

# Exhibit 16

THE INCOME TAX  
AND  
THE PROGRESSIVE ERA

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## CHAPTER VI

### TOPPLING THE KEYSTONE: THE AMENDMENT IN NEW YORK

The key to the fate of the proposed Sixteenth Amendment lay in the northeastern industrial states. The various commentators on the chances of the amendment differed somewhat in their assessment of individual states, but friends and foes alike were agreed that the greatest opposition to ratification would come from the populous states of the industrial Northeast. The Census Bureau divided the area into three districts -- New England, Middle Atlantic and East North Central. Its statistics and those of the Internal Revenue Service spoke volumes about the regional concentration of wealth in the nation. The Middle Atlantic and East North Central regions were ranked first and second in the amount of wealth per state. New England appeared well down in that category but led the nation in the value of all products manufactured. Northeastern states also ranked well up in per capita income, despite their generally large populations, with only Vermont and New Hampshire placing in the lower half of states in that category. Collectively, residents of the three regions received almost sixty per cent of the nation's income. When the federal tax eventually went into effect, the inhabitants of five northeastern states--New York, Pennsylvania, Ohio, Massachusetts and Illinois--paid nearly seventy per cent of the bill.<sup>1</sup>

Even more significant than the amount of income in the northeastern states was its degree of concentration in the upper brackets. The most thorough study of national income distribution found that "the greatest disparity is in the Eastern States, particularly those with large cities." The "Iron Rectangle" contained 189 of the 206 people in the nation with

to believe it would use this as an excuse to do so. Even if it should, the tax fell equally on all securities and was not discriminatory. "Central authority," the Columbia professor concluded, "should not be opposed in those cases where self-government means retrogression rather than progress." Seligman had pressed for a state income tax for several years, but temporarily dropped the idea to push for ratification because the debate was so "heated and close."<sup>32</sup>

Finally, Cordell Hull, being freer to criticize Hughes than were any of the governor's fellow Republicans, let loose the harshest verbal blast of all at his "officious intemperance." Accusing Hughes of placing himself between the plutocracy and the people, the Tennessee Congressman questioned Hughes' authority to even comment on ratification. The governor, Hull argued, had no constitutional role to play in the amendment process and had no right to veto what the legislature did. After reiterating all the arguments that others had cited to counteract Hughes' contention, Hull concluded by castigating Hughes for splitting hairs over this particular grant of federal power when he readily accepted more sweeping ones. "He swallows the camel," Hull chided, "but strains at the gnat."<sup>33</sup>

Despite the disagreement of such noted experts, however, Hughes' objection to the adoption of the amendment received much currency in several states. The governor of Connecticut, Frank B. Weeks, based his opposition to the measure upon it and the legislative Committee on Federal Relations in Massachusetts cited the argument as the reason for its unfavorable report. Lawmakers in Louisiana, South Carolina, and Utah cited it in their speeches. Governor Augustus Willson of Kentucky, as previously noted, lavishly praised Hughes' interpretation of the amendment in the

New York Times on February 26, 1911. He called the amendment the "most serious since the organization of our government would empower Congress to destroy states that Congress would use the power who favored ratification, such as Democratic Republican Fort of New Jersey, four in messages urging ratification. His reasoning, opining that "if our passage of a one percent tax will affect the state are in a sorry state."<sup>34</sup>

While it is difficult to assess had in other states, or even in New York to help the cause of the amendment the merits of the Governor's objection. In 1916, while Hughes was an associate he assented to the unanimous decision of the Pacific. This decision upheld the tax law that was based directly on the Amendment. The decision, written the opposite position from Hughes' amendment "does not purport to curtail sense -- an authority already possessed] -- or to limit and distinguish another, but that the whole purpose income taxes, when imposed, from

New York Times on February 26, 1911. In the extensive article, Willson called the amendment the "most serious encroachment on States Rights since the organization of our government," declared that ratification would empower Congress to destroy states and municipalities, and insisted that Congress would use the power if it were so granted. Governors who favored ratification, such as Democrat Judson Harmon of Ohio and Republican Fort of New Jersey, found it necessary to dispute the view in messages urging ratification. Fort was particularly critical of Hughes' reasoning, opining that "if our patriotism is so low that the possibility of a one percent tax will affect the value and sale of bonds, then we are in a sorry state."<sup>34</sup>

While it is difficult to assess the influence that the Hughes argument had in other states, or even in New York, it is certain that it did nothing to help the cause of the amendment. It is also difficult to judge either the merits of the Governor's objection or the depth of his conviction. In 1916, while Hughes was an associate justice of the U.S. Supreme Court, he assented to the unanimous decision in the case of Brushaber v. Union Pacific. This decision upheld the constitutionality of the 1913 income tax law that was based directly on the power conferred by the Sixteenth Amendment. The decision, written by Chief Justice Edward White, took the opposite position from Hughes' earlier stand by stating that the amendment "does not purport to confer power to levy taxes in a generic sense -- an authority already possessed and never questioned [emphasis mine] -- or to limit and distinguish between one kind of income tax and another, but that the whole purpose of the amendment was to relieve all income taxes, when imposed, from apportionment." In effect, as Hughes'

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