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The Income Tax

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The word "proceeding" is not a technical one, and is aptly used by the courts to designate an inquiry before a grand jury."

It may be said, by this decision, all doubt concerning the self-incriminating provision of the 5th amendment, applies as well to a hearing before a grand jury as it does to a hearing on an indictment found by a grand jury. But it may be said the introduction of the 5th amendment applies only where the witness is asked to incriminate himself, that is, give testimony which might expose him to a criminal charge, and where there exists an immunity statute, which gives the witness absolute protection, he can, by the processes of the court, be punished for contempt if he refuse to testify at a grand jury hearing. This question was fully discussed and determined in *Brown vs. Walker*, 161 U. S., 591.

Determined then by the present statutes of the law, it may be said that the Constitutional interdiction is an absolute protection to the witness from giving testimony before any judicial tribunal which would criminate him, but that no witness could refuse to testify where there was a statutory immunity.

W. H. TOWNSEND.

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THE INCOME TAX

The Act of Congress, providing for a Federal Income Tax became a law on October 3rd, 1913. It imposes an assessment of 1 per cent per annum, known as the normal tax, upon the entire net income arising or accruing from all sources in the preceding Calendar year to:

(1) Every citizen of the United States, whether residing at home or abroad.

(2) Every person residing in the United States, though not a citizen thereof.

The normal tax of 1 per cent per annum is levied upon the entire net income, not exceeding the sum of \$20,000 per annum. A further assessment, known as the additional tax, is levied upon net incomes exceeding \$20,000, as follows:—On amounts of income from \$20,000 to \$50,000—1 per cent additional tax; from \$50,000 to \$75,000 2 per cent; from \$75,000 to \$100,000—3 per cent; from \$100,000 to \$250,000—4 per cent; from \$250,000 to \$500,000—5 per cent; and 6 per cent upon all income exceeding \$500,000.

The Income Tax law allows certain exemptions and deductions. Section C., provides:

“That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000.00, plus \$1,000.00 additional, if the person making the return be a married man with a wife living with him, or plus the sum of \$1,000.00 additional, if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000.00 be deducted by both husband and a wife, Provided, that only one deduction of \$4,000.00 shall be made from the aggregate income of both husband and wife when living together.”

The law further provides that, in computing net income for the purpose of the normal tax, there shall be allowed, as deductions:

(1) Necessary expenses of all business, not including personal expenses. (2) All national, State, county, school and municipal taxes paid within the year. (3) Losses actually sustained within the year, not compensated for by insurance or otherwise. (4) All interest paid within the year on indebtedness. (5) All worthless debts charged off within the year. (6) A reasonable allowance for the depreciation in value of property, arising out of its use, not to exceed in the case of mines 5 per centum of the gross value of its output for the year. (7) The amount received as dividends on the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income. (8) The amount of income, the tax upon which has been paid or withheld for payment at the source of the income.

The tax is computed upon the net income of a person, accruing during each preceding calendar year, ending December 31st. But for the year ending December 31st, 1913, the tax is calculated on income from March 1st, 1913 to December 31st, 1913, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions.

The law further provides that on or before the 1st day of March, 1914, and the first day of March in each year thereafter, every person of lawful age shall make a true and accurate return, under oath or affirmation, to the internal revenue collector of his district, setting forth the gross amount of income from all sources and deducting from the total the aggregate exemption and deductions permitted, except that no return need be made:

(1) Where the net income is less than \$3,000.00.

(2) Where the assessment is only the normal tax on dividends on capital stock, net earnings of corporations, joint stock companies or associations, or insurance companies, taxable on their net income.

(3) Where a person's return has been made by another party unless he has other income.

All person shall be notified of the amount of their income tax on or before the 1st day of June of each year, and all assessments are to be paid on or before the last day of that month. If the tax is unpaid after the 30th, of June in each year, and after ten days after notice and demand by the collector, the sum of 5 per cent, on the amount of tax unpaid, shall be added and 1 per cent interest per month from date due until paid, except from the estates of insane, deceased, or insolvent persons.

The normal tax upon certain incomes is to be withheld at the source. The "source" is to be construed as referring to the place where the income originates, and the "sources" mentioned in the law are:—All persons, firms, corporations, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States, having the custody, control, receipt, disposal, or payment of:

(1) Interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, or income of another person, exceeding \$3,000.00 for any taxable year, other than dividends on capital stock or net earnings of corporations, stock companies, or associations, subject to like tax.

(2) Fixed and determinable annual gains, profits, and income derived from interest upon bonds, mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, although such interest does not amount to \$3,000.00.

In all cases where the tax is to be deducted at the source, the party, making such deduction, is held personally for the tax, and is required to make return payment to the officer of the United States Government authorized to receive the same, except: Where the person, to whom the income is due, not less than thirty days prior to the day on which the return of his income must be made, files with the person who is required to withhold and pay the tax for him, a signed notice, claiming the benefit of the exemption allowed by law. If such application be made, no tax shall be withheld upon the amount of the exemption. But no allowances will be made for losses, taxes, and other deductions for which the law provides, unless the beneficiary files with the person withholding tax, a true statement of his in-

come from all sources and the amount of exemptions or deductions claimed. If, however, the person be a minor, an insane person, absent from the United States, or is unable, owing to serious illness, to make a return or application, the application may be made by the party holding the income, upon proper oath that he is sufficiently informed upon the affairs and property of his beneficiary.

Relating to contracts for the full payment of interest the law provides:

“In the case of bonds and other indebtedness, which has been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed.”

Under such a guaranty, the payer of such interest is alone liable for the tax. This, however, applies only to contracts made prior to the enactment of this law, as the Act specifies: “nor shall any contract entered into after this Act takes effect, be valid in regard to any Federal Income Tax imposed upon a person liable to such payment.

The normal tax, imposed upon individuals, is likewise assessed upon the entire net incomes of corporations, joint-stock companies or associations, and insurance companies. Labor, agriculture and horticultural organizations; mutual savings banks, having no capital stock represented by shares; fraternal beneficiary societies; domestic building and loan associations; cemetery companies operated exclusively for the benefit of its members; religious, charitable, scientific, and educational institutions; and civic leagues, are exempt from this tax.

The organizations, subject to this tax, are allowed certain deductions from the gross income. (1) Necessary business expenses within the year. (2) All losses within the year, not compensated by insurance or otherwise. (3) The amount of interest accrued and paid within the year on its indebtedness to an amount not exceeding one-half of the sum of its interest bearing indebtedness and its paid up capital stock outstanding at the close of the year.

The corporations and associations liable for this tax, may designate the last day of any month in the year as the day of the closing of its fiscal year, and the tax will be computed accordingly. In such cases, the return shall be made within sixty days after the close of the fiscal year.

The Income Tax is an experiment in governmental maintenance. Whether or not it will be a success, cannot be determined at this

time. More or less confusion will prevail, until people become better acquainted with the law, and matters adjust themselves to new conditions. Legal controversies will doubtless arise, and the opinions of our courts will place a construction on portions of this Act which are now somewhat obscure.

WILLIAM H. TOWNSEND.

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PERSONALS

Sixteen new students have entered the law department for this term.

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Among the new students from other states are: Wm. Huber, from Alabama; R. C. Vaught, from Oregon; and Mariano Jalandom, from the Philippines.

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South Strong '10 has been elected County Attorney of Breathitt County.

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A bill has been prepared for the present session of the Legislature by Representative Elwood Hamilton, of Franklin County, regulating the requirements for admission to the bar. Mr. Hamilton is one of our old students and is making good in his practice in Frankfort.

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The members of Mr. Bush's Corporation Class are preparing a thesis on the Doctrine of Ultra Vires and its application.

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V. Y. Moore of the Class of '11, is having a splendid practice in Marion, Ky.

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Hon. B. T. Rountree, who is a member of the Kentucky Legislature, now in session at Frankfort, will resume his studies in the Law Department upon the adjournment of that body.

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The Law College has recently been improved by the addition of the Course in the Preparation of Legal Instruments. This new Course, which will run from March 1st to May 31st, will be of great practical importance to the law students. Mr. Nickols, a graduate of the University of Virginia Law School and prominent at the Lexington bar, will have charge of the Class.