

THE TRUTH ABOUT THE INCOME TAX

The act establishing the income tax, passed in 1913, is the most misunderstood piece of legislation in human history. This single page is intended to cut through all the confusion about that law, because in reality there is no confusion **in** the law, to quickly and absolutely demonstrate the proper application of the income tax since its inception. In the Supreme Court decision that established the constitutionality of the income tax legislation, it clearly states in the very first sentence of the Opinion of the Court, delivered by Chief Justice White: "..., the appellant filed his bill to enjoin the corporation from complying with the income tax provisions **of the tariff act of October 3, 1913.**" *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1, 9 (1916)

Notice the **fact** that Chief Justice White **clearly and unequivocally identifies the income tax as part of a tariff act**. By definition, a **tariff is a tax laid on foreign imports** or activity. *Black's Law Dictionary* tells us that a "**tariff**" is: "a schedule or system of duties imposed by a government on imported or exported goods. In the United States tariffs are imposed on imported goods only". A tariff is one form of an "impost", which is of course one of the three kinds of **indirect** taxes authorized by the Constitution in Article 1, Section 8, Clause 1, for the government to lay and collect. However, **as a tax on foreign activity** or on the importation of goods from a foreign country, **a tariff clearly is not, and cannot be, legally or lawfully applied to the domestic activities of American citizens**. Is there evidence of this limitation in the law?

In the *Brushaber* decision cited above the Court further tells us "2. The act provides for **collecting the tax at the source**; that is, **makes it the duty of corporations, etc., to retain and pay** the sum of **the tax ...**" *Brushaber v. Union Pacific R.R. Co.*, 240 US 1, 21 (1916). Here, the Supreme Court clearly tells us that the scheme of the income tax, as provided by the tariff act, is that of a tax that is **collected at the source**, by third parties, identified as "**corporations, etc.**" The entire **scheme of the income tax** as it was originally imposed, **and as it is still actually established and imposed under the law**, is described by the Court in this sentence. The Court identifies that "**collecting the tax at the source**;" is how the income tax is actually imposed in the law because "*The act provides...*", and **it identifies how the tax is to be collected and paid under the actual laws that were passed into existence**, as it "*...makes it the duty of corporations, etc. to retain and pay the sum of the tax...*".

This "**collecting the tax at the source**" – through a legislatively created "**duty... to retain and pay**" is called "**withholding**", and is of course, what the income tax was really all about in 1913, and the legislatively created "**duty**" of the "**corporations, etc.**", referenced here by the Court, is defined in the law, and has been since the inception of this tax in 1913. Title 26 U.S. Code Section 7701(a)(16) clearly states "**Withholding Agent**. - The term "*Withholding Agent*" means any person required to deduct and withhold any tax under the provisions of sections 1441, 1442, 1443, or 1461." **This is the complete and entire authority in the law to withhold (collect) income taxes under Subtitle A (Income Tax)**, and has been continuously since 1913.

This "**Withholding Agent**" is the entity defined in the income tax laws (Title 26 - Subtitle A) with the legal "**duty**" to "**retain and pay the sum of the tax**" as identified by the Supreme Court in the *Brushaber* Opinion, or re-stated – the duty to **withhold the income tax at the source from all**

subject persons under the Subtitle A income tax authorities and mandates. The definition, and full legal powers, of the “*Withholding Agent*” are simple and straight-forward. To understand the complete enacted authority to collect income tax at the source by withholding, all one need do is read the actual code sections invoked by the statutory definition. The first three code sections, 1441, 1442, and 1443 which are cited in the definition of a *Withholding Agent*, each provide as follows: **§ 1441 Withholding of Tax on Nonresident Aliens, § 1442 Withholding of Tax on Foreign Corporations, § 1443 Foreign Tax Exempt Organizations.** One should carefully note that the law authorizes the withholding of income tax **only from foreign persons**, and then remember that the Supreme Court says the income tax is part of a tariff act (imposed on foreign activity). Finally, the last code section referenced in the definition of a *Withholding Agent*, **§ 1461 Liability for withheld tax**, states: “**Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax** and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.”

Section 1461 says that the *Withholding Agents* are **made liable** for the **payment of the income taxes** that they have **withheld** from **subject persons - who are all foreign**. This is the only code section in all of the income tax laws (Subtitle A) where anyone is **made liable for the payment of the income tax by a statute** (law). And who is **made liable** by statute? The *Withholding Agents* are made liable for the payment of the tax - **that they have collected from subject foreign persons**. It is **not** the *persons* who are the actual subjects of the tax (the non-resident aliens and foreign corporations) that are made liable for the payment of the tax directly, **it is the *Withholding Agents*** that are **made liable in an indirect fashion**, under Article I, Section 8, Clause 1. The injection of this third party, the *Withholding Agent*, into the income tax collection scheme of *collection at the source*, keeps the income tax **indirect** because **the burden to pay the tax is shifted from the tax collector** (the *Withholding Agent*), **to the subject foreign taxpayer**. While it is the *corporations, etc.* who actually **retain and pay the tax**, the tax is **only collected from foreign subject persons**. Under the law the tax is **collected** by a third party, indirectly, and is **not** collected directly by the IRS, **nor is the tax paid directly by the subject taxpayer** - the foreign entity (or any other person), by a mandatory filing requirement imposed on the taxpayer. **Nor is there any direct liability ever established in the name of the actual subject taxpayer by the statutes** because none is necessary, as “*the act provides for collecting the tax at the source*”. Under the actual provisions of the statutes, the income tax is collected by the third party tax collector, by withholding. And if they fail to withhold, it is the *Withholding Agent* that pays the penalty and interest under **§ 1463** which states: “**If -any person ... fails to deduct and withhold any tax under this chapter,... this section shall in no case relieve such person from liability for interest or any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.**”

This is all straight from the law **as it exists today**, and this agrees completely with what the Supreme Court wrote in its *Brushaber* Opinion in 1916: that the income tax is part of a tariff act under Article I, Section 8, Clause 1 of the Constitution, **laid indirectly** and **collected at the source** by withholding from **subject taxpayers** – who under the **tariff**, are of course, **all foreign**. The tax is laid in the original act, and still in the law today, as a **tariff** that is withheld **only from foreign persons** – because **only non-resident foreign persons (aliens and foreign corporations)** can be **lawfully forced** to pay a **tariff** on their **activities** in the **fifty states**. Under the true scheme of the income tax adopted in the tariff act, and still captured and evident in the law today, **the foreign entities**, the non-resident aliens and foreign corporations, are the actual taxpayers **and subjects** of the income tax, and **the sovereign entities**, the American citizens and corporations, **are cast in the role of the income tax collector, and not as the subject taxpayers**. All this information is documented in statutory detail, and more is revealed, at www.Tax-Freedom.com

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