals to deduct from their gross income dividends paid them by corporations whose incomes are taxed, and not giving such right of deduction to corporations.

Brushaber complains that the law treats corporations harsher than humans in this tax.

5. Want of due process is also asserted to result from the fact that the act allows a deduction of $3,000 or $4,000 to those who pay the normal tax, that is, whose incomes are $20,000 or less, and does not allow the deduction to those whose incomes are greater than $20,000; that is, such persons are not allowed, for the purpose of the additional or progressive tax, a second right to deduct the $3,000 or $4,000 which they have already enjoyed. And a further violation of due process is based on the fact that for the purpose of the additional tax no second right to deduct dividends received from corporations is permitted.

6. In various forms of statement, want of due process, it is moreover insisted, arises from the provisions of the act allowing a deduction for the purpose of ascertaining the taxable income of stated amounts, on the ground that the provisions discriminate between married and single people, and discriminate between husbands and wives who are living together and those who are not.

7. Discrimination and want of due process result, it is said, from the fact that the owners of houses in which they live are not compelled to estimate the rental value in making up their incomes, while those who are living in rented houses and pay rent are not allowed, in making up their taxable income, to deduct rent which they have [240 U.S. 1, 24] paid, and that want of due process also results from the fact that although family expenses are not, as a rule, permitted to be deducted from gross, to arrive at taxable, income, farmers are permitted to omit from their income return certain products of the farm which are susceptible of use by them for sustaining their families during the year.

Brushaber spotted the renter's penalty. The code rectified this in later version.

Brushaber whines that farmers don't have to pay tax on the tomatoes that they grown and eat.

544 So far as these numerous and minute, not to say in many respects
545 hypercritical, contentions are based upon an assumed violation of the
546 uniformity clause, their want of legal merit is at once apparent, since
547 it is settled that that clause exacts only a geographical uniformity,
548 and there is not a semblance of ground in any of the propositions for
549 assuming that a violation of such uniformity is complained of.
550 Knowlton v. Moore, 178 U.S. 41 , 44 L. ed. 969, 20 Sup. Ct. Rep.
551 747; Patton v. Brady, 184 U.S. 608, 622 , 46 S. L. ed. 713, 720, 22
552 Sup. Ct. Rep. 493; Flint v. Stone Tracy Co. 220 U.S. 107, 158 , 55 S.
553 L. ed. 389, 416, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312;
554 Billings v. United States, 232 U.S. 261, 282 , 58 S. L. ed. 596, 605,
555 34 Sup. Ct. Rep. 421.

556

557 So far as the due process clause of the 5th Amendment is relied
558 upon, it suffices to say that there is no basis for such reliance, since
559 it is equally well settled that such clause is not a limitation upon the
560 taxing power conferred upon Congress by the Constitution; in other
561 words, that the Constitution does not conflict with itself by conferring,
562 upon the one hand, a taxing power, and taking the same power
563 away, on the other, by the limitations of the due process clause.
564 Treat v. White, 181 U.S. 264 , 45 L. ed. 853, 21 Sup. Ct. Rep. 611;
565 Patton v. Brady, 184 U.S. 608 , 46 L. ed. 713, 22 Sup. Ct. Rep. 493;
566 McCray v. United States, 195 U.S. 27, 61 , 49 S. L. ed. 78, 97, 24
567 Sup. Ct. Rep. 769, 1 Ann. Cas. 561; Flint v. Stone Tracy Co. 220
568 U.S. 107, 158 , 55 S. L. ed. 389, 416, 31 Sup. Ct. Rep. 342, Ann.
569 Cas. 1912B, 1312; Billings v. United States, 232 U.S. 261, 282 , 58
570 S. L. ed. 596, 605, 34 Sup. Ct. Rep. 421. And no change in the
571 situation here would arise even if it be conceded, as we think it must
572 be, that this doctrine would have no application in a case where,
573 although there was a seeming exercise of the taxing power, the act
574 complained of was so arbitrary as to constrain to the conclusion that
575 it was not the exertion of taxation, but a confiscation of property; that
576 is, a taking [240 U.S. 1, 25] of the same in violation of the 5th
577 Amendment; or, what is equivalent thereto, was so wanting in basis
578 for classification as to produce such a gross and patent inequality as
579 to inevitably lead to the same conclusion.

580 We say this because none of the propositions relied upon in the
581 remotest degree present such questions. It is true that it is
582 elaborately insisted that although there be no express constitutional
583 provision prohibiting it, the progressive feature of the tax causes it to
584 transcend the conception of all taxation and to be a mere arbitrary
585 abuse of power which must be treated as wanting in due process.

586 But the proposition disregards the fact that in the very early history of
587 the government a progressive tax was imposed by Congress, and
588 that such authority was exerted in some, if not all, of the various
589 income taxes enacted prior to 1894 to which we have previously
590 adverted. And over and above all this the contention but disregards
591 the further fact that its absolute want of foundation in reason was
592 plainly pointed out in Knowlton v. Moore, 178 U.S. 41 , 44 L. ed. 969,
593 20 Sup. Ct. Rep. 747, and the right to urge it was necessarily
594 foreclosed by the ruling in that case made. In this situation it is, of
595 course, superfluous to say that arguments as to the expediency of
596 levying such taxes, or of the economic mistake or wrong involved in
597 their imposition, are beyond judicial cognizance.

Besides this demonstration of the want of merit in the contention based upon the progressive feature of the tax, the error in the others is equally well established either by prior decisions or by the adequate bases for classification which are apparent on the face of the assailed provisions; that is, the distinction between individuals and corporations, the difference between various kinds of corporations, etc., etc. Ibid.; Flint v. Stone Tracy Co. 220 U.S. 107, 158 , 55 S. L. ed. 389, 416, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312; Billings v. United States, 232 U.S. 261, 282 , 58 S. L. ed. 596, 605, 34 Sup. Ct. Rep. 421; First Nat. Bank v. Kentucky, 9 Wall. 353, 19 L. ed. 701; National Safe Deposit Co. v. Stead, 232 U.S. 58, 70 , 58 S. L. ed. 504, 510, 34 Sup. Ct. Rep. 209. In fact, comprehensively surveying all the contentions [240 U.S. 1, 26] relied upon, aside from the erroneous construction of the Amendment which we have previously disposed of, we cannot escape the conclusion that they all rest upon the mistaken theory that although there be differences between the subjects taxed, to differently tax them transcends the limit of taxation and amounts to a want of due process, and that where a tax levied is believed by one who resists its enforcement to be wanting in wisdom and to operate injustice, from that fact in the nature of things there arises a want of due process of law and a resulting authority in the judiciary to exceed its powers and correct what is assumed to be mistaken or unwise exertions by the legislative authority of its lawful powers, even although there be no semblance of warrant in the Constitution for so doing.

623 We have not referred to a contention that because certain
624 administrative powers to enforce the act were conferred by the
625 statute upon the Secretary of the Treasury, therefore it was void as
626 unwarrantedly delegating legislative authority, because we think to
627 state the proposition is to answer it.

628 Marshall Field & Co. v. Clark, 143 U.S. 649 , 36 L. ed. 294, 12 Sup.
629 Ct. Rep. 495;

630 Buttfield v. Stranahan, 192 U.S. 470, 496 , 48 S. L. ed. 525, 535, 24
631 Sup. Ct. Rep. 349;

632 Oceanic Steam Nav. Co. v. Stranahan, 214 U.S. 320 , 53 L. ed.
633 1013, 29 Sup. Ct. Rep. 671.

634 AFFIRMED.

635 Mr. Justice McReynolds took no part in the consideration and
636 decision of this case.

637

Court dismiss the delegation of Congressional powers issue. Hmm.