Exhibit 106

INCOME-TAX AMENDMENT.

BY WILLIAM E. BORAH, U. S. SENATOR.

IT is persistently urged that by adopting the proposed constitutional amendment providing for the levying of an income tax without apportionment some new or additional taxing power will be conferred upon Congress, some limitation placed upon the powers of the State. Many are led to believe that we are in effect readjusting the taxing power as between the national and the State governments. With much apparent earnestness a warning is sent forth from certain sources every few days that the States should look well to this attempt to take away some of their present power. Even so profound a constitutional lawyer as ex-Senator Edmunds says, in an article lately printed in the "Congressional Record": "In so sweeping and unlimited a form (is the proposed amendment) as to grant Congress the right to tax the very States themselves by impositions upon their bonds and other sources of revenue. . . . For what reason is this great and radical change and surrender proposed?"

What "radical change" is to be made, what "surrender proposed"? I submit that the position thus taken by the ex-Senator cannot be sustained either upon reason or authority.

Is there any doubt in the mind of any lawyer, or layman for that matter, who has considered the subject, that Congress has power to levy an income tax now—under the Constitution as it at present exists? May we not, if we apportion the same, levy an income tax at the present time? Congress has the power now to do precisely that which is deemed revolutionary and destructive to the States. There has never been any difference of opinion among lawyers or in the decisions as to the power of Congress to levy an income tax. The sole question has been as to whether it should be apportioned or not, and the sole purpose and only effect of the amendment is to relieve from the necessity of ap-

power to embarrass or destroy the other. In other words, that there must always be subtracted from this unlimited taxing power, plenary though it be, the right of a State government to exist and perform its functions. Upon this principle and upon this principle alone the instrumentalities of the States are exempted. Marshall, when confronted with the claim of the States of the right to tax the instrumentalities of the national Government, boldly stated that no provision of the Constitution could be found to prohibit such taxation. But said the justice: "There is no express provision (of the Constitution) for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds."

Later, when the question was presented as to the power of the Government to tax the instrumentalities of the States, the court was met with the rule long established that there was no limit to the taxing power of Congress. "That it might be exerted upon all individuals and upon every species of property" was conceded. If so, upon what theory was the income from State bonds or State officials' salaries to be exempted? Solely upon the theory that these sovereignties were in their spheres independent, and that the "admittedly unlimited power" to tax related alone to the property or incomes from sources within the jurisdiction of the sovereignty laying the tax. That the State government and its instrumentalities of sovereignty were not within the jurisdiction or subject to the control of the national Government was the conclusion reached. The court said:

"It is admitted there is no express provision in the Constitution that prohibits the general Government from taxing the means and instrumentalities of a State, nor is there any prohibiting the State from taxing the means and instrumentalities of the Government. In both cases exemption rests upon necessary implication and is upheld by the great law of self-preservation, as any Government whose means employed in conducting its operations, if subject to the control of another and distinct Government, can exist only at the mercy of that Government."

It will be recalled that the income tax of 1864 covered specifically incomes from State securities and the salaries of State officers. This law was held constitutional. That is, it was held that the tax need not be apportioned. There was, therefore, before the

court precisely the situation we would have should this amendment be adopted and the rule of apportionment discarded. We had an income-tax statute specifically covering the subject-matter of incomes from the State securities, and we had numerous decisions of the Supreme Court to the effect that the taxing power of Congress was plenary and yet the court held that you could not tax State securities or bonds. Did the court so hold upon the theory that State bonds were excepted from the taxing power under the Constitution, or that the language of the taxing power was not sufficient to cover the same? By no means. On the other hand, in this very decision, it is said that there was no limitation to the taxing power of Congress. Did it hold this because the statute itself did not cover this kind of property? By no means. The effect of those decisions was that, notwithstanding the unlimited taxing power of Congress when standing alone, it must be construed in the light of the fact that we have a dual Government. The decision was based upon the law of self-preservation—the whole scope and plan of Government as outlined in the Constitution being that there were two separate and distinct sovereignties unembarrassed by each other.

Let us suppose that this amendment is adopted and Congress should pass a law levying an income tax upon the income from State bonds. It would then be said that a statute covering this specific kind of property passed under an amendment covering incomes "from whatever source derived" would certainly authorize the tax. But could it not be said in complete answer to this that upon several previous occasions Congress had passed a statute taxing incomes from State bonds under a constitutional provision which the court had held covered property of every nature and kind, but that aside from the plenary power of taxation and the specific provisions of the statute there was another principle which must obtain when construing the Constitution providing for a dual form of Government and that that principle remains intact? The court did not hold, for instance, in the Pollock case that the income tax on State bonds was void because it was unapportioned. It held, notwithstanding the language of the statute and the plenary power of the Constitution under which it was passed, that the national Government could not tax these State bonds for the reasons theretofore announced in the case of Collector *vs.* Day and above quoted.