View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by ValpoScholar

ValpoScholar

Valparaiso University Law Review

Volume 9
Number 1 *Fall 1974*

pp.221-242

Fall 1974

The Constitutionality of the Taxation of Imputed Income

Follow this and additional works at: https://scholar.valpo.edu/vulr

Part of the Law Commons

Recommended Citation

The Constitutionality of the Taxation of Imputed Income, 9 Val. U. L. Rev. 221 (1974).
Available at: https://scholar.valpo.edu/vulr/vol9/iss1/8

This Notes is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.

THE CONSTITUTIONALITY OF THE TAXATION OF IMPUTED INCOME

INTRODUCTION

Imputed income has been defined as:

> [a] flow of satisfactions from durable goods owned and used by the taxpayer, or from goods and services arising out of the personal exertions of the taxpayer on his own behalf.[1]

This definition of imputed income recognizes two categories—imputed income from assets and imputed income from self-service and leisure. To describe further the definition of imputed income and explain how taxation of imputed income tends toward equalization,[2] the following examples are presented.

Imputed Income from Assets

An analysis of the concept and taxation of imputed income of assets will be based upon several different hypothetical fact situations:[3] (1) the taxation of imputed rent; (2) the taxation of imputed income from bank accounts; and (3) the taxation of imputed income from prepaid insurance policies.

With reference to imputed rent, assume that two taxpayers, A and B, each have $50,000 to invest. Further, assume that A purchases a $50,000 home for his own residence, while B invests his cash in a regular savings account at his local savings and loan. If B's savings account yields five percent per year, then B will receive $2,500 as interest on his investment after one year. Current income tax law requires B to include this $2,500 along with his other taxable income for taxing purposes.[4] A has no income on his investment in

---

1. Marsh, *Taxation of Imputed Income*, 58 POL. SCI. Q. 514, 514 (1943). *See also* Balch, *Individual Income Taxes and Housing*, 11 NAT'L TAX J. 168, 168-69 (1958) [hereinafter cited as Balch], which refers to Marsh's definition as the most generally accepted definition of imputed income.

2. The purpose of recognizing imputed income in the area of taxation is to produce a more equitable income tax. Haskell & Kauffman, *Taxation of Imputed Income: The Bargain Purchase Problem*, 17 NAT'L TAX J. 232, 233 (1964) [hereinafter cited as Haskell & Kauffman].

3. *See* W. VICKREY, AGENDA FOR PROGRESSIVE TAXATION 18 (1947) [hereinafter cited as VICKREY], which explains what constitutes imputed income from assets.

4. INT. REV. CODE OF 1954, § 61(a)(4).

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

his home that is taxable under the Internal Revenue Code. Thus, although both A and B invest cash in assets of similar value, only B is taxed on the income. The theory of imputed income, however, maintains that for equal treatment of investments, A should be taxed on the rental value of his home. If A decides to rent his house at, for example, $2,500 per year, rather than living in it, such amount is taxable to A as rental income.[5] Consequently, A's investment allows him the option under present law either to rent it and realize taxable income, or live in it himself and not be taxed. The taxation of imputed rent requires that if A decides to remain in his own house, he is required to include in his taxable income the amount at which he could rent his house to others.[6] The result of the acceptance of the concept of taxation of imputed rent is that A will be required to include $2,500 in taxable income whether or not he rents his home. If he rents it, $2,500 will be deemed taxable as rental income. If he does not rent it, $2,500 will be taxable as imputed rent. Requiring A to include $2,500 in taxable income whether or not he rents the home equalizes the tax treatment of A's investment and B's investment, *i.e.*, both must include in income a fair return on their respective investments.

Imputed income from assets is further illustrated by two examples regarding bank accounts. The first example shows that inequity in taxation results when no service charge is imposed on a bank checking account with a specified minimum balance. Assume that there is no checking account service charge if the account is above a specified minimum balance.[7] Further assume that a depositor whose account balance is below the minimum amount has additional funds to invest. He may deposit such amount in the checking account, thus escaping the service charge (assuming of course that the required minimum balance is met), or he may deposit it in a savings account which earns taxable interest. Since the latter choice results in the depositor being charged a service charge because the minimum balance is not met, inequity results. Although adding

5. INT. REV. CODE OF 1954, § 61(a)(5).

6. Numerous methods of equalization will be discussed *infra*. *See* notes 47-50 *infra* and accompanying text. Some writers refer to imputed rent as "the benefit received by an individual through the use of his own real estate." Balch, *supra* note 1, at 168. *See also* Schoenfeld & Steinberg, *The Federal Income Tax in Relation to Housing: A Commentary*, 24 THE TAX LAW. 347 (1970-71) [hereinafter cited as Schoenfeld & Steinberg].

7. VICKREY, *supra* note 3, at 32-33.

https://scholar.valpo.edu/vulr/vol9/iss1/8

money to the checking account sufficient to meet the minimum balance is worth the amount of the service charge which is not charged to the depositor, it is not taxed under current law. The taxation of imputed income in this area requires the depositor to include in his taxable income any service charges that were avoided because the minimum balance requirements were met. Equity in taxation results since the depositor is taxed whether he places the additional funds in a checking account or in a savings account. If the funds are added to the checking account, taxation of imputed income requires inclusion of the value received, *i.e.*, the avoided service charge. If the funds are invested in the savings account, then the interest earned is taxable. Equalization of the tax treatment of the different investments is therefore afforded.

The second example of imputed income of bank accounts involves free services which some banks provide to certain customers who maintain substantial checking account balances. This example illustrates that inequity ensues when services performed for a bank depositor are not taxed. For instance, a recent newspaper article stated that at least one major bank provides free of charge to customers with a minimum checking account balance of $25,000 a highly trained staff that performs personal secretarial assignments, secures theater and travel reservations and offers investment advice.[8] Taxation of imputed income in this example equalizes the tax treatment between the individual who has the $25,000 checking account and the one who does not have such an account. To clarify the concept, assume that A has a $25,000 checking account while B does not. Both desire secretarial services. A receives the secretarial services free from the bank; B, however, must hire a secretary at his own expense. The inequity in tax treatment develops because A receives services without ever paying taxes on them. A receives neither interest nor similar taxable income under the arrangement. B is in a different situation. He must pay for such secretarial services by hiring a secretary. Inequity develops because B must use cash which he earned as wages and on which he paid taxes to pay for the secretarial services.

---

8. N.Y. Times, Aug. 12, 1968, at 29, col. 1. *See* STAFF OF HOUSE COMM. ON WAYS AND MEANS, 86TH CONG., 1ST SESS., TAX REVISION COMPENDIUM OF PAPERS ON BROADENING THE TAX BASE 324 (Comm. Print 1959) [hereinafter cited as COMPENDIUM]; Bittker, *A Comprehensive Tax Base as a Goal of Income Tax Reform*, 80 HARV. L. REV. 925 (1967) [hereinafter cited as Bittker].

Produced by The Berkeley Electronic Press, 1974

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

To equalize the two situations, taxation of imputed income would require that A include in income the amount that he would have been required to pay for the services had he hired his own secretary. A and B would be in similar tax positions because each includes in income the value of the services of the secretary. A, under the concept of taxation of imputed income, includes this amount at the time the secretarial services are performed, whereas B includes the same amount in his taxable income when he earns the money that is used to pay the secretary.

Finally, the taxation of imputed income from assets may be illustrated by prepaid insurance policies. Insurance coverage over a period in excess of one year can usually be paid by either a series of annual premiums or one lump-sum payment at the beginning of the policy period. It is important to note that the amount of the lump-sum payment is usually less than the total of all the annual premiums. This is due in part to the concept of the time value of money. The insurance company is willing to accept less money at the start of the policy period because it obviously has a longer period of time to invest the premiums received. The nontaxability of the difference between the lump-sum amount and the total of the annual premiums produces inequity. For example, assume that A and B each have cash sufficient to pay the lump-sum payment. A prepays his insurance in one lump-sum payment, while B decides against the lump-sum payment. B pays the first annual premium and invests the remaining cash until the next premium is due. A recognizes no taxable income from this transaction, yet in the first year B is taxed on the interest he earns on the money he invests. A is able to retain an amount of money approximately equal to the amount that he would have earned had he invested the money and actually earned interest. In effect, A's retention of the money is similar to an actual earning of interest because the total amount of cash that he pays to the insurance company is less than the total that B pays for the same period of coverage. Equalization of the taxation of this transaction requires A to be taxed on the amount that he saves by paying in one lump-sum at the beginning of the policy period rather than by paying the annual premiums.[9]

9. *See* Rev. Rul. 65-199, 1965-2 CUM. BULL. 20, which recognizes that the difference between the lump-sum payment and the total of the annual premiums is nontaxable. *See also* VICKREY, *supra* note 3, at 32-33, which describes the application of imputed income to prepaid insurance examples.

https://scholar.valpo.edu/vulr/vol9/iss1/8

Imputed Income from Self-Service and Leisure

The second category of imputed income noted in the definition is imputed income from self-service and leisure.[10] Several examples illustrate the concept and taxation of imputed income from self-service and leisure. The first example involves a professional carpenter who performs carpentry work on his own house.[11] Under current law, the carpenter does not recognize taxable income. Inequity in taxation results because if anyone other than the above mentioned carpenter performs the work, that person is taxed on the compensation or wages received.[12] To equalize the two situations, the concept of taxation of imputed income from self-service and leisure requires the carpenter to include in his own income an amount equal to the value of the services he performs on his own home. Equalization results because whoever does the work must include the value of such services in income. If the homeowner performs the work, taxation of imputed income requires inclusion of the value of such work. (It should be emphasized that it is not within the scope of this note to consider the problems arising in the valuation of one's own services.) If anyone other than the homeowner performs the work, then the compensation received from the homeowner as wages is taxable. The same principle is applicable in the case where an accountant remains at home to perform some amateur plumbing,[13] thus emphasizing that the concept of taxation of imputed income from self-service and leisure is applicable even though the services performed are not similar to the taxpayer's vocation.[14]

The value of the services of the housewife-mother is another example of imputed income from self-service and leisure. As in many other cases, this situation raises much controversy because the application of imputed income in this area would affect many people. Assume that two similar families with working husbands have the wives, A and B, at home caring for the children. Also

10. *See* note 1 *supra* and accompanying text.
11. VICKREY, *supra* note 3, at 44.
12. INT. REV. CODE OF 1954, § 61(a)(1).
13. VICKREY, *supra* note 3, at 44.
14. *See* Galvin, *More on Boris Bittker and the Comprehensive Tax Base: The Practicalities of Tax Reform and the ABA's CSTR*, 81 HARV. L. REV. 1016, 1016-17 (1968) [hereinafter cited as Galvin], where the principle in the second example is recognized.

Produced by The Berkeley Electronic Press, 1974

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

assume that A decides to work outside the home and employs a nursemaid to care for her children. B, however, decides to remain at home and care for her children herself. A is taxed on the wages she earns outside the home.[15] B, since she receives no wages, reports no income. Inequity of taxation ensues because A pays for the child care services with after-tax dollars while B is not affected taxwise. This is similar to the reasoning in the second bank account example (free secretarial service).[16]

Congress recognized the inequity arising in the child care situation and passed section 210 of the Revenue Act of 1971.[17] Section 210 provides a deduction from the taxable income of the working mother for child care expenses incurred as a result of her employment.[18] It is important to note that Congress recognized the concept of taxation of imputed income only indirectly. The recognition of imputed income is indirect because instead of requiring the mother who remains home to include the value of the household services she performs in income, section 210 allows the mother who works outside the home to deduct certain expenses she incurs by hiring babysitters.[19] Perhaps the testimony before the House Committee on

---

15. Taxable income shall include compensation. INT. REV. CODE OF 1954, § 61(a)(1).

16. *See* note 8 *supra*.

17. Section 210 of the Revenue Act of 1971 amended INT. REV. CODE OF 1954, § 214. For analysis of whether a child care expense is deductible when it is a necessary prerequisite to employment see Hjorth, *A Tax Subsidy for Child Care: Section 210 of the Revenue Act of 1971*, 50 TAXES 133, 137 (1972).

For a detailed explanation of how this section of the Code expands the provisions with respect to the dependent care expenses see Strueling, *The New Household Service Expense and Dependent Care Expense Deduction: Who Will Benefit?*, 50 TAXES 589 (1972).

For alternatives to the old statute regarding child care deductions which are based on imputed income theory see Comment, *The Child Care Deduction: Issues Raised by Michael and Elizabeth Nammack and the Pending Amendment to Section 214*, 10 B.C. IND. & COM. L. REV. 270 (1971).

18. INT. REV. CODE OF 1954, § 214(b)(2) provides:

> The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:
>
> (A) expenses for household services, and
>
> (B) expenses for the care of a qualifying individual.

19. Smith v. Comm'r, 40 B.T.A. 1038 (1938), *aff'd mem.*, 113 F.2d 114 (2d Cir. 1940), where the taxpayer had deducted the cost of wages paid to nursemaids who cared for her child while she was gainfully employed, was analyzed in Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*, 21 BUFF. L. REV. 49 (1971). While the court in *Smith* recognized that housekeeping services are nontaxable imputed

Ways and Means of a noted tax expert sheds light on the fact that Congress only indirectly recognized the taxation of imputed income of housewives. The expert stated that

> [a] famous case of income in kind is the services of the housewife. It is not possible perhaps even theoretically to impute a market value for each of the many types of services rendered. Yet to omit imputation clearly discriminates in favor of the housewife by comparison to the wife who chooses to work outside the home for a monetary wage.[20]

A final example of imputed income from self-service and leisure deals with farm produce consumed on the farm.[21] Under current law, the farmer who consumes his own farm produce is not required to include its value in his taxable income.[22] Since all other consumers must purchase their produce, inequity in taxation develops for the same reason as in the example of the carpenter doing his own carpentry.[23] The farmer is not affected taxwise, while the ordinary consumer must purchase produce with after-tax dollars. These dollars are after-tax because the dollars are usually from wages less income taxes paid by the ordinary consumer. Equalization of tax treatment

---

income, it concluded that if services are not taxable, then a deduction for them is not allowable. *Id.* at 64-65.

The argument that the denying of a child care deduction penalizes the working mother because the mother who remains at home is not taxed on her services is used to criticize the holding of a recent case which disallowed child care expense deductions. Levy, *Income Taxation - Child Care - Expenses - The Limitations of Section 214(b), I.R.C. 1954, In Respect of Deduction for Child Care Expenses Are Not Violative of Due Process of Law under the Fifth Amendment - Nammack v. Comm'r, 56 T.C. 1379 (1971),* 41 CINN. L. REV. 264, 272-73 (1972).

By passage of section 214, taxation of imputed income was recognized only partially by Congress because there is a limitation to the allowable deduction. Comment, *Constitutional Law - Taxation: The Limitations on Child Care Deductions of Section 214 of the Internal Revenue Code Do Not Deprive Working Mothers of Equal Protection or Due Process of Law,* 39 BROOKLYN L. REV. 466 (1972).

20. COMPENDIUM, *supra* note 8, at 325.

21. Some authorities refer to farm produce consumed on the farm as income in kind. COMPENDIUM, *supra* note 8, at 322, 377.

22. The Act of 1867 permitted the exclusion from taxable income of that portion of farm production consumed on the farm. Revenue Act of 1864, § 117, *as amended,* 14 Stat. 478 (1867).

23. *See* note 11 *supra.* This example can be extended to include any person who grows some of his own food in a private garden, not on a farm. For example, the city-dweller who grows beans on his apartment balcony for his personal consumption. This is very similar in effect to the accountant doing his own plumbing. *See* notes 13 & 14 *supra.*

Produced by The Berkeley Electronic Press, 1974

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

would require the farmer to include in income any food which he produces and consumes directly.

The ultimate conceptual extension of the principle of taxation of imputed income from self-service and leisure deals with the leisure element. The leisure element arises when an individual who lives on property income rather than wages has the choice to refrain from productive activity. Leisure is actually nothing more than consumption of one's own services.[24] The tax treatment of this concept results in inequity because self-consumption of one's own services is not taxed, while the sale of one's services to others is taxed as wages. Equity requires that the value of one's services be included in income, whether an individual is working or not. Taxation of imputed income from self-service and leisure meets the equity demand by including in income the value of one's services when not employed.[25]

TREATMENT OF IMPUTED INCOME BY CONGRESS, THE TREASURY DEPARTMENT AND ECONOMISTS

Past treatment of imputed income indicates varied approaches and attitudes among Congress, the Treasury Department and economists. Congress and the Treasury Department have not readily accepted the principle of imputed income.[26] However, economists have accepted the concept of imputed income in economic theories and models which are used to measure the efficiency of our economy.[27]

Past Congressional and Treasury Department Views on Imputed Income

Taxation of imputed income has elicited various responses from Congress and the Treasury Department since the enactment of the first federal income tax law in the mid-nineteenth century,[28] and the statutory history of the taxation of imputed income has been varied. While some of the early income tax statutes made no reference to

24. VICKREY, *supra* note 3, at 48-49.
25. *Id.*
26. *See* notes 28-40 *infra* and accompanying text.
27. *See* notes 41-56 *infra* and accompanying text.
28. Revenue Act of 1861, § 49, 12 Stat. 309.

imputed income,[29] others specifically excluded it.[30] Early in the history of income taxation in the United States, both the taxpayer[31] and the Commissioner of Internal Revenue[32] were in favor of the taxation of imputed rent. Rather than taxing imputed rent to the homeowner, Congress recognized imputed rent indirectly by allowing a renter to deduct rent paid in order to equalize the situation between renters and homeowners.[33] Today, of course, no renter's deduction is allowed because it is deemed a nondeductible personal expense.[34] Thus, disallowance of this deduction continues even though Congress is aware of the inequity that results from this approach.[35]

The amount of recorded congressional debate in the area of taxation of imputed income is sparse for two reasons. First, *the taxation of imputed income has never been directly recognized in the United States.*[36] In fact, no recent President has included in his tax message to Congress any reference whatsoever to the principle

29. Revenue Act of 1913, § II.B., 38 Stat. 167; Act of 1894, § 28, 28 Stat. 553; Act of 1870, § 9, 16 Stat. 258; Act of 1861, § 49, 12 Stat. 309.

30. The Act of 1864, § 117, *as amended*, 14 Stat. 479 (1867), provided that "[t]here shall be included all income . . . except the rental value of any homestead used or occupied by any person or by his family in his own right or in the right of his wife."

31. Although the taxpayers were ready to accept such a tax and no complaints about the administration of such a tax were offered, the House Committee on Ways and Means rejected such a provision. H. SMITH, THE UNITED STATES FEDERAL INTERNAL TAX HISTORY FROM 1861 TO 1871 58 (1914). *See* FINANCE REPORT 70 (1863).

32. The Commissioner stated that "[h]e was unable to see . . . [w]hy one who lives in his own house should not be taxed on its rental value, as much as if he let it to another and put the rent in his purse." REPORT OF THE COMMISSIONER OF INTERNAL REVENUE FOR YEAR ENDING JUNE 30, 1864, at 13 (1864). The Commissioner has used the same argument at other times. REPORT OF THE COMMISSIONER OF INTERNAL REVENUE FOR THE YEAR ENDING JUNE 30, 1863 (1863); REPORT OF THE SPECIAL COMMISSIONER OF THE REVENUE (1868).

33. *See* notes 6 & 31 *supra* and accompanying text. Allowing such deduction were the following tax laws: Act of 1870, § 9, 16 Stat. 258; Act of 1864, § 117, *as amended*, 14 Stat. 478 (1867); Act of 1862, § 91, *as amended*, 12 Stat. 723 (1863). Silent on the subject was the Act of 1894, § 28, 28 Stat. 553.

34. Personal, living, or family expenses are disallowed unless expressly provided otherwise. INT. REV. CODE OF 1954, § 262.

35. It is on record that Congress is aware of the inequity. 50 CONG. REC. 3848 (1913).

36. Imputed rent has been taxed in France and Great Britain in the past. *Hearing of Tax Reform before the House Comm. on Ways and Means*, 86th Cong., 1st Sess., at 156-57 (1960) [hereinafter cited as *Hearing*]. Although repealed in 1963, the Income Tax Law, [1952] 15 & 16 Geo. 6 & 1 Eliz. 2, c. 10, § 222 (Great Britain), provided that "if a taxpayer . . . is both owner and occupier . . . of lands . . . the amount of the annual value . . . shall be deemed to be income." Balch, *supra* note 1, at 170.

Produced by The Berkeley Electronic Press, 1974

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

of the taxation of imputed income.[37] Second, early congressional debate in the area of taxation was not recorded. Extensive research of the congressional records has revealed only one series of discussions before the House Committee on Ways and Means dealing specifically with the concept of the taxation of imputed income.[38] From the questions asked in those discussions, it appears that the major concerns of Congress were whether the taxation of imputed rent would defeat the incentive of homeownership[39] and whether such taxation would be constitutional.[40]

Economists' Views of Imputed Income

An understanding of the economists' definition of "income" is important in the study of the taxation of imputed income because economists often draft many of the tax reform proposals for Congress.[41] Economists have three different definitions of "income": (1) the Haig-Simon approach; (2) the Irving Fisher definition; and (3) the Schany approach. The Haig-Simon approach defines income as

---

37. A perusal of recent tax messages to Congress has revealed no reference to the taxation of imputed income. *Prepared Statements Submitted to the Committee on Ways and Means by the Honorable John B. Connally, Secretary of the Treasury, and the Honorable George P. Shultz, Director of the Office of Management and Budget, on the Tax Proposals Embodied in President Nixon's New Economic Policy before the House Committee on Ways and Means*, 92d Cong., 1st Sess. (1971); *Summary of Testimony on the Administration's Legislative Tax Proposals before the House Committee on Ways and Means*, 92d Cong., 1st Sess. (1971); *Tax Recommendations of the President Submitted to Congress Aug. 30, 1970*, 91st Cong., 2d Sess. (1970); *Tax Reform Studies and Proposals by the Treasury Department before the House Committee on Ways and Means and the Senate Finance Committee*, 91st Cong., 1st Sess., pt. 1 (1969); *The President's 1963 Tax Message before the House Committee on Ways and Means*, 88th Cong., 1st Sess., pt. 1 (1963); *The President's 1961 Tax Recommendations before the House Committee on Ways and Means*, 87th Cong., 1st Sess. (1961).

38. Numerous noted tax experts were given the opportunity to present new techniques and principles of taxation before the House Committee on Ways and Means. *Hearing, supra* note 36, at 156-58.

39. An example of some of the questions asked is:

> Do you not think that [taxation of imputed rent] could well defeat the purpose revenuewise in that it would be fundamentally a great deterrent to the present method of homeownership?

Id. at 157.

40. *Id. See* notes 88-96 *infra* and accompanying text.

41. An example of a tax reform proposal using the Haig-Simon definition is Pechman, *Comprehensive Income Taxation: A Comment*, 81 HARV. L. REV. 63, 64 (1967). Recognizing that imputed rent comes within the definition of income, one tax proposal would exclude it on the grounds that it "stands on relatively technical or theoretical tax arguments." Surrey, *Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance*, 84 HARV. L. REV. 352, 395 (1970).

https://scholar.valpo.edu/vulr/vol9/iss1/8

"the increase or accretion in one's power to satisfy his wants in a given period insofar as that power consists of (a) money itself, and (b) anything susceptible of valuation in terms of money."[42] Since the valuation of imputed income is measurable, imputed income falls within the Haig-Simon definition of income. According to Irving Fisher, income is a flow of benefits consisting of pleasurable utilities.[43] Imputed income also satisfies this definition, because, as illustrated in the first section of this note, benefits inevitably accrue to the individual.[44] Finally, Schany defines income as "the entire difference between the value of assets at the end of the fiscal period and their value at the beginning."[45] Imputed income examples usually do not come within Schany's definition because imputed income seldom increases the value of assets. However, since the Haig-Simon definition is the most widely accepted definition, most economists include imputed income in the area of taxation.[46]

Although most economists include imputed income in the area of taxation, distinct means of valuation are suggested. For example, the valuation of imputed rent is susceptible to three alternative means of computation, although ultimately all yield approximately the same figure.[47] The methods of valuation include: (1) the net rental value approach; (2) the return on equity approach; and (3) the interest rate approach. Assume that an individual owns a house and desires to compute its annual imputed income figure. The net rental value is the appraised rental value of the dwelling, *i.e.*, the figure which represents the amount that the home would rent for in the marketplace.[48] The return on equity approach is similar to that applied by "big business" in capital budgeting decisions; the computation involves discounting to present value all expected future

42. Crockett, *The Legal and Economic Concepts of Income*, 52 A.B.A.J. 1126, 1126 (1966) [hereinafter cited as Crockett].

43. *Id.*

44. *See* notes 3, 6, 8, 11, 13, 20-22, 25 *supra* and accompanying text.

45. Crockett, *supra* note 42, at 1128.

46. *Id.*

47. Differences between the three methods in the short run are due to temporary market disequilibria (*e.g.*, when the long-run and short-run interest rates are unequal), or risk premiums required on thin equities (*i.e.*, when the amount of bond debt greatly exceeds the amount of common stock). VICKREY, *supra* note 3, at 26.

48. For analysis of all three methods of computation see VICKREY, *supra* note 3, at 20-21.

Produced by The Berkeley Electronic Press, 1974

profits earned on a similar investment in the marketplace.[49] This approach requires a determination by the owner of the profits that would be earned each subsequent year on such asset over the life of the asset if the owner were to rent it. All of these figures of future profits are discounted to present value to arrive at the imputed income calculation. The interest rate approach initially requires a determination of the dwelling's market value. The value of imputed rent is then determined by multiplying the hypothetical sales figure by a predetermined interest rate (*e.g.*, the current rate of a regular savings account at a savings and loan).[50]

Somewhat analogous to the return on equity approach is the utilization of a spending tax which some economists advance as an alternative to the inclusion of imputed income in taxable income.[51] Due to the nature of the tax, this alternative treatment would only apply in cases involving imputed rent and imputed income from consumer durables (*e.g.*, furniture and appliances), and not in cases involving imputed income from self-service and leisure.[52] The spending tax approach, therefore, does not accept the income tax approach which considers the expenditures on housing and consumer durables as consumption. Rather, the spending tax approach treats such expenditures as investments in assets; the expenditures are taxed by writing off the cost of the investment over the useful life of the asset.[53]

In addition to defining imputed income, economists have studied the results of the exclusion of imputed income from taxation. Two major issues have developed from such studies. First, nontaxation of such items as imputed rent results in less congressional scrutiny.[54] If the intention of Congress is to promote homeownership,

---

49. *Id.*

50. *Id.*

51. *Id.* at 26.

52. *Id.* For a comment on how the spending tax will impair incentives to acquire income see *id.* at 344.

53. *Id.* at 26.

54. Bittker, *Accounting for Federal Tax Subsidies in the National Budget*, 22 NAT'L TAX J. 244 (1969). Another writer believes that exclusion from taxation would be simpler, but nevertheless prefers taxation followed by tax subsidies. Musgrave, *In Defense of an Income Concept*, 81 HARV. L. REV. 44, 52 (1967); *cf.* Surrey, *Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance*, 84 HARV. L. REV. 352 (1970) (direct expenditures); Surrey & Hellmuth, *The Tax Expenditure*

then taxation of imputed rent followed by tax credits or subsidies will bring more attention to the subject area because of the congressional review that accompanies the appropriation of government funds.[55] The other major issue, based upon economic theory, is whether nontaxation of imputed income in areas such as housing causes an inefficient allocation of resources.[56] That is, economic theory shows that more goods and services will ultimately be provided if imputed income is taxed.

The Constitutionality of the Taxation of Income

To understand the constitutional analysis of the taxation of imputed income, it is first necessary to discuss the source of the power of Congress to tax and to survey the views of the Supreme Court regarding the constitutional definition of income.

Derivation of the Power to Tax

The present power of Congress to tax flows from a combination of the sixteenth amendment[57] and three clauses of article I[58] of the United States Constitution. While Congress has the power to "lay and collect taxes,"[59] apportionment of "direct taxes" among the states is required by article I.[60] However, the sixteenth amendment

---

Budget - Response to Professor Bittker, 22 NAT'L TAX J. 528, 530 (1969) (approach suggests presenting tax provisions such as exclusions like imputed rent as expenditure classifications in the federal budget).

55. VICKREY, *supra* note 3, at 18.

56. The concept of inefficient allocation of resources has been proven by simulated computer models. Askari, *Federal Taxes and the Internal Rate of Return on Owner Occupied Housing*, 25 NAT'L TAX J. 101, 101-03 (1972). *See also* STUDIES IN SUBSTANTIVE TAX REFORM 137 (A. Willis ed. 1969) (current exclusion of imputed rent from taxable income distorts resource allocation); Galvin, *supra* note 14, at 1029 (Canadian commission would tax imputed income for an equitable system of taxation); Hjorth, *A Tax Subsidy for Child Care: Section 210 of the Revenue Act of 1971*, 50 TAXES 133, 144 (1972) (economic allocation of resources of housewives has been interfered with by disallowing child care deductions); Rolph, *Discriminating Effects of the Income Tax Treatment of Owner-Occupants*, 26 NAT'L TAX J. 471 (1973) (examines the economic effects due to the exclusion of imputed rent from taxation).

Contra, Schoenfeld & Steinberg, *supra* note 6, at 358 (suggests that tax laws regarding home ownership not be changed since the true evil is inequity between income levels rather than between owners and renters at the same economic level).

57. U.S. CONST. amend. XVI.

58. U.S. CONST. art. I, §§ 2, 8, 9.

59. U.S. CONST. art. I, § 8.

60. U.S. CONST. art. I, §§ 2, 9.

Produced by The Berkeley Electronic Press, 1974

eliminates the necessity of apportionment if only income is taxed. It is important to note that since apportionment is deemed impractical by most commentators,[61] only unapportioned tax statutes are feasible. If a tax is not apportioned, it then follows that a determination of whether or not the item which the statute taxes comes within the definition of "income" is foremost in the constitutional analysis of each direct tax statute.[62] Since every tax on imputed income would be a direct tax, it is paramount in a study of the constitutionality of the taxation of imputed income to determine if imputed income falls within the constitutional definition of "income."

Constitutional Definition of "Income"

(1) The *Macomber* Test

The sixteenth amendment did not define the constitutional meaning of "income"[63] and it has therefore been necessary for the United States Supreme Court to accept the responsibility in the construction of the definition of "income." The definition has not only evolved on an ad hoc basis,[64] but it has changed in meaning over the years.[65] Since the majority view is that Congress, in passing various tax statutes, intended to tax to the fullest extent constitutionally possible, determining the definition of "income" will include an analysis not only of what the Supreme Court has stated when constitutional issues of taxation were raised, but what the Court's views were in cases involving only statutory interpretations.[66] In the first tax case after the passage of the sixteenth amend-

61. B. BITTKER & L. STONE, FEDERAL INCOME ESTATE AND GIFT TAXATION 38 (4th ed. 1972).

62. Underlying this determination is the dispute as to whether the definition of "income" was changed by the enactment of the sixteenth amendment. The major consensus, however, is that the sixteenth amendment did not redefine the term. *Compare* Eisner v. Macomber, 252 U.S. 189, 206 (1920) (sixteenth amendment did not extend the taxing power to new subjects), *and* Brushaber v. Union Pac. R.R., 240 U.S. 1, 17-18 (1916) (sixteenth amendment does not purport to confer power to levy income taxes in a generic sense), *with* Comm'r v. Independent Life Ins. Co., 62 F.2d 1066, 1067 (6th Cir. 1932).

63. Conner v. United States, 303 F. Supp. 1187, 1189 (S.D.Texas 1969).

64. "What is or is not income within the meaning of the amendment must be determined in each case according to truth and substance, without regard to form." Eisner v. Macomber, 252 U.S. 189, 206 (1920).

65. *See* notes 68-87 *infra*.

66. Some writers agree that the courts have tried to fill the void left by statutes regarding the definition of "income." *See* Rapp, *Some Recent Developments in the Concept of Taxable Income*, 11 TAX L. REV. 329 (1955-56) [hereinafter cited as Rapp]; Crockett, *supra* note 42, at 1127.

ment,[67] which upheld the constitutionality of the 1913 income tax statute, the Supreme Court was hesitant to exact a clear definition of "income" under the sixteenth amendment. But shortly thereafter the Supreme Court in *Eisner v. Macomber*[68] reinterpreted the sixteenth amendment and found that it created limitations upon the definition of "income."[69] The definition of "income" according to the *Macomber* court, often termed the realization or severance theory, is:

> the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets, and . . . a gain, a profit, something of exchangeable value, proceeding from the property, *severed* from capital.[70]

The essence of the definition is that in order for income to be taxed, it has to be severed from the property from which it was derived. The concept of severance was readily applicable to *Macomber* because the case involved a determination as to whether stock dividends were to be treated as having been severed from the stock from which the dividend was paid. However, the applicability of the severance theory to the taxation of imputed income has been doubted by some tax experts and attorneys. For example, responding to a question before the House Committee on Ways and Means concerning whether the taxation of imputed rent is constitutional, Lester Ponder, a noted tax lawyer, responded: "My thought is that under our system, developed over the years, under our income tax system, we have always required some form of a severance of something in the form of property before we have imposed income taxes."[71] The *Macomber* decision offers two additional tests — the realization from labor or capital test and the exchangeable value test. The former requires that taxable income be derived from labor or capital and the latter requires that it originate from someone other than the taxpayer.[72]

67. Brushaber v. Union Pac. R.R., 240 U.S. 1 (1916).
68. 252 U.S. 189 (1920).
69. For extended analysis of the definition of "income" see Wright, *The Effects of the Source of Realized Benefits upon the Supreme Court's Concept of Taxable Receipts*, 8 STAN. L. REV. 164, 175-76 (1955-56) [hereinafter cited as Wright].
70. 252 U.S. at 207 (emphasis added).
71. *Hearing*, *supra* note 36, at 157.
72. *See* note 70 *supra*.

(2) The *Glenshaw* Test

Although the severance requirement was once thought to be essential in every case involving the taxation of income, it appears that a chain of cases has brought about the demise of the severance requirement.[73] These cases also appear to have produced the end of the requirement that taxable income be something of exchangeable value received by the taxpayer for his separate use,[74] and the death of the notion that receipts are taxable only if realized from capital, from labor, or from both combined.[75]

Three of the major cases responsible for the demise of the *Macomber* tests were *United States v. Kirby*,[76] *Rutkin v. United States*[77] and *Commissioner v. Glenshaw Glass Co.*[78] In *Kirby*, the taxpayer had issued its own bonds to the public and purchased them back the same year at a lower price. The Court held that this difference was taxable income. The *Kirby* court's statement that "[n]othing [is] to be gained by the study of judicial definitions,"[79] was evidence of the Court's disenchantment with *Macomber*. The general agreement among commentators was that although *Macomber* laid down three basic tests, *Kirby* evidenced the Court's willingness to be flexible in the determination of the definition of "income."[80] In upholding the taxation of amounts received by extortion, the *Rutkin* court introduced the demise of the requirement that taxable gain must have been derived from labor or capital.[81]

Since no reference to the definition of "income" was made in the Constitution, constitutional analysis as to the definition of "income" is often nothing more than a statement of a conclusion rather than a presentation of well-reasoned legal theory. For example, in responding to the constitutional argument, *Rutkin* merely stated: "We think the power of Congress to tax these receipts as income under the Sixteenth Amendment is unquestionable."[82] According to

73. Wright, *supra* note 69, at 182.
74. *Id.* at 185-93.
75. *Id.* at 199-201.
76. 284 U.S. 1 (1931).
77. 343 U.S. 130 (1952).
78. 348 U.S. 426 (1955).
79. 284 U.S. at 3.
80. Wright, *supra* note 69, at 182.
81. *Id.* at 193-201.
82. 343 U.S. at 138.

some writers,[83] the ultimate death of the *Macomber* tests resulted from the decision in *Commissioner v. Glenshaw Glass Co.*[84] *Glenshaw* held that money received as punitive damages from antitrust recovery was taxable.[85] The *Glenshaw* court not only ignored *Macomber*, but offered a new test—accession to wealth.[86] This new test looks not to the source of the gain as in *Macomber*; rather, it looks merely to whether the taxpayer's wealth has increased.[87]

The Constitutionality of the Taxation of Imputed Income

The Supreme Court's View of the Constitutionality of Taxation of Imputed Income

The only United States Supreme Court case which has taken a stand on the taxation of imputed income is *Helvering v. Independent Life Insurance Co.*[88] In *Independent*, an insurance company owned an office building which was occupied by the company's investment department and an outside tenant. Pursuant to insurance tax law,[89] the Court held that if the company decided to take a deduction for expenses of its own building, then the company was required to include in income an amount which represented the rental value of the portion of the building which was occupied by the company's investment department.[90] This, in essence, is similar to the taxation of imputed income; the only difference is that it was optional in *Independent*, because if the company had not desired to take the expense deduction, it would not have been required to include the imputed rent in income.[91] But the Court postulated that if the inclusion of imputed rent had been *required*, rather than a mere condition to a deduction, it would not have been constitutional. The Court stated that since the tax was direct,[92] unappor-

83. *See* Rapp, *supra* note 66, at 366; Wright, *supra* note 69, at 202 (exact constitutional notion remains somewhat obscure).

84. 348 U.S. 426 (1955).

85. 348 U.S. at 427.

86. *Id.*

87. *Id.*

88. 292 U.S. 371 (1934).

89. Revenue Act of June 2, 1924, ch. 134, §§ 244, 245, 43 Stat. 289.

90. 292 U.S. at 371.

91. *Id.*

92. *Id.* at 378. Cases cited were: Willcuts v. Bunn, 282 U.S. 216 (1930); Bromley v. McCaughn, 280 U.S. 124 (1929); Dawson v. Kentucky Distilleries & Warehouse Co., 255 U.S. 288 (1920); Eisner v. Macomber, 252 U.S. 189 (1920); Brushaber v. Union Pac. R.R., 240 U.S. 1 (1916); Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895).

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

tioned and not within the constitutional definition of "income,"[93] it was unconstitutional. Chronologically, it is important to note that *Independent* was decided during the period after *Macomber*, but before the implementation of the accession to wealth test established in *Glenshaw*. In fact, six of the seven major cases involving the definition of "income" which were cited in *Independent* stand for the proposition that severance is required.[94] Yet as mentioned earlier in this note,[95] the requirement that this test be met is questionable. The seventh cited case summarily dismissed the constitutional issue of imputed income as a "minute" and "hypercritical" argument.[96]

The Failure of the Supreme Court to Determine the Constitutionality of the Taxation of Imputed Income Has Caused Inconsistent Lower Court Decisions

Numerous lower court decisions have been reasoned on the fortuitous facts in each particular case because of the lack of a determination by the Supreme Court of the constitutionality of the taxation of imputed income. The lower courts appear to be groping for a rational approach, but inevitably they rely on mere matter of form and not the substance of the transaction. Although it is not spelled out verbatim, there is a general notion in the Internal Revenue Code of 1954 that substance should rule over form.

In the case of a bargain purchase, the courts appear to be in favor of the taxation of imputed income, although little constitutional justification is demonstrated.[97] Specifically, bargain purchases as noted herein include only those fact situations where an employee, whether he is an agent, broker, salesman or partner, purchases from his employer a product at a price lower than what the

93. 292 U.S. at 379. This argument was based upon: MacLaughlin v. Alliance Ins. Co., 286 U.S. 244 (1932); Taft v. Bowers, 278 U.S. 470 (1929); Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1920); Eisner v. Macomber, 252 U.S. 189 (1920); Doyle v. Mitchell Bros. Co., 247 U.S. 179 (1918); Stratton's Independence v. Howbert, 231 U.S. 399 (1913).

94. MacLaughlin v. Alliance Ins. Co., 286 U.S. 244 (1932); Burk-Waggoner Ass'n v. Hopkins, 269 U.S. 110 (1932); Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1920); Eisner v. Macomber, 252 U.S. 189 (1920); Doyle v. Mitchell Bros. Co., 247 U.S. 179 (1920); Stratton's Independence v. Howbert, 231 U.S. 399 (1913).

95. *See* notes 73-87 *supra*.

96. Brushaber v. Union Pac. R.R., 240 U.S. 1, 1 (1916). *See* Balch, *supra* note 1, at 170.

97. Haskell & Kauffman, *supra* note 2.

general public would be required to pay. The question is whether the difference between the price offered to the public and the employee's price should be taxable as income to the employee.

Since the Supreme Court has not dealt specifically with the constitutionality of imputed income in relation to bargain purchases, lower courts have felt compelled at least to touch base with the *Macomber* reasoning (realization and severance). Whether *Glenshaw* and the accession to wealth approach would apply to bargain purchase situations has not yet been determined. The question would be whether a discount is an accession to one's wealth as required in *Glenshaw*. Accordingly, the trend has been that if the courts determine that the employer and employee are separate entities, then the discount is usually taxable. For example, *Toy v. Commissioner*[98] held that a partner of a real estate firm should have been taxed on the amount of commissions he received, even though it arose from sales to himself. In *Toy* the taxpayer had purchased properties from the partnership, paying the same commissions as the public would in such a sale. These commissions were then included as partnership income which was ultimately distributed pro rata to the partners according to the partnership agreement. Some of that which was payable to the taxpayer was obviously from his own transaction. Without the aid of a clear mandate from Congress or direction from the Supreme Court to tax imputed income, the *Toy* court necessarily had to construct a fiction to hold the amount taxable. The fiction was that partnerships are separate and distinct entities. Although this might be the case under state laws governing partnerships, it is not correct at the federal tax level, because partnerships are not separate taxable entities.[99]

Another case evidencing a possible fiction is *Daehler v. Commissioner*.[100] *Daehler* held taxable the amount refunded to a real estate salesman from his employer as a commission on a house the salesman himself had purchased.[101] Although the parties may not have intended this transaction to be compensation, but rather

98. 1942 P-H TAX CT. REP. & MEM. DEC. 1128.

99. "A partnership as such shall not be subject to the income tax." INT. REV. CODE OF 1954, § 701.

100. 31 T.C. 722 (1959).

101. *Id.*

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

a mere reduction of the price paid for the house, the court held that it was compensation and hence taxable.[102]

Toy and *Daehler* fall within the theory of the taxation of imputed income from self-service and leisure, since the taxpayer in each instance had performed a service for himself by acting as salesman. It is of interest that no problems would have arisen if the Supreme Court had previously deemed that taxation of imputed income was constitutional. That is, the courts would not have had to base their decisions on a possible fiction. The result would be that no case would be based on the mere fortuitous findings of the court.

Conclusion

A redetermination of the constitutionality of the taxation of imputed income would seem appropriate since the Supreme Court appears quite flexible in defining "income" under the federal income tax laws. Some writers[103] postulate that the Supreme Court fosters the belief that the taxation of imputed income is unconstitutional because *Helvering v. Independent Life Insurance Co.*[104] is often cited by the courts. However, it should be noted that of all the cases citing *Independent*, only four are addressed to the imputed income issue. Of the four cases addressed to this issue, only *United States v. Atlas Life Insurance Co.* has reached the Supreme Court.[105] *Atlas* holds that the *exclusion* of imputed rent is constitutional, but refuses to take the opportunity to decide the constitutionality of the *inclusion* of imputed rent in income. The remaining three lower court cases merely affirm *Independent* without reason.[106] Other cases citing *Independent* can be grouped into two classes. First, a number of cases cite *Independent* for the principle that all deductions are a matter of legislative grace.[107] The second group cites *Independent* for the proposition that Congress may place any condi-

102. Gross income includes commissions. INT. REV. CODE OF 1954, § 61(a)(1).

103. *See* Balch, *supra* note 1, at 171; Rapp, *supra* note 66, at 368.

104. 292 U.S. 371 (1934). *See* notes 88-93 *supra*.

105. 381 U.S. 233 (1965).

106. Crystal Lake Cemetery Ass'n v. United States, 413 F.2d 617 (8th Cir. 1969); American Nat'l Ins. Co. v. Comm'r, 91 F.2d 705 (5th Cir. 1937); Southland Life Ins. Co. v. Comm'r, 30 B.T.A. 874 (1934).

107. *See, e.g.*, Avery v. Comm'r, 84 F.2d 905 (7th Cir. 1936); Weber Flour Mills Co. v. Comm'r, 82 F.2d 765 (10th Cir. 1936); Miller v. Comm'r, 40 B.T.A. 515 (1939).

tion on deductions.[108] It is therefore submitted that the constitutionality of imputed income is indeed open to question.

The offering of an historical purview of the constitutionality of income in general presented a foundation for the determination of the constitutionality of imputed income. It should be noted that at least one eminent Supreme Court Justice suggests that the constitutional definition of income is truly nebulous and susceptible to the various interpretations of each particular Justice.[109] With this in mind, two constitutional tests (*Macomber* and *Glenshaw*) are suggested. It is proposed that the constitutionality of imputed income depends *strictly* upon whether the income test of *Macomber* or *Glenshaw* is applied.

If the *Macomber* severance test is applied, the reasoning in the dictum of *Independent* could be advanced to show that taxation of imputed income is unconstitutional. However, this has never been done and it is very possible that the Court would consider the taxation of imputed income constitutional. Since *Macomber* was the first case to take a stand on defining income, it derived its test from the facts in that case. The result is that the *Macomber* test is too restrictive, and it is the *Glenshaw* test that was developed to expand *Macomber*.

In employing the *Glenshaw* test, the only issue regarding the constitutionality of the taxation of imputed income is the determination of whether imputed income is an accession to one's wealth. The following two examples are offered in regard to this issue. First, the accession to wealth in the area of imputed rent is the savings accumulated by owning rather than renting a house. This figure is the amount by which the increase in homeowner's equity in the home exceeds the amount that a similar taxpayer is required to pay in rent for such a house. A second example of accession deals with farm consumption. The accession to wealth is the amount that the farmer saves by consuming his own produce rather than purchasing such food at the supermarket. (It is assumed that this amount more than offsets the income the farmer loses in not selling the produce

108. *See, e.g.*, Lamont v. Comm'r, 120 F.2d 996 (5th Cir. 1941); Merchants' Bank Bldg. Co. v. Helvering, 84 F.2d 478 (8th Cir. 1936); Delsanter v. Comm'r, 28 T.C. 845 (1957); Winmill v. Comm'r, 35 B.T.A. 804 (1937).

109. Comm'r v. Glenshaw Glass Co., 348 U.S. 426, 430 (1955) (Black, J., concurring).

Produced by The Berkeley Electronic Press, 1974

Valparaiso University Law Review, Vol. 9, No. 1 [1974], Art. 8

he consumes.) Both of these examples demonstrate that the savings which a taxpayer accumulates by choosing one alternative over the other is actually an accession to the taxpayer's wealth. The taxpayer's accumulated savings, or his accession to wealth, result from imputed income as determined by an expansion of *Glenshaw*. The determination of the above accession to wealth resulting from imputed income is derived from an expansion of the *Glenshaw* test in that the taxpayer receives benefits from owning his own house or producing his own food. It is an expansion because *Glenshaw* has been applied only where there is an increase in income to the taxpayer rather than mere accumulated savings as herein described.

Although it has been proven that from an economic standpoint the taxation of imputed income would produce a better allocation of our national resources,[110] it is not feasible to tax every imputed income item discussed above. Application of a tax as described in the section of this note explaining the concept of imputed income might indeed conflict with current policies of the Internal Revenue Code such as the provisions which promote homeownership. Also, such a tax might be difficult to assess and collect. However, a determination by the Court that the taxation of imputed income is constitutional would be helpful in the area of bargain purchases. This acceptance of the *Glenshaw* reasoning by the courts in the area of bargain purchases should be made so that all further decisions involving bargain purchases will not be based upon the fortuitous choice of either the *Glenshaw* or *Macomber* test. If this is accepted, lower courts will need only look to see if the transaction is a bargain purchase and will not be required to find a fiction that there is a separate taxable entity from which the taxpayer receives compensation. Not only will court decisions become consistent, but taxation of imputed income (at least as to bargain purchases) will be found to be a constitutionally valid and truly representative tax.

---

110. C. McConnell, Economics—Principles, Problems, and Policies 393 (3d ed. 1966).