



401(K) 2012, "Tax Return 1040", 24 Jan 2012, flickr.

Taking Back the Constitution - Part 7 - Repeal the 16th

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The income tax has been a factor in every American's life for one hundred years. We have adjusted to its ugly quirks, uncertainties, and depredations. Many look upon it as an inescapable condition of life in a modern country. You may find my comments unduly harsh for a less-than-fair – but seemingly necessary tax. There are superior replacements that have been carefully researched, but as yet, lack the political backing to replace the income tax.ⁱ Let me describe why an income tax is unsuited to a free country.ⁱⁱ

The 16th Amendment

An income tax was levied during the Civil War, but was eventually stopped by the Supreme Court citing the portion of the Constitution which states:

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

Indirect taxes are collected from manufacturers and merchants who add them to the prices they charge for their products. Thus, these taxes are paid only when people purchase those products or services.

Direct taxes are levied on incomes, inheritances, and other property. The government can demand whatever share they deem appropriate. Direct taxes imply that you do not fully own your private property. In fact, if you do not pay those taxes, the government will confiscate your

property. Our founding fathers understood the danger of taxes that could be used to steal people's property, so they refused to permit this sort theft by the federal government. They also tried to prevent taxes that could be used to tax citizens in some states for the benefit of those in other states. The knew that envy and the chance to live on other people's efforts could easily be manipulated for tyrannical purposes.

Unfortunately, the caution shown by the authors of our Constitution was thrown out amid the push of our government to amass more power. More power requires more money. Tariffs and excise taxes did not yield the desired cash so an income tax was legalized by the 16th Amendment (adopted after a fight of many years)^{iv} on 03 February 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.

The income tax

The first permanent income tax started with rates of 1% on the lowest bracket and 7% on a bracket that would started at about 12 million 2012 dollars. Thus most citizens were lulled into thinking it was only a tax on the very rich, and few thought of the unequal treatment implied by a graduated income tax.^v The practical difficulty of collecting such a tax was felt only gradually as more and more people felt the IRS'^{vi} intrusiveness into finances that had formerly been only their personal concerns.

Meanwhile, by exempting non-profits, charities, schools and churches, our government defused opposition from the most prominent opinion leaders in our society. Even the lobbying laws serve to restrict the right of political protest to those that are willing give up the charitable deduction.

The tax of slaves

During WWI the top rate rose to 77%, demonstrating for all that the income you earned was no longer yours but the government's. They only had to decide how much they would permit you to retain. Rights to your income were transferred to government by the 16th, and formerly free citizens became slaves to the whims of the government. The transition was disguised for the average citizen by imposing significant rates only on the rich in the early years. Finally the lowest rate of 4% leapt up to 10% in 1941, but by that time most citizens had forgotten what it was like to be free men of property.

Our "representatives" of course realized that when they permitted the "slaves" to retain too little, their incentive to produce and earn money for the government was reduced. Discussions of income tax rates often revolve around such esoterica as the Laffer curve, which tries to manipulate the tax rate to produce the maximum revenue for the government. Even that tends to emphasize short-term effects, since it fails to account for the effect of taxes on capital formation.

Income tax causes violation of fundamental rights

The Internal Revenue Service, to be effective, is forced to view every taxpayer as a potential lawbreaker. It has a war on its hands to collect this tax. Fear, espionage, deception, and force are essential tools. The 4th Amendment – “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .,” is routinely violated by the IRS, as anyone who has had their bank records seized as part of an audit can testify. The 5th Amendment – “. . . nor shall be compelled in any criminal case to be a witness against himself . . .,” is violated every time you sign an income tax return. The courts have permitted the IRS to violate these provisions of the Constitution realizing that this immoral tax could not be collected if we fully retained these fundamental rights.

Too complex to know what you owe

Except for those whose income is almost entirely wages, the income tax you pay is only an estimate. Most tax returns are now prepared by paid professionals and still, the amount of taxes actually owed, remains a crapshoot. Money magazine used to annually send a sample household’s tax records to nearly 50 professionals and examine their results.^{vii} Normally all got different results and by Money’s computation none were correct. In 1998 the returns claimed taxes from \$34,240 to \$68,912. The closest answer still favored the government by \$610.

Both individuals and professional preparers now rely on the seemingly endless questions of tax preparation software. *PC World* ran a hypothetical family through five of the most popular tax preparation programs. The programs gave tax amounts varying over about \$2,000 or about 10% of their total tax bill.^{viii}

This lack of certainty about the amount of tax owed is fundamentally unfair. Fear of audit and potential lost time and penalties causes people to routinely overpay their tax liability. The IRS can still find a reason to audit almost any non-trivial tax return – if the person selected is in disfavor.

If they really want to get you

The IRS can afford to audit very few returns so they choose the ones that offer the possibility of the greatest revenue. They definitely look for the easy dollar and often compromise when the potential return is not worth their time.

They also do comprehensive audits to form a statistical basis that will permit them to choose which audits should produce the greatest possible “profit.” From this they estimate that 40% of Americans are not in compliance with the tax code. That’s a lot of criminals!

There is another category of taxpayer that is occasionally under consideration for an audit. These are folks that have angered some political type with access to IRS management. If an audit can find any possible error, the IRS will charge them with “willful evasion” of their income taxes. This subjects them to potential prosecution with jail time ahead if convicted. Cooperation with the audit and offers to pay what the IRS says you owe is no defense. They want you jailed.^{ix}

The recent use of the IRS to bleed Tea Party and conservative groups of both time and money was a highly successful part of the 2012 election cycle. Most of these groups have still not received IRS approval.

I could go on for many pages, but anyone who still thinks we need the income tax had better read Frank Chodorov's classic, *The Income Tax: Root of All Evil*.

What should we do?

I suggest the following:

Amendment Number _____

The Congress shall have power to lay and collect taxes on the final sale of goods and services within the United States. It may also rebate a portion, in sum not to exceed 20 per cent, of that tax to every legally resident family in the United States, conditioned only on the number of family members.

Three years from the ratification of this amendment, the sixteenth article of amendment to the Constitution of the United States is hereby repealed.

This amendment permits the replacement of the income taxes and payroll taxes by a national sales tax similar in form to the FairTax and permits a three-year period in which to wrap up the outstanding income tax issues.

ⁱ Probably the most politically palatable and researched of these options is the FairTax (<http://www.fairtax.org/>) which replaces all income taxes with a national sales tax and rebate to make a smoothly graduated tax on consumption. Wages and other income would be entirely free of federal taxes. A 17 minute slide presentation on my reference site at <http://don.snalaska.net> outlines many of the weaknesses of the i-come and payroll taxes and the superiority of the FairTax. Click on the FairTax option and once on the FairTax page chose the slide show.

ⁱⁱ Harsh as this column is it is mild compared to the classic book: *The Income Tax: Root of All Evil* by Frank Chodorov (1954). He provides a much more detailed set of reasons why the income tax is a political evil than I can include in this brief column.

ⁱⁱⁱ U.S. Constitution, Article I, Section 9, paragraph 4.

^{iv} The first personal income tax was imposed in 1861 to help pay for the Civil War. It was 3% of all incomes over \$800 (about \$26,000 in 2013 dollars). It was replaced by another income tax in 1862. It was repealed well after the end of the war. In 1894, Congress passed the first peacetime income tax of 2% on incomes over \$4,000 (about \$130,000 in 2013 dollars). In 1895 the U.S. Supreme Court in *Pollock v. Farmers' Loan & Trust Co.* said income from rental property had to be apportioned according to Article I, Section 9, paragraph 4. This made an income tax impractical. Then in 1909 Congress passed and sent to the states what would when ratified become the 16th Amendment.

^v Karl Marx and Friedrich Engels in *The Communist Manifesto* (1848) promoted a heavy progressive or graduated income tax as a step toward the destruction of capitalism.

^{vi} The Internal Revenue Service (IRS) was originally known as the Bureau of Internal Revenue (IRB) of the Department of the Treasury. It started using the IRS nomenclature on some forms as early as 1918. The name was formalized in 1953 as the Internal Revenue Service.

^{vii} Money magazine ran their last annual test of professional tax preparers in 1998.

^{viii} This and many other details about complexity are available in *A Taxing Trend: The Rise in Complexity, Forms, and Paperwork Burdens*, NTU Policy Paper # 130, 17 April 2012 (<http://www.ntu.org/news-and-issues/taxes/tax-reform/ntupp130.html>).

^{ix} For example, the case against William H. Malone used a dispute over plant depreciation to put him in the slammer for 2 years. He had been Chairman of the Illinois Tax Commission and had run for governor as a Republican. He had become a political undesirable to politicians who controlled the IRS. His case is detailed in *They Got Their Man: A Story of Income tax Persecution* by Elmer Lynn Williams (1941). There have been a number of other cases under several administrations stretching up to the present time.