Exhibit 20

ROOT FOR ADOPTION OF TAX AMENDMENT

No Danger to State Bonds in Income Provision, He Argues, Answering Hughes.

LETTER READ IN ALBANY

State and Municipal Issues, He Says, Are Protected by the General Principles of the Federal Constitution.

Special to The New York Times.

ALBANY, Feb. 28.—Senator Elihu Root's reasons for thinking that the proposed amendment to the Federal Constitution to provide for an income tax should be adopted was read to the Senate to-night by Senator Frederick M. Davenport, to whom Mr. Root had written at length explaining his attitude.

Senator Root, who advocated the amendment when it was before Congress last year, argued against the position of Gov. Hughes, who, in submitting the matter to the Legislature, declared that by the language of the proposed amendment the States seemed to give to the National Government the power to tax incomes derived from State and municipal bonds. The Governor, while he expressed approval of an income tax, opposed this particular amendment because it provided a tax on incomes "from whatever source derived." Senator Root, in his letter, took the ground that the proposed amendment did not give the National Government any new power. State and municipal bonds, he argued, were excluded from the application of the tax by general and established constitutional principles inherent in the very nature of the dual Government of the United States.

Senator Root's letter follows:

THE UNITED STATES SENATE,
Washington, D. C., Feb. 17, 1910.

My Dear Senator:

Since our conversation last month I have given much consideration to the scope and effect of the proposed Income Tax amendment to the Constitution of the United States.

Much as I respect the opinion of the Governor of the State, I cannot agree with the view expressed in his special message of Jan. 5, and as I advocated in the Senate the resolution to submit the proposed amendment, it seems appropriate that I should state my view of its effect.

The proposed amendment is in these words:

> Article 16—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 objection made to the amendment is that this will confer upon the National Government the power to tax incomes derived from bonds issued by the States or under the authority of the States, and will place the borrowing capacity of the State and its Governmental agencies at the mercy of the Federal taxing power.

I do not find in the amendment any such meaning or effect. I do not consider that the amendment in any degree whatever will enlarge the taxing power of the National Government or will have any effect except to relieve the exercise of that taxing power from the requirement that the tax shall be apportioned among the several States. The effect of the amendment will be, in my view, the same as if it said, "The United States may lay a tax on incomes without apportioning the tax, and this shall be applicable whatever the source of the income subjected to the tax," leaving the question, "What incomes are subject to National taxation?" to be determined by the same principles and rules which are now applicable to the determination of that question.

If we were to construe the proposed amendment only by a critical examination of its words, the view upon which the objection is based would be reached by practically cutting the provision in two and reading it as if it read, "the Congress shall have power to lay and collect taxes on incomes from whatever source derived," without the concluding words. But we are not at liberty to do this. The amendment consists of a single sentence, and the whole of it must be read together. It expresses but a single idea, and that is that the tax to which it relates must be laid and collected without apportionment among the several States and without regard to any census or enumeration, while the words "from whatever source derived" are obviously introduced to make the exemption from the rule of apportionment comprehensive and applicable to all taxes on incomes.

We are not left, however, to a mere critical examination of words. This provision, as Mr. Justice Bradley said of the Constitution in the Legal Tender cases, is "to be interpreted in the light of history and of the circumstances of the period in which it was framed." Justice Story said of another clause of the Constitution, in Briscoe against the Bank of Kentucky. (11 Peters 332.)

> And I mean to insist that the history of the Colonies, before and during the Revolution and down to the very time of the adoption of the Constitution, constitutes the highest and most authentic evidence to which we can resort to interpret this clause of the instrument; and to disregard it would be to blind ourselves to the practical mischiefs which it was meant to suppress, and to forget all the great purposes to which it was to be applied.

This view must necessarily be applied to the proposed amendment if it be adopted. It will be construed in the light of the judicial and political history which led to the proposal and which appears upon the public records of our Government.

What is that history? The Constitution of 1787 conferred upon the National Government the power of taxation without any limit whatever except that taxes on exports were prohibited.

The method of exercising the power, however was subjected to two limitations. One, that imports, duties, and excises should be uniform, and the other, that direct taxes should be apportioned among the States. The apportionment provisions were as follows:

> Article I.—Section 2—Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, &c. (Amended, but not in this respect, by the Fourteenth Amendment.)
>
> Section 9—No capitation or other direct tax shall be laid unless in proportion to the census or enumeration before directed to be taken.

For more than a hundred years after the adoption of the Constitution various tax laws of Congress were, from time to time, brought before the courts upon objections that they imposed direct taxes in violation of the rule of apportionment. The decisions of the courts uniformly sustained these laws, from the Hylton case, in 1796, which sustained an upapportioned tax on carriages, (3 Dallas 171,) to the Springer case, in 1880, which sustained an unapportioned tax on incomes. (102 U. S. 586.)

In the meantime numerous laws were passed and enforced imposing taxes on incomes without apportionment; and a great part of the means for carrying on the civil war was derived from such taxes.

In the year 1895, however, an income tax law included in the Wilson Tariff act of 1894 was brought before the Supreme Court in the case of Pollock against the Farmers' Loan and Trust Company, and in that case the court decided against the law. The case was heard twice. On the first hearing a majority of the court held that a tax on income derived from real estate must be apportioned as a direct tax because a tax on real estate itself would be direct; and the Judges divided equally as to whether a tax on income derived from personal property must be apportioned. (157 U. S. 429.)

Upon the second hearing of the case, the court, by a majority of five to four, held that a tax upon income derived from personal property must be considered a direct tax and must be apportioned. (158 U. S. 601.) All the Judges agreed, however, that taxes on incomes derived from business or occupations need not be apportioned. The effect of these decisions was thus described in one of the minority opinions:

> But the serious aspect of the present decision is that by a new interpretation of the Constitution it so ties the hands of the legislative branch of the Government that without an amendment of that instrument, or unless this court, at some future time, should return to the old theory of the Constitution, Congress cannot subject to taxation—however great the needs or pressing the necessities of the Government—either the invested personal property of the country, bonds, stocks, and investments of all kinds, or the income arising from the renting of real estate, or from the yield of personal property, except by the grossly unequal and unjust rule of apportionment among the States. Thus, undue and disproportioned burdens are placed upon the many, while the few, safely entrenched behind the rule of apportionment among the States on the basis of numbers, are permitted to evade their share of responsibility for the support of the Government ordained for the protection of the rights of all.

It was so evidently impossible to collect an income tax by apportionment among the States according to population that the general judgment of the country confirmed the opinion that the decision in the Polock case had practically taken away from Congress a power of vital importance to the General Government—a power the exercise of which had, at least in one time of peril, proved essential to the Nation's life.

The attention of the country was sharply called to the need of more Government revenue for the first time after the Pollock case by the decrease of customs and internal revenue receipts and the rapidly mounting deficit which followed the financial panic of 1907, and in the extraordinary session of Congress which began March 15, 1909, when the revised Tariff bill came into the Senate, an amendment to the bill was introduced reproducing in substance the old income tax provisions of 1894 which the Supreme Court had held to be invalid both as to income derived from real estate and as to income derived from personal property. The avowed and necessary effect of including such provisions in the new tariff law would be to present again to the Supreme Court the same questions which had been decided in the Pollock case and to challenge a reversal of their decision. Thereupon the resolution for the submission of this amendment was introduced in the Senate and was passed by Congress.

The proposal followed the suggestions of the Supreme Court in the Pollock case.

The evil to be remedied was avowedly and manifestly the incapacity of the National Government resulting from the decision that income practically could not be taxed when derived either from real estate or from personal property, although it could be taxed when derived from business or occupation.

The terms of the amendment are apt to cure that evil and to take away from the different classes of income considered by the court a practical immunity from taxation based upon the source from which they were derived.

There was no question in Congress or in the courts or in the country about the taxation of State securities. No one claimed that the inability of the General Government to tax them was an evil. The inability to tax them did not arise from the terms of the Constitution, but from the fact that, being the necessary instruments of carrying on other and sovereign Governments they were not the proper subject of National taxation, and that, therefore, no provisions of the Constitution, however wide the scope of their language, could be held to apply to such securities or to the income from them. Judge Cooley, in his work on constitutional law, says:

> The power to tax, whether by the United States or by the States, is to be construed in the light of, and limited by, the fact that the States and the Union are inseparable, and that the Constitution contemplates the perpetual maintenance of each with all its constitutional powers, unembarrassed and unimpaired by any action of the other. The taxing power of the Federal Government does not therefore extend to the means or agencies through or by the employment of which the States perform their essential functions, &c.

This rule of construction has been maintained for generations. It is undisputed; it was referred to with approval by the Justices who wrote and delivered the opinions in the Pollock case, both for and against the judgment. It has been declared again and again by the Supreme Court to be not open to question. It is a rule of construction just as controlling in defining the scope of the proposed amendment as it is in defining the scope of the existing provisions. Under it, from the earliest times of our Government, the apparently unlimited taxing power conferred by the terms of the Constitution has been held not to apply to the instrumentalities of the State. Under it acts of Congress, which, by their express terms, appeared to include instrumentalities of State Government, have uniformly been held not to include them. This uniform, long-established, and indisputable rule applied to the construction of our Constitution—a rule which has been declared to be essential to a continuance of our dual system of government—forbids that the words of that instrument conferring the power of taxation should be deemed to apply to anything but the proper subjects of National taxation. Under it we are forbidden to apply the words "from whatever source derived" in the proposed amendment to any of the instrumentalities of State Government.

This amendment will be no new grant of power. The Congress already has power to impose taxes on incomes from whatever source derived, subject to the rule of construction, which excludes State securities from the operation of the power; but the taxes so imposed must be apportioned among the States. Under the proposed amendment there will be the same and no greater power to tax incomes from whatever source derived, subject to the same rule of construction, but relieved from the requirement that the tax shall be apportioned.

It appears therefore that no danger to the powers or instrumentalities of the State is to be apprehended from the adoption of the amendment.

It would be cause for regret if the amendment were rejected by the Legislature of New York.

It is said that a very large part of any income tax under the amendment would be paid by citizens of New York. That is undoubtedly true, but there is all the more reason why our Legislature should take special care to exclude every narrow and selfish motive from influence upon its action and should consider the proposal in a spirit of broad National patriotism and should act upon it for the best interests of the whole country.

The main reason why the citizens of New York will pay so large a part of the tax is that New York City is the chief financial and commercial centre of a great country with vast resources and industrial activity. For many years Americans engaged in developing the wealth of all parts of the country have been going to New York to secure capital and market their securities and to buy their supplies. Thousands of men who have amassed fortunes in all sorts of enterprises in other States have gone to New York to live because they like the life of the city or because their distant enterprises require representation at the financial centre. The incomes of New York are in a great measure derived from the country at large. A continual stream of wealth sets toward the great city from the mines and manufactories and railroads outside of New York. The United States is no longer a mere group of separate communities embraced in a political union; it has become a product of organic growth, a vast industrial organization covering and including the whole country; and the relation of New York City to the whole organization of which it is a part is the great source of her wealth and the chief reason why her citizens will pay so great a part of an income tax. We have the wealth because behind the city stands the country. We ought to be willing to share the burdens of the National Government in the same proportion in which we share its benefits.

The circumstances that originally justified the establishment of the rule of apportionment in the Constitution have long since passed away. It is universally conceded that its application to existing conditions would be so unjust and inequitable as to be impossible. The power of taxation which the rule makes it impossible for the Nation to exercise may be again, as it has once been, vital to the preservation of National existence. It would be most unfortunate if the several States of the Union were to insist upon the continuance of this unjust and useless limitation upon the necessary powers originally and wisely granted to the National Government.

With kind regards, I am always,
Very sincerely yours,
ELIHU ROOT.

Hon. Frederick M. Davenport,
Senate Chamber,
Albany, New York.

In the Assembly after Senator Root's letter had been read by the clerk, Edwin A. Merritt, Jr., moved that it be referred to the Judiciary Committee and printed as an Assembly document.

Daniel F. Frisbie, minority leader, seconded the motion and said that it gave him pleasure to listen to "such a sound argument from the junior United States Senator of Democratic doctrine."

A resolution disapproving the income tax amendment is now before the Senate Judiciary Committee.