AMENDMENT XVI—INCOME TAX

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.

HISTORICAL NOTES

Proposal and Ratification

The sixteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-first Congress on the 12th of July, 1909, and was declared, in a proclamation of the Secretary of State, dated the 25th of February, 1913, to have been ratified by 36 of the 48 States. The dates of ratification were: Alabama, August 10, 1909; Kentucky, February 8, 1910; South Carolina, February 19, 1910; Illinois, March 1, 1910; Mississippi, March 7, 1910; Oklahoma, March 10, 1910; Maryland, April 8, 1910; Georgia, August 3, 1910; Texas, August 16, 1910; Ohio, January 19, 1911; Idaho, January 20, 1911; Oregon, January 23, 1911; Washington, January 26, 1911; Montana, January 30, 1911; Indiana, January 30, 1911; California, January 31, 1911; Nevada, January 31, 1911; South Dakota, February 3, 1911; Nebraska, February 9, 1911; North Carolina, February 11, 1911; Colorado, February 15, 1911; North Dakota, February 17, 1911; Kansas, February 18, 1911; Michigan, February 23, 1911; Iowa, February 24, 1911; Missouri, March 16, 1911; Maine, March 31, 1911; Tennessee, April 7, 1911; Arkansas, April 22, 1911 (after having rejected it earlier); Wisconsin, May 26, 1911; New York, July 12, 1911; Arizona, April 6, 1912; Minnesota, June 11, 1912; Louisiana, June 28, 1912; West Virginia, January 31, 1913; New Mexico, February 3, 1913.

Ratification was completed on February 3, 1913.

The amendment was subsequently ratified by Massachusetts, March 4, 1913; New Hampshire, March 7, 1913 (after having rejected it on March 2, 1911).

The amendment was rejected (and not subsequently ratified) by Connecticut, Rhode Island, and Utah.

LIBRARY REFERENCES

Administrative Law

Internal Revenue Service, see West's Federal Practice Manual § 131 et seq.

Law Reviews

The scope of national power vis-á-vis the states: The dispensability of judicial review. Jesse H. Choper, 86 Yale L.J. 1552 (1977).

Texts and Treatises

Power to tax, see Rotunda, Nowak & Young, Treatise on Constitutional Law: Substance and Procedure §§ 5.2 to 5.7.

WESTLAW ELECTRONIC RESEARCH

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Also, see the WESTLAW guide following the Explanation pages of this volume.

NOTES OF DECISIONS

For Detailed Alphabetical Note Index, see the Various Subdivisions.

I. GENERALLY

Subdivision Index

American Digest System

Power to impose income tax, see Internal Revenue ⇐3067.

Encyclopedias

Power to impose income tax, see C.J.S. Internal Revenue § 12.

1. Constitutionality—Generally

Sixteenth Amendment authorizing income tax is valid. Cook v. Spillman, C.A.9 (Cal.) 1986, 806 F.2d 948.

It is now impossible for a taxpayer to reasonably believe that this amendment is unconstitutional, and therefore, a taxpayer cannot assert a good-faith belief defense based upon those assertions. U.S. v. Burton, D.C.Tex.1983, 575 F.Supp. 1320.

2. —— Adoption or ratification of amendment

Sixteenth Amendment to Constitution was not improperly ratified. U.S. v. Ferguson, C.A.7 (Ind.) 1986, 793 F.2d 828, certiorari denied 107 S.Ct. 406, 93 L.Ed.2d 358.

Ratification of Sixteenth Amendment, permitting Congress to impose income

tax, was not rendered invalid by typographical errors in resolutions of various states ratifying Amendment or by allegedly fraudulent certification by Secretary of State, absent claim that alleged typographical errors went to meaning of Amendment or evidence of fraud. Sisk v. C.I.R., C.A.6, 1986, 791 F.2d 58.

This amendment was constitutionally adopted and is not a "nullity," despite contention that Ohio was not a State when it ratified this amendment, that William Howard Taft, being from Ohio, was thus not legally President at the time and that all laws enacted during Taft's administration were therefore void. Knoblauch v. C.I.R., C.A.5, 1984, 749 F.2d 200, certiorari denied 106 S.Ct. 95, 88 L.Ed.2d 78.

This amendment was validly adopted by submission thereof to state legislatures. Keogh v. Neely, C.C.A.Ill.1931, 50 F.2d 685, appeal dismissed and certiorari denied 52 S.Ct. 39, 286 U.S. 583, 76 L.Ed. 504.

The Sixteenth Amendment, granting Congress power to lay and collect income taxes, was validly ratified and is a part of United States Constitution despite minor variations in text of the amendment as contained in resolutions of the various states ratifying it, of which the Secretary of State was aware when he certified the amendment as having been ratified, absent showing that minor variations in capitalization, punctuation and wording of the various state resolutions were materially different in purpose or effect from the language of the congressional joint resolution proposing the amendment, and in light of fact that the amendment has been recognized and acted upon since 1913. U.S. v. House, D.C.Mich.1985, 617 F.Supp. 237, affirmed 787 F.2d 593.

3. Construction with other Constitutional provisions

This amendment did not limit or expand power of Congress to tax under Art. I, § 8, cl. 1, authorizing Congress to lay and collect taxes, but, rather, simply provided for taxation of income without apportionment. Pledger v. C.I.R., C.A.5, 1981, 641 F.2d 287, certiorari denied 102 S.Ct. 504, 454 U.S. 964, 70 L.Ed.2d 379.

4. Construction

In income tax matters, the law regards substance rather than form. Keokuk & Hamilton Bridge, Inc. v. C.I.R., C.A.8, 1950, 180 F.2d 58.

Questions of taxation must be determined by viewing what was actually done rather than the declared purpose of the participants, and when applying the provisions of this amendment, matters of substance and not mere form must be regarded. Louis W. Gunby, Inc., v. Helvering, 1941, 122 F.2d 203, 74 App.D.C. 185. See, also, West Boylston Mfg. Co. of Alabama v. Commissioner of Internal Revenue, C.C.A.Ala.1941, 120 F.2d 622.

In applying provisions of this amendment and income tax laws enacted thereunder, matters of substance must be regarded, and mere form disregarded. Commissioner of Internal Revenue v. Schumacher Wall Board Corporation, C.C.A.1938, 93 F.2d 79. See, also, Royal Mfg. Co. v. Commissioner of Internal Revenue, C.C.A.3, 1943, 139 F.2d 958; Nordberg Mfg. Co. v. Kuhl, D.C.Wis., 1947, 69 F.Supp. 750, affirmed 166 F.2d 331.

Generally, taxing statutes are construed literally and strictly, but a strict construction is not called for when a common sense construction squares with plain and obvious intent of Congress. Piper v. U.S., D.C.Minn.1943, 50 F.Supp. 363, appeal dismissed 142 F.2d 465.

5. Purpose

This amendment merely removes all occasion which otherwise might exist for an apportionment among the states of taxes laid on income, from whatever source derived and the taxing power is not extended to new or excepted subjects. Peck v. Lowe, N.Y.1918, 38 S.Ct. 432, 247 U.S. 165, 62 L.Ed. 1049. See, also, Bowers v. Kerbaugh-Empire Co., N.Y.1926, 46 S.Ct. 449, 271 U.S. 170, 70 L.Ed. 886; Sprouse v. Commissioner of Internal Revenue, C.C.A.1941, 122 F.2d 973, affirmed 63 S.Ct. 791, 318 U.S. 604, 87 L.Ed. 1029.

The whole purpose of the Amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived. Brushaber v. Union Pac. R. Co., N.Y.1916, 36 S.Ct. 236, 240 U.S. 1, 60 L.Ed. 493, Ann.Cas.1917B, 713, L.R.A.1917D, 414. See, also, Tyee Realty Co. v. Anderson, N.Y.1916, 36 S.Ct. 281, 240 U.S. 115, 60 L.Ed. 554;

Stanton v. Baltic Min. Co., Mass.1916, 36 S.Ct. 278, 240 U.S. 103, 60 L.Ed. 546.

6. Retroactive effect

Where fact of infringement of patent was not determined until 1915 in suit brought by owner thereof before Mar. 1, 1913, for injunction and accounting of profits, income tax on proceeds of settlement accepted by owner in 1925 was not violative of express or implied restrictions of Constitution, even though large part of such settlement was attributable to acts of infringement antedating this amendment. U.S. v. Safety Car Heating & Lighting Co., N.J.1936, 56 S.Ct. 353, 297 U.S. 88, 80 L.Ed. 500, rehearing denied 56 S.Ct. 495, 297 U.S. 727, 80 L.Ed. 1010.

Where trust involved was set up in 1904 prior to adoption of this amendment, case was not an appropriate one for judicial straining to prevent consummation of a purpose of tax avoidance. Commissioner of Internal Revenue v. Bateman, C.C.A.1942, 127 F.2d 266.

The Treasury Regulation providing that if a person sues in one year and recovers money on a judgment in a later year, income is realized in the later year, assuming that the money would have been income in the earlier year if then recovered, is invalid if applied so as to prevent the taxation of the proceeds of judgments in actions brought against the government after the adoption of this amendment for damages for interfering with sealing operations in the Bering Sea prior to this amendment. H. Liebes & Co. v. Commissioner of Internal Revenue, C.C.A.1937, 90 F.2d 932.

Will, which was drafted four years before adoption of this amendment, showed testator's intent to create a trust, identified the trust property and the beneficiaries, and clearly set forth purposes of the trust, created a trust for federal income tax purposes. Smither v. U.S., D.C.Tex.1952, 108 F.Supp. 772, affirmed 205 F.2d 518.

In classifying for purpose of income taxation Congress may give retroactive effect to a tax. Union Packing Co. v. Rogan, D.C.Cal.1937, 17 F.Supp. 934.

State is not subject to limitation on power of federal government to extend reach of federal income tax legislation before 1 March 1913. Katzenberg v. Comptroller of Treasury, 1971, 282 A.2d 465, 263 Md. 189.

7. Generally

This amendment empowers Congress to levy income tax against any source of income, without need to apportion tax equally among states, or to classify it as excise tax applicable to specific categories of activities. Parker v. C.I.R., C.A.5, 1984, 724 F.2d 469.

It is not necessary to apportion income tax among the several states. Lonsdale v. C.I.R., C.A.5, 1981, 661 F.2d 71.

This amendment authorizes imposition of income tax without apportionment among the states. Broughton v. U.S., C.A.Iowa 1980, 632 F.2d 706, certiorari denied 101 S.Ct. 1390, 450 U.S. 930, 67 L.Ed.2d 363.

In view of this amendment giving Congress power to lay and collect taxes on incomes, government was not limited to taxes such as sales tax. Kasey v. C.I.R., C.A.9, 1972, 457 F.2d 369, certiorari denied 93 S.Ct. 197, 409 U.S. 869, 34 L.Ed.2d 120.

Constitutionality of income tax laws, enacted pursuant to this amendment, is established. Crowe v. C.I.R., C.A.Minn. 1968, 396 F.2d 766.

Congress has the power to lay and collect income taxes. Baird v. C.I.R., C.A.7, 1958, 256 F.2d 918, affirmed 79 S.Ct. 1270, 360 U.S. 446, 3 L.Ed.2d 1360, mandate conformed to 270 F.2d 64.

This amendment was not a grant of power to tax income, because Congress always had such power, but merely removed the necessity for apportionment among states of taxes on income. Kerbaugh-Empire Co. v. Bowers, D.C.N.Y. 1924, 300 F. 938, affirmed 46 S.Ct. 449, 271 U.S. 170, 70 L.Ed. 886. See, also, Fairbanks v. C.I.R., C.A.9, 1951, 191 F.2d 680, certiorari denied 72 S.Ct. 648, 343 U.S. 915, 96 L.Ed. 1330.

8. State regulation or control

The federal government's power to tax income cannot be limited by provisions of a state constitution. Gunn v. Dallman, C.A.Ill.1948, 171 F.2d 36, certiorari denied 69 S.Ct. 747, 336 U.S. 937, 93 L.Ed. 1095.

Imposition and collection of federal income tax is a federal function, and

state constitution and statute exempting life insurance proceeds payable to widow from claims of husband's creditors do not prevent imposition of transferee liability for Federal taxes, such liability being answerable without reference to various state law limitations. Bales v. C.I.R., 1954, 22 T.C. 355.

9. Persons subject to tax—Generally

Commissioner's reference to 26 U.S. C.A. § 22(a) [I.R.C.1939] including in taxable income "dividends" was not sufficient to sustain action of Commissioner in assessing as income to husband dividends payable to wife on stock owned by wife, since such section, like this amendment permitting the taxation of income, does not say who is to pay the tax and both contemplate that taxpayer is the person who owns the income or property from which income arises. Hughes v. C.I.R., C.C.A.Ga.1946, 153 F.2d 712.

10. —— Corporations

Application of this amendment and tax statutes is not confined to corporations and licensees. Snead v. C.I.R., C.A.10, 1984, 733 F.2d 719, modified on other grounds 744 F.2d 1448.

This amendment authorizes taxation of income not only of corporations and other business organizations, but also that of individuals. U.S. v. Stillhammer, C.A.N.M.1983, 706 F.2d 1072.

Congress has power to levy tax on corporate net income even though there is an impairment of capital. Crane-Johnson Co. v. Commissioner of Internal Revenue, C.C.A.1939, 105 F.2d 740, affirmed 61 S.Ct. 114, 311 U.S. 54, 85 L.Ed. 35.

The taxability of corporate income is not affected by fact that corporation employed accrual method of accounting rather than cash receipts and disbursements method. Barker v. U.S., 1939, 26 F.Supp. 1004, 88 Ct.Cl. 468.

11. —— Farmers or ranchers

Taxpayer was required to pay income tax despite contention that he was not required to pay such taxes because he was engaged in the common-law occupations of farming and ranching which were allegedly beyond the scope of this amendment. U.S. v. Silkman, C.A.N.D. 1976, 543 F.2d 1218, certiorari denied 97 S.Ct. 2185, 431 U.S. 919, 53 L.Ed.2d 230.

12. —— Publishers

Those who exercise rights protected by Amend. 1 are subject to ordinary income taxes which are imposed on all. Publishers New Press, Inc. v. Moysey, D.C.N.Y.1956, 141 F.Supp. 340.

13. —— State agencies and instrumentalities

Under Iowa laws, city became equitable owner of bridge property by acceptance of gift proposal, and corporation which was organized for sole purpose of carrying out the gift proposal and which was bound to collect income from bridge and to apply it to expenses of operation and to reduction of bonded indebtedness did not receive taxable income within Internal Revenue Code, 1939, or this amendment. Keokuk & Hamilton Bridge, Inc. v. C.I.R., C.A.8, 1950, 180 F.2d 58.

Implied constitutional prohibition against federal income taxes on state's agencies and instrumentalities was unaltered by this amendment. Watson v. Commissioner of Internal Revenue, C.C.A.1936, 81 F.2d 626.

This amendment authorizing Congress to lay and collect taxes on income did not alter pre-existing exemption of agencies of a state from federal income taxation. Wolkstein v. Port of New York Authority, D.C.N.J.1959, 178 F.Supp. 209.

14. —— Unincorporated associations

Congress may tax the income of an association which, although unincorporated, conducts its business as if it were incorporated; such power of taxation is not affected by the fact that under the state law the association is not a legal entity and cannot hold title to property, or by the fact that the shareholders are liable for its debts as partners. Burk-Waggoner Oil Ass'n v. Hopkins, Tex. 1925, 46 S.Ct. 48, 269 U.S. 110, 70 L.Ed. 183.

15. Direct tax

The Constitution does not prohibit imposition of a direct tax without apportionment. Lovell v. U.S., C.A.7 (Wis.) 1984, 755 F.2d 517.

The taxation of wage earner's income is not, in view of this amendment, unconstitutional as direct tax not apportioned among the states. Broughton v. U.S., C.A.Iowa 1980, 632 F.2d 706, certio-

rari denied 101 S.Ct. 1390, 450 U.S. 930, 67 L.Ed.2d 363.

Income tax is a direct tax. U.S. v. Francisco, C.A.Iowa 1980, 614 F.2d 617, certiorari denied 100 S.Ct. 1861, 446 U.S. 922, 64 L.Ed.2d 278.

5 U.S.C.A. § 5532, which provides for a substantial reduction in the retirement pay of retired regular officers of the uniformed services who hold federal civilian positions, does not constitute a direct tax upon such officers not in proportion to the census, since the terms of 5 U.S.C.A. § 5532 and its legislative history demonstrate that it was more than a mere replication of the Economy Act of 1932, since, even if the 1932 Act was the direct forebear of and dominant influence upon 5 U.S.C.A. § 5532, that statute was in no legal sense a tax measure, and since, even were it held that the 1932 Act imposed a direct tax upon retired officers, the "tax" would be an income tax within this amendment. Puglisi v. U.S., 1977, 564 F.2d 403, 215 Ct.Cl. 86, certiorari denied 98 S.Ct. 1606, 435 U.S. 968, 56 L.Ed.2d 59, rehearing denied 98 S.Ct. 2860, 436 U.S. 951, 56 L.Ed.2d 794.

An income taxpayer can establish that tax imposed is invalid under the Constitution only by showing that the tax is direct and therefore requires apportionment, and that the tax does not fall within scope of this amendment which lifts apportionment requirement from categories of taxes on income as are deemed to be direct taxes. Simmons v. U.S., C.A.Md.1962, 308 F.2d 160.

An unapportioned direct tax on anything which is not income would be unconstitutional. C.I.R. v. Obear-Nester Glass Co., C.A.7, 1954, 217 F.2d 56, certiorari denied 75 S.Ct. 570, 348 U.S. 982, 99 L.Ed. 764, rehearing denied 75 S.Ct. 870, 349 U.S. 948, 99 L.Ed. 1274.

"Direct tax" is capitation tax, a tax on realty, on income from realty and personalty held for investment, and on income of personal property. Kingan & Co. v. Smith, D.C.Ind.1936, 17 F.Supp. 217.

Where taxpayer purchased under agreement employer's stock subject to contractual restraints on transferability, Tax Court sustained Commissioner's determination that taxable income under 26 U.S.C.A. § 83(a) was difference between average market price of stock on last business day prior to date on which shares were no longer subject to forfeiture and price taxpayer paid for shares, contrary to taxpayer's contention that taxable income could not exceed fair market value of stock received under agreement, and determined that 26 U.S.C.A. § 83(a) was not unconstitutional under this amendment since 26 U.S.C.A. § 83 does not impose direct tax and therefore is within congressional taxing power. Sakol v. C.I.R., 1977, 67 T.C. 986, affirmed 574 F.2d 694, certiorari denied 99 S.Ct. 177, 439 U.S. 859, 58 L.Ed.2d 168.

16. Classifications

Congress may classify for purpose of income taxation if there be some reasonable foundation for the classification. Union Packing Co. v. Rogan, D.C.Cal. 1937, 17 F.Supp. 934.

17. Criminal sanctions or penalties

Authority of Congress under Sixteenth Amendment includes authority to enact criminal sanctions for violation of Internal Revenue Code, over which federal district courts have original exclusive jurisdiction. U.S. v. Tedder, C.A.10 (Kan.) 1986, 787 F.2d 540.

A provision for the assessment and collection through administrative officers of an additional tax and penalty for false and fraudulent returns is within the taxing powers of Congress. McDowell v. Heiner, D.C.Pa.1925, 9 F.2d 120, affirmed 15 F.2d 1015.

Inherent in Congress' power to lay and collect taxes on income is the power to assess penalties for an individual's failure to pay full amount of income tax due. Carey v. U.S., D.C.Va.1985, 601 F.Supp. 150.

18. Deductions, credits, and allowances

Depletion deduction is a matter of legislative grace and is not constitutionally compelled. Beal Foundation v. U.S., C.A.Tex.1977, 559 F.2d 359.

Congress has power to condition, limit or deny deductions from gross income in order to arrive at the net that it chooses to tax. Crowe v. C.I.R., C.A.Minn. 1968, 396 F.2d 766.

Under this amendment all income whether net or gross may be taxed by Congress, and deductions allowed on gross income are given as a matter of

grace. Avery v. Commissioner of Internal Revenue, C.C.A.1936, 84 F.2d 905, certiorari denied 57 S.Ct. 231, 299 U.S. 604, 81 L.Ed. 445, rehearing denied 57 S.Ct. 430, 300 U.S. 686, 81 L.Ed. 888.

Under this amendment, Congress, in taxing income, need not allow deduction because invested capital is gradually being exhausted. Kentucky Tobacco Products Co. v. Lucas, D.C.Ky.1925, 5 F.2d 723.

The matter of deductions, credits and allowances on an income tax is in the discretion of Congress, and if Congress sees fit to deny them in unrelated though similar transactions, it is acting within its power. Manufacturers Trust Co. v. U.S., 1940, 32 F.Supp. 289, 91 Ct.Cl. 406, certiorari denied 61 S.Ct. 710, 312 U.S. 691, 85 L.Ed. 1127.

Petitioner showed no basis for claim that 26 U.S.C.A. former § 270 [now § 183], relating to deductions for hobby losses, exceeded constitutional power to tax under this amendment; or that it constituted arbitrary taking of property in violation of Amend. 5, it being well established that deductions are matter of legislative grace. Lockhart v. C.I.R., 1965, 43 T.C. 776.

19. Estimated taxes

Statutory provisions requiring declaration and current payment of estimated income tax by individuals are appropriate measures for convenient collection of income tax authorized under constitutional amendment and are not unconstitutional as requiring self-incrimination or as amounting to unreasonable search and seizure or on ground of uncertainty as to amount of tax. Erwin v. Cranquist, C.A.Or.1958, 253 F.2d 26, certiorari denied 78 S.Ct. 997, 356 U.S. 960, 2 L.Ed.2d 1067.

20. Exemptions

The authority of Congress to impose a tax on incomes "from whatever source derived," does not by implication exclude the power to make exemptions, and the income tax provisions of Act Oct. 3, 1913, c. 16, 38 Stat. 166, in so far as they provide that the tax shall not apply to enumerated organizations or corporations, such as labor, agricultural or horticultural organizations, mutual savings banks, etc., are valid. Brushaber v. Union Pac. R. Co., N.Y.1916, 36 S.Ct. 236, 240 U.S. 1, 60 L.Ed. 493, Ann.Cas. 1917B, 713, L.R.A.1917D, 414.

Congress has power to make exemptions from income tax. Communist Party, U.S.A. v. Moysey, D.C.N.Y.1956, 141 F.Supp. 332.

21. Refunds

Congressional power to lay and collect taxes on incomes, under this amendment, includes prescribing basic rates of taxation, time and manner in which taxes are to be paid and also means and methods for making refunds, with or without interest. Jacobs v. Gromatsky, C.A.La.1974, 494 F.2d 513, certiorari denied 95 S.Ct. 126, 419 U.S. 868, 42 L.Ed.2d 107.

There was no violation of Amend. 5 in denial of plaintiff's demand that Internal Revenue Service pay his refund in "legal money" on basis that inflation would make same amount of paper money worth less, as action of Internal Revenue Service and its agents were not a "taking" but a taxation of income under this amendment, and Federal Reserve Note or paper money is "legal" or "lawful money." Cameron v. I.R.S., D.C.Ind. 1984, 593 F.Supp. 1540, affirmed 773 F.2d 126.

22. Single tax advocacy

Section 3573, Ala.Code, 1907, permitting the organization of a single tax corporation under which a single tax corporation was incorporated, whose constitution provided for the establishment of a community which should own and lease its own land, and, without infringing any governmental rule of taxation, as between itself and its members, apply and demonstrate the single tax principle of taxation, whereby the corporation should appropriate rent by taxation, could not be condemned on the ground of its opposition to public policy; nor is such act violative of this amendment. Fairhope Single Tax Corp. v. Melville, 1915, 69 So. 466, 193 Ala. 290.

23. Computation of tax—Generally

Mere fact that a gift made in contemplation of death and included in a donor-decedent's estate for estate tax purposes must have its basis determined under 26 U.S.C.A. § 1015 providing such basis shall be the same as it would be in hands of donor or last preceding owner by whom it was not acquired by gift, and

not under 26 U.S.C.A. § 1014 providing the basis shall be fair market value of such property at time of grantor's death, even though harsh in result, did not render such tax invalid as contravening this amendment and Amend. 5. Spicer v. U.S., 1957, 153 F.Supp. 472, 139 Ct.Cl. 727.

24. —— Cash or accrual basis

This amendment is not violated by providing for the computation of income annually based on the net result of all transactions within the year. Burnet v. Sanford & Brooks Co., 1931, 51 S.Ct. 150, 282 U.S. 359, 75 L.Ed. 383.

The assessment of income and profits taxes on accrual basis did not violate this amendment. Weed & Bro. v. U.S., Ct.Cl.1930, 38 F.2d 935, certiorari denied 51 S.Ct. 25, 282 U.S. 846, 75 L.Ed. 759.

The constitutionality of taxing income on the accrual basis is not dependent on consent of taxpayer, as the power granted in the Constitution includes the right to require an accrual method without reference to individual taxpayer's choice. Boynton v. Pedrick, D.C.N.Y.1954, 136 F.Supp. 888, affirmed 228 F.2d 745, certiorari denied 76 S.Ct. 835, 351 U.S. 938, 100 L.Ed. 1465, rehearing denied 76 S.Ct. 1046, 351 U.S. 990, 100 L.Ed. 1503.

25. —— Time of taxation

Revenue Act, 1928, § 204(b)(1)(B), construed as taxing entire gain realized by stock fire insurance companies in 1928 from sale of property acquired before that year, although part of gain represents enhanced value before 1928, was constitutional. MacLaughlin v. Alliance Ins. Co. of Philadelphia, Pa.1932, 52 S.Ct. 538, 286 U.S. 244, 76 L.Ed. 1083. See, also, Insurance Co. of the State of Pennsylvania v. MacLaughlin, C.C.A.1932, 59 F.2d 1065.

Where taxpayer receiving bonuses in 1926 for executing oil and gas leases deducted depletion allowances from the bonuses in 1926 income tax return but the leases were surrendered in 1936 without development, and the Commissioner restored to income the depletion allowances and assessed additional taxes for the year 1936, the charging as income in 1936 of gain actually received in 1926 involved no constitutional question, since under this amendment that which is not income cannot be taxed as such, but there is no requirement regarding the year in which income must be taxed. Sneed v. Commissioner of Internal Revenue, C.C.A.Tex.1941, 119 F.2d 767, rehearing denied 121 F.2d 725, certiorari denied 62 S.Ct. 297, 314 U.S. 686, 86 L.Ed. 549.

II. SOURCES OF INCOME

Subdivision Index

American Digest System

Constitutional provisions as to what incomes are taxable, see Internal Revenue ⇐3111.

Encyclopedias

Meaning of income under Sixteenth Amendment, see C.J.S. Internal Revenue § 57.

51. Generally

"Income" within this amendment with few, if any, exceptions, is income as the word is known in common speech. U.S. v. Safety Car Heating & Lighting Co., N.J.1936, 56 S.Ct. 353, 297 U.S. 88, 80 L.Ed. 500, rehearing denied 56 S.Ct. 495, 297 U.S. 727, 80 L.Ed. 1010. See, also, Helvering v. Edison Bros. Stores, C.C.A. 1943, 133 F.2d 575, certiorari denied 63 S.Ct. 1166, 319 U.S. 752, 87 L.Ed. 1706; Mahana v. U.S., 1950, 88 F.Supp. 285, 115 Ct.Cl. 716, certiorari denied 70 S.Ct. 1023, 339 U.S. 978, 94 L.Ed. 1383, rehearing denied 71 S.Ct. 14, 340 U.S. 847, 95 L.Ed. 620; Union Packing Co. v. Rogan, D.C.Cal.1937, 17 F.Supp. 934.

26 U.S.C.A. § 61(a) defining gross income for purposes of Internal Revenue Code, 26 U.S.C.A. § 1 et seq., is in full compliance with Congressional authority under this amendment to impose taxes on income without apportionment among the states. Perkins v. C.I.R., C.A.6, 1984, 746 F.2d 1187.

Definition of income in 26 U.S.C.A. § 61(a)(1) as all "accessions to wealth" is clearly within power to tax "income" granted by this amendment. Lonsdale v. C.I.R., C.A.5, 1981, 661 F.2d 71.

Congress intended to tax income from whatever source derived. U.S. v. Francisco, C.A.Iowa 1980, 614 F.2d 617, certiorari denied 100 S.Ct. 1861, 446 U.S. 922, 64 L.Ed.2d 278.

The words "from whatever source derived" as used in the Constitutional provision giving Congress power to lay and collect taxes on incomes from whatever source derived are words of enlargement indicating an intention that the meaning of "income" should not be restricted. Magness v. C.I.R., C.A.Ga.1957, 247 F.2d 740, certiorari denied 78 S.Ct. 412, 355 U.S. 931, 2 L.Ed.2d 414.

This amendment gives Congress the power to lay and collect taxes on incomes from whatever source derived. Jud Plumbing & Heating v. C.I.R., C.C.A. Tex.1946, 153 F.2d 681. See, also, U.S. v. Buras, C.A.Cal.1980, 633 F.2d 1356; U.S. v. Russell, C.A.Ark.1978, 585 F.2d 368.

Congress cannot, without apportionment, tax as income that which is not income within meaning of this amendment. Helvering v. Edison Bros. Stores, C.C.A.1943, 133 F.2d 575, certiorari denied 63 S.Ct. 1166, 319 U.S. 752, 87 L.Ed. 1706.

In determining meaning of "income", courts, unless Congress orders otherwise, will follow ordinary meaning of the word on theory that state legislatures had idea of an ordinary meaning for "income" in mind when legislatures ratified this amendment. Union Trust Co. of Pittsburgh v. Commissioner of Internal Revenue, C.C.A.1940, 115 F.2d 86, certiorari denied 61 S.Ct. 741, 312 U.S. 700, 85 L.Ed. 1134.

52. Accumulated earnings

Assessment of accumulated earnings tax on earnings accumulated by corporate taxpayer over period of 60 years was not in violation of this amendment as a tax on capital rather than on income. Novelart Mfg. Co. v. C.I.R., C.A.6, 1970, 434 F.2d 1011, certiorari denied 91 S.Ct. 2229, 403 U.S. 918, 29 L.Ed.2d 695.

53. Alimony, support, and maintenance

Even though divorced husband's alimony payments to wife may have been made out of husband's capital or his tax-exempt income, nevertheless 26 U.S.C.A. § 22(k) [I.R.C.1939] providing that alimony payments to wife are taxable income to wife and are deductible by husband is not violative of this amendment relating to income taxes. Neeman v. C.I.R., C.A.2, 1958, 255 F.2d 841, certiorari denied 79 S.Ct. 65, 358 U.S. 841, 3 L.Ed.2d 76.

26 U.S.C.A. § 22(k) [I.R.C.1939] was within power of Congress to tax income from whatever source derived. Fairbanks v. C.I.R., C.A.9, 1951, 191 F.2d 680, certiorari denied 72 S.Ct. 648, 343 U.S. 915, 96 L.Ed. 1330.

Alimony payments are "income" within this amendment. Mahana v. U.S., 1950, 88 F.Supp. 285, 115 Ct.Cl. 716, cer-

tiorari denied 70 S.Ct. 1023, 339 U.S. 978, 94 L.Ed. 1383, rehearing denied 71 S.Ct. 14, 340 U.S. 847, 95 L.Ed. 620.

Alimony payments received by taxpayer under separation agreement later embodied in divorce decree from earnings of former spouse and subsequently from his estate were income validly taxed within meaning of 26 U.S.C.A. § 22 [I.R.C.1939] and this amendment, it being within power of Congress and more realistic to tax the recipient, rather than the payor of the payments. Twinam v. C.I.R., 1954, 22 T.C. 83.

54. Annuities

Taxpayer could not assert unconstitutionality of income tax provision of 26 U.S.C.A. § 22(b)(2) [I.R.C.1939], relating to annuities on ground it was a tax on capital and was not apportioned among the states, where taxpayer did not show that property she transferred in payment of annuities did not earn 3 percent so that capital was being returned to taxpayer and was being taxed. Raymond v. Commissioner of Internal Revenue, C.C.A.1940, 114 F.2d 140, certiorari denied 61 S.Ct. 319, 311 U.S. 710, 85 L.Ed. 462.

55. Cash receipts

"Income" within this amendment is not limited to direct receipt of cash. Crane v. C.I.R., 1947, 67 S.Ct. 1047, 331 U.S. 1, 91 L.Ed. 1301.

The term "income" as used in this amendment and in the revenue statutes is not limited to cash income. Cherokee Motor Coach Co. v. Commissioner of Internal Revenue, C.C.A.1943, 135 F.2d 840.

Taxable income is constitutionally broader than the actual receipt of cash. Boynton v. Pedrick, D.C.N.Y.1954, 136 F.Supp. 888, affirmed 228 F.2d 745, certiorari denied 76 S.Ct. 835, 351 U.S. 938, 100 L.Ed. 1465, rehearing denied 76 S.Ct. 1046, 351 U.S. 990, 100 L.Ed. 1503.

56. Compensation for services—Generally

Income received as compensation for services rendered under a contract with the state is taxable. Metcalf & Eddy v. Mitchell, Mass.1926, 46 S.Ct. 172, 269 U.S. 514, 70 L.Ed. 384.

Taxpayers' contentions that wages may not be taxed because they come from taxpayer's person, which is depreciating asset, and because Sixteenth Amendment authorizes only excise taxes, were objectively frivolous, so that tax court and Internal Revenue Service were entitled to impose sanctions. Coleman v. C.I.R., C.A.7 (Ind.) 1986, 791 F.2d 68.

Federal income taxes were not improperly assessed on ground that assessment violated Fifth Amendment, that taxpayers' wages were property not subject to the income tax, that only public servants are subject to tax liability, that withholding of tax from wages is a direct tax on the source of income without apportionment in violation of the Sixteenth Amendment, that withholding of taxes violated equal protection, and that taxpayers were not allowed to exclude from amount of wages the cost of maintaining their well-being. Motes v. U.S., C.A.11 (Ga.) 1986, 785 F.2d 928.

Tax on wages is not a property tax which would be required to be apportioned. Connor v. C.I.R., C.A.2, 1985, 770 F.2d 17.

Federal income tax laws are not unconstitutional as applied to wages received for labor. U.S. v. Moore, C.A.Wyo.1979, 692 F.2d 95.

Internal Revenue Code, Title 26, U.S.C.A., defines gross income as all income from whatever source derived, including compensation for services, and this amendment authorizes imposition of tax upon income without apportionment among states; thus, taxpayers could not avoid taxation of their income on grounds that individual's labor is capital in which he or she possesses property right, that individual has right to exchange that property for money, and that such transaction is equal exchange which does not give rise to any profit. Funk v. C.I.R., C.A.8, 1982, 687 F.2d 264. See, also, Stelly v. C.I.R., C.A.5 (Tex.) 1985, 761 F.2d 1113, certiorari denied 106 S.Ct. 149, 88 L.Ed.2d 123; Hansen v. U.S., C.A.Neb.1984, 744 F.2d 658.

Compensation for services, or wages, constitutes "income" and tax on wages is not contrary to provisions of this amendment. U.S. v. Venator, D.C.N.Y.1983, 568 F.Supp. 832.

57. —— Federal judges

Formerly, the salary of a federal judge was immune from an income tax by virtue of Art. 3, § 1, prohibiting the diminishing of a judge's salary during his

term of office. Evans v. Gore, Ky.1920, 40 S.Ct. 550, 253 U.S. 245, 64 L.Ed. 887.

58. —— State employees

Evidence sustained Board of Tax Appeal's conclusion that lawyer serving as chief counsel for committee which Legislature created by joint resolution to investigate activities and finances of states, counties, and municipalities as basis for legislation, was "independent contractor" rather than state's "employee," and hence remuneration for services was not exempt from federal income tax. Watson v. Commissioner of Internal Revenue, 1936, 81 F.2d 626.

An employee of a street railway system operated by a city is engaged in a governmental function, and his salary derived from such services was formerly exempt from taxation by the federal government. Frey v. Woodworth, D.C. Mich.1924, 2 F.2d 725, error dismissed 46 S.Ct. 347, 270 U.S. 669, 70 L.Ed. 791.

The salaries of federal or state officers and employees are not immune from the taxing power of the other sovereign where the tax is nondiscriminatory. Coates v. U.S., D.C.N.Y.1939, 28 F.Supp. 320, affirmed 111 F.2d 609.

59. —— Trust funds

Where taxation to employees of sums paid by employer to trustee for education of employees' children was only the taxing of personal service income to the persons who performed the services and the employees were not without control over the manner in which they were compensated, the taxing of the payments did not violate Amend. 5 and this amendment. Armantrout v. C.I.R., C.A.7, 1978, 570 F.2d 210.

60. Contingent income

This amendment authorizes the taxing of income but not the taxing of the intangible and nonnegotiable contingencies of a taxpayer on a cash receipts basis, that may in a later year result in income. D.D. Oil Co. v. C.I.R., C.C.A. Tex.1945, 147 F.2d 936.

61. Cooperative earnings

The net earning of a farmers' cooperative company, whose business transactions consisted of running a grain elevator, a feed store, a general merchandise store, purchase, sale, and shipping of grain and other farm products, and handling machinery, supplies, and repairs, portion of which earnings were usable to pay dividends on capital stock without reference to patronage by stockholders, was taxable "income," as against contentions that earnings were merely accumulated patrons' savings and that company was merely a bailee for such money. Farmers Union Co-op. Co. of Guide Rock, Neb., v. Commissioner of Internal Revenue, C.C.A.1937, 90 F.2d 488.

Where petitioner corporation, which assisted citrus grove owners in marketing their fruit, became member-patron of cooperative and consented to include in income noncash per-unit retain certificates, which represented its equity interest in cooperative, Tax Court determined (1) inclusion of certificates in patron's gross income did not violate its rights under this amendment, Amends. 5 or 13, considering case law, legislative history, and congressional intendment, and (2) on facts and under case law, petitioner was not mere conduit, and income was not properly taxed to grove owners. Riverfront Groves, Inc. v. C.I.R., 1973, 60 T.C. 435.

62. Dividends

In construing provision of 26 U.S.C.A. §§ 22(a), 115(f) [I.R.C.1939], that distribution in stock or right to acquire stock shall not be treated as dividend to the extent that it does not constitute income within this amendment, court refused to impute to Congress intent to hold meaning of the provision in suspense, in departure from usual policy of providing practical basis for timely settlement of fact questions, until termination of litigation challenging previous decision of the Supreme Court that stock dividends were not income. Helvering v. Griffiths, 1943, 63 S.Ct. 636, 318 U.S. 371, 87 L.Ed. 843.

Where dividend declared on common stock payable in preferred stock gave to common stockholder an interest different in character from that which his common stock represented, the preferred stock dividend was constitutionally taxable. Helvering v. Gowran, 1937, 58 S.Ct. 154, 302 U.S. 238, 82 L.Ed. 224, rehearing denied 58 S.Ct. 478, 302 U.S. 781, 82 L.Ed. 603.

Payment of dividend of new common shares does not constitute receipt of "income" by stockholder for tax purposes, where new stock certificates plus the old represent same proportionate interest in

net assets of corporation as did the old certificates. Koskland v. Helvering, 1936, 56 S.Ct. 767, 298 U.S. 441, 80 L.Ed. 1268.

The word "income" as used in this amendment does not include a stock dividend, since such a dividend is capital and not income and can be taxed only if the tax is apportioned among the several states in accordance with Art. 1, § 2, cl. 3 and Art. 1, § 9, cl. 4 of the Constitution. Eisner v. Macomber, N.Y.1920, 40 S.Ct. 189, 252 U.S. 189, 64 L.Ed. 521. See, also, Walsh v. Brewster, Conn.1921, 41 S.Ct. 392, 255 U.S. 536, 65 L.Ed. 762.

Congress was at liberty, under this amendment, to tax as income without apportionment everything that became income in the ordinary sense of the word after the adoption of this amendment, including dividends received in the ordinary course by a stockholder from a corporation, even though they were extraordinary in amount and might appear upon analysis to be a mere realization in possession of an inchoate and contingent interest that the stockholder had in a surplus of corporate assets previously existing. Lynch v. Hornby, Minn.1918, 38 S.Ct. 543, 247 U.S. 339, 62 L.Ed. 1149.

By virtue of this amendment, Congress had authority to tax all sums received as income after Feb. 28, 1913, and therefore it would be presumed, for purposes of determining taxability of distributions subsequently made by corporation whose capital was impaired as of Feb. 28, 1913, that Congress, intending to use its taxing power to fullest, intended to tax all distributed sums actually earned by corporation after critical date, without diminution on account of the capital deficit existing on that date. C.I.R. v. Kelham, C.A.9, 1951, 192 F.2d 785, certiorari denied 72 S.Ct. 760, 343 U.S. 927, 96 L.Ed. 1337.

Alaska Permanent Fund dividend payments were "income" for purposes of Sixteenth Amendment and Internal Revenue Code. Beattie Through Beattie v. U.S., D.Alaska 1986, 635 F.Supp. 481.

63. Estates and trusts

Amounts received by Arizona widow as widow's allowance from income of estate was "income" under this amendment. U.S. v. James, C.A.Ariz.1964, 333 F.2d 748, certiorari denied 85 S.Ct. 331, 379 U.S. 932, 13 L.Ed.2d 343.

64. Gain from capital or labor

The meaning of "income" in this amendment is the gain derived from or through a sale or conversion of capital assets, from labor or from both combined; not a gain accruing to capital, or growth or increment of value in the investment, but a gain, a profit, something of exchangeable value, proceeding from the property, severed from the capital, however invested or employed, and coming in, being "derived", that is, received or drawn by the recipient for his separate use, benefit, and disposal. Taft v. Bowers, N.Y.1929, 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460. See, also, Sprouse v. Commissioner of Internal Revenue, C.C.A.1941, 122 F.2d 973, certiorari denied 62 S.Ct. 798, 315 U.S. 810, 86 L.Ed. 1209, affirmed 63 S.Ct. 791, 318 U.S. 604, 87 L.Ed. 1029; Hilgenberg v. U.S., D.C.Md. 1937, 21 F.Supp. 453.

"Income may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital." Bowers v. Kerbaugh-Empire Co., N.Y. 1926, 46 S.Ct. 449, 271 U.S. 170, 70 L.Ed. 886. See, also, Noel v. Parrott, C.C.A.Va. 1926, 15 F.2d 669, certiorari denied 47 S.Ct. 457, 273 U.S. 754, 71 L.Ed. 875.

Where a borrower of German marks repaid the debt several years later when marks had fallen in value the difference was not taxable as income under this amendment or under Revenue Act 1921, §§ 213, 230, 232, 233, 42 Stat. 237, 252, 254, since it was not derived from employment of capital, labor, or both or from sale or conversion of capital assets resulting in profit there being no such thing as negative income. Bowers v. Kerbaugh-Empire Co., N.Y.1926, 46 S.Ct. 449, 271 U.S. 170, 70 L.Ed. 886.

"Income" within this amendment is gain derived from capital, from labor or from both combined. Cheley v. Commissioner of Internal Revenue, C.C.A. 1942, 131 F.2d 1018.

"Income" within this amendment includes gain derived from capital, from labor, or from both combined, but does not include money received from conversion of capital represented by something other than money, although it does include a gain on the conversion. Na-

tional Bank of Commerce of Seattle v. Commissioner of Internal Revenue, C.C.A.1940, 115 F.2d 875.

A definition of income as including property gains as well as money does not violate this amendment. Atkins' Estate v. Lucas, 1929, 36 F.2d 611, 59 App. D.C. 151.

Taxable "income" under this amendment, must be new property acquired or increment detached from former investment. Trust Co. of Georgia v. Rose, D.C. Ga.1928, 25 F.2d 997, affirmed 28 F.2d 767.

65. Gross receipts

The allowance of cost of goods sold as a subtraction from gross receipts in computing gross income is not merely a matter of grace but is required by law, since there is no constitutional authority, under this amendment, to tax gross receipts; and therefore decision disallowing illegal payments as deductions from gross income, such deductions being a matter of grace, would not require determination that payments made in excess of price ceilings fixed by 50 U.S.C. A.App. § 2101 et seq., could not be included as part of cost of goods sold in determining gross income. Anderson Oldsmobile v. Hofferbert, D.C.Md.1952, 102 F.Supp. 902, affirmed 197 F.2d 504.

66. Illegal transactions

Power of Congress, under this amendment, to tax money extorted by taxpayer from victim with victim's consent induced solely by harassing demands and threats of violence is unquestionable. Rutkin v. U.S., N.J.1952, 72 S.Ct. 571, 343 U.S. 130, 96 L.Ed. 833, rehearing denied 72 S.Ct. 1039, 343 U.S. 952, 96 L.Ed. 1353.

Power under this amendment to lay and collect taxes on incomes from whatever source derived includes power to impose reasonable reporting requirements on all individuals in regard to their sources of income from any source, even illegal sources, and defendant was required to report embezzlement income despite his right under Amend. 5 not to be compelled in any criminal case to be a witness against himself. U.S. v. Milder, D.C.Neb.1971, 329 F.Supp. 759, affirmed 459 F.2d 801, certiorari denied 93 S.Ct. 60, 409 U.S. 851, 34 L.Ed.2d 93.

The District of Columbia usury laws, having been enacted for benefit of borrower rather than lender, could not be invoked by taxpayer's receivers as basis for recovery of income tax on theory that discounts charged by taxpayer on loans were in reality additional interest in excess of legal rate, and did not therefore constitute taxable "income." Barker v. U.S., 1939, 26 F.Supp. 1004, 88 Ct.Cl. 468.

67. Improvements to realty

The value of improvements made by lessee under lease requiring lessee to make improvements, necessary for successful operation, to belong to lessor at termination of lease, without specification of any items or of time or amount of any expenditure, could not be included in lessor's gross income for income tax purposes as "rent," in absence of showing that cost of improvements was rent or an expenditure not properly to be attributed to lessee's capital or maintenance account as distinguished from operating expense. M.E. Blatt Co. v. U.S., 1939, 59 S.Ct. 186, 305 U.S. 267, 83 L.Ed. 167.

Whether lessee's improvements are taxable to lessor as income before sale of leased premises depends on whether value received by improvements is embodied in something separately disposable having value of its own when separated from land. Hewitt Realty Co. v. Commissioner of Internal Revenue, C.C.A. 1935, 76 F.2d 880.

Under lease authorizing, but not requiring, lessee to make, at his own expense, improvements, and providing that any improvements existing on termination of lease should belong to landlord, value of improvements, when made, did not constitute "income" then taxable to landlord, within contemplation of this amendment or Revenue Act 1932, § 22(a). Hilgenberg v. U.S., D.C. Md.1938, 21 F.Supp. 453.

68. Income earned outside United States

The Government has power to reach and tax the income of a taxpayer, even though it was earned outside of the United States. Jones v. Kyle, C.A.Okl.1951, 190 F.2d 353, certiorari denied 72 S.Ct. 175, 342 U.S. 886, 96 L.Ed. 664.

69. Insurance proceeds

Insurance company's reimbursement of taxpayers' cost of renting another dwelling pending repairs to fire damaged structure represented no gain to taxpayers and did not have to be reported as gross income for which there was no corresponding deduction, but as taxpayers were allowed loss deduction measured by market value of property before and after the fire the amount received as reimbursement should have been included in the amount to be subtracted from the loss figure. Conner v. U.S., C.A.Tex.1971, 439 F.2d 974, supplemented 442 F.2d 1349.

Where corporation, to which was transferred seven life policies by officer as partial satisfaction for funds embezzled over a period of years, received on death of officer the sum of $22,500.22, which represented amount received from policies over and above total cost of acquiring and maintaining them in effect, such amount was "income" within this amendment, notwithstanding that such amount was a recovery of part of moneys embezzled. Waynesboro Knitting Co. v. C.I.R., C.A.3, 1955, 225 F.2d 477.

70. Prizes

Even if income tax upon a prize received by taxpayer for catching a certain tagged fish was direct, it came within this amendment relieving direct taxes upon income from apportionment requirement of Art. 1, § 9, cl. 4, and was therefore subject to taxation under the Constitution. Simmons v. U.S., C.A.Md. 1962, 308 F.2d 160.

71. Rental value

Income tax statute, if taxing part of building occupied by owner or rental value thereof, would be invalid because laying direct tax requiring apportionment, since rental value of building occupied by owner is not "income" within this amendment. Helvering v. Independent Life Ins. Co., 1934, 54 S.Ct. 758, 292 U.S. 371, 78 L.Ed. 1311.

Rental value of real estate occupied by owner is not income, and a tax thereon is not an income tax, but a direct tax upon the real estate which, without apportionment, is unconstitutional. 17 B.T.A. 757.

72. Return of capital

A return of capital or investment is not taxable under this amendment. Commissioner of Internal Revenue v. Meyer, C.C.A.6, 1943, 139 F.2d 256.

A refund received by taxpayer of an expenditure made in previous year is a "return of capital" and not "gross income" subject to income tax, unless taxpayer has retained some advantage from the initial expenditure. Bartlett v. Delaney, D.C.Mass.1948, 75 F.Supp. 490, affirmed 173 F.2d 535, certiorari denied 70 S.Ct. 59, 338 U.S. 817, 94 L.Ed. 495.

73. Sale or exchange of property—Generally

The gain derived from a single, isolated sale of personal property which has depreciated in value during a series of years is income within the meaning of this amendment. Merchants' Loan, etc., Co. v. Smietanka, Ill.1921, 41 S.Ct. 386, 255 U.S. 509, 65 L.Ed. 751. See, also, Walsh v. Brewster, Conn.1921, 41 S.Ct. 392, 255 U.S. 536, 65 L.Ed. 762; Goodrich v. Edwards, N.Y.1921, 41 S.Ct. 390, 255 U.S. 527, 65 L.Ed. 758; Eldorado Coal, etc., Co. v. Mager, Ill.1921, 41 S.Ct. 390, 255 U.S. 522, 65 L.Ed. 757.

Gains from the sale of capital assets constitute "income" as contemplated by this amendment. Irish v. Commissioner of Internal Revenue, C.C.A.1942, 129 F.2d 468.

Where in 1976 taxpayers sold four buildings they had acquired in 1964 and reported capital gain of $170,688 without paying the additional minimum tax on these items of tax preference, Tax Court determined that taxpayers had failed to sustain their burden of proving that they had a lesser capital gain on sales than they reported, since, under case law, normal gain represented change in legal value, and was taxable within meaning of this amendment. Hellermann v. C.I.R., 1981, 77 T.C. 1361.

74. —— Stocks or securities

Net profit realized on sale of county and city bonds is taxable as income. Willcuts v. Bunn, Minn.1931, 51 S.Ct. 125, 282 U.S. 216, 75 L.Ed. 304.

Revenue Act, 1921, § 202, providing that, for income tax purposes, basis for ascertaining gain on disposition of property acquired by gift shall be same as that which it would have in hands of

donor, or last preceding owner by whom it was not acquired by gift, and which operates to require donee of stock, who sells it at profit, to pay income tax on difference between selling price and value when donor acquired it, was valid, under this amendment, as against contention that gift became capital asset of donee to extent of its value when received, and that therefore, when disposed of by her, no part of that value could be treated as taxable income in her hands. Taft v. Bowers, N.Y.1929, 49 S.Ct. 199, 278 U.S. 470, 73 L.Ed. 460.

Where taxpaying employee purchasing stock pursuant to stock option could receive only 65 percent of fair market value of stock if it was sold during period of restriction, stock being only temporarily subject to diminution in value, if exchanged, because of securities restrictions, full value of stock existed from moment of purchase and Congress could establish such value as taxable value without contravening this amendment, and could constitutionally tax full fair market value at time of purchase, less cost, without regard to temporary restriction, and there was no nonexistent value upon which he was taxed. Pledger v. C.I.R., C.A.5, 1981, 641 F.2d 287, certiorari denied 102 S.Ct. 504, 454 U.S. 964, 70 L.Ed.2d 379.

Fact that stock option was compensatory did not mean that income derived therefrom had to be taxed upon receipt of option and taxing at later date pursuant to Treasury regulations would not exceed authority conferred by 26 U.S.C.A. § 61 or violate this amendment. Frank v. C.I.R., C.A.Wis.1971, 447 F.2d 552.

Profit derived from difference in value on exchange of securities is income. Insurance & Title Guarantee Co. v. Commissioner of Internal Revenue, C.C.A. 1929, 36 F.2d 842, certiorari denied 50 S.Ct. 352, 281 U.S. 748, 74 L.Ed. 1160.

Under this amendment, Revenue Act, 1932, § 23(r)(1), limiting deductions for losses sustained from sales or exchanges of stocks or bonds, defined to be noncapital assets, to the extent of the gains from such sales or exchanges, is not unconstitutional as levy of direct tax without apportionment. Cohn v. U.S., 1938, 23 F.Supp. 534.

Where transfer of corporate stock in trust was made in contemplation of death, and stock was subjected to estate tax on settlor's death, determination of taxable gain arising from sale of stock by trustees on basis of difference between cost of original stock to settlor and sale price, was not in violation of this amendment authorizing taxation of incomes on theory that such difference could not all be deemed income. Speer v. Duggan, D.C.N.Y.1933, 5 F.Supp. 722.

75. Shifting of tax burden

Income attributable to taxpayer's shifting of burden of federal excise tax, not paid by him, to others was "income" within this amendment. Kingan & Co. v. Smith, D.C.Ind.1936, 17 F.Supp. 217.

76. Social security

As applied to individuals, social security tax is considered a tax on income and, as an income tax, it is exempt under this amendment from rule of apportionment set forth in Art. 1, § 2, cl. 3. Krzyske v. C.I.R., D.C.Mich.1982, 548 F.Supp. 101, affirmed 740 F.2d 968.

77. State or local obligations

Revenue Acts, 1936, 1938, § 22(b)(4), excluding, from gross income, interest received by taxpayer on obligations of states or their political subdivisions is not limited to cases where federal taxation was constitutionally possible in 1913 but also covers the field where taxation of obligations was doubtful and subject to contention by the states. Commissioner of Internal Revenue v. Shamberg's Estate, C.C.A.2, 1944, 144 F.2d 998, certiorari denied 65 S.Ct. 433, 323 U.S. 792, 89 L.Ed. 631.

Profit realized by corporate taxpayer from award of compensation for city's taking, under power of eminent domain, of taxpayer's realty acquired before Mar. 1, 1913, was not immune from federal taxation as a tax on obligation of state or political subdivision, but was "income" within this amendment and the various Revenue Acts, and taxable as such. Baltimore & O.R. Co. v. Commissioner of Internal Revenue, C.C.A.1935, 78 F.2d 460.

This amendment did not give power to tax income from state or municipal obligations. Bunn v. Willcuts, C.C.A.Minn. 1928, 29 F.2d 132.

78. Stock distributions

This amendment is a "grant of power" but the grant is limited to laying and

collection of taxes on incomes and under such limitations, stock distributed to a shareholder cannot be subjected to income tax unless it is in fact income. Cheley v. Commissioner of Internal Revenue, C.C.A.1942, 131 F.2d 1018.

79. Strike benefits

Strike benefits paid by union to airline pilots from assessments against pilots of nonstriking airlines, and based on pilots' annual salary and not needs, constituted income within meaning of this amendment as payments for any services required to assist strike effort and to refrain from flying for employer, and as such were not excludable as gifts under 26 U.S.C.A. § 102(a), since they did not proceed from disinterested generosity or charitable impulse but were made to further union objectives to attain economic benefits for members and for consideration given by pilots in conforming to conditions of payment. Brown v. C.I.R., 1967, 47 T.C. 399, affirmed 398 F.2d 832, certiorari denied 89 S.Ct. 719, 393 U.S. 1065, 21 L.Ed.2d 708.

80. Subsidies

Money subsidies paid by the Cuban government to a railroad company, in consideration of the construction of a railroad in that country, and the allowance of reduced rates, is not "income" within the contemplation of this amendment. Edwards v. Cuba Railroad, N.Y. 1925, 45 S.Ct. 614, 268 U.S. 628, 69 L.Ed. 1124.

81. Subscription rights

The preferential right of existing stockholders in a corporation to subscribe at a specified price for an equivalent number of shares of a new issue of capital stock authorized by state statutes and certain resolutions of the stockholders, in and of itself constituted no gain, profit, or income taxable under this amendment. Miles v. Safe Deposit & Trust Co., Md.1922, 42 S.Ct. 483, 259 U.S. 247, 66 L.Ed. 923.

Right to subscribe to additional corporate stock is analogous to a stock dividend, and does not constitute gain, profit, or income taxable under this amendment, but only so much of proceeds of right constitutes taxable income as represents realized profit over cost to stockholder of what was sold. Continental Bank & Trust Co. of New York v. U.S., D.C.N.Y.1937, 19 F.Supp. 15.

82. Undistributed income or profits

The fact that surtax under Revenue Act, 1936, §§ 14, 26(c)(1), was imposed upon annual income only if not distributed did not make it anything other than a true tax on "income" rather than "capital" within meaning of this amendment, irrespective of whether there might be an impairment of the capital stock. Helvering v. Northwest Steel Rolling Mills, 1940, 61 S.Ct. 109, 311 U.S. 46, 85 L.Ed. 29.

Revenue Act, 1934, § 351, imposing a surtax on the undistributed adjusted net income of a personal holding company is not unconstitutional as ceasing to provide for an "income tax" and providing for a "capital levy," since the surtax is based only on income, and it is no less an "income tax" because it requires the taxpayer to treat as undistributed adjusted net income so much of its current earnings distributed to its shareholders as equaled the amount of the impairment of its capital. Foley Securities Corporation v. Commissioner of Internal Revenue, C.C.A.1939, 106 F.2d 731.

Revenue Act 1936, § 337, requiring undistributed net income of a foreign personal holding company to be included in gross income of citizens or residents who are shareholders in such company is constitutional. Rodney, Inc., v. Hoey, D.C.N.Y.1944, 53 F.Supp. 604.