

STATE OF NEW YORK

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PUBLIC PAPERS  
OF  
CHARLES E. HUGHES  
GOVERNOR

1910

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## SPECIAL MESSAGE

**Submitting to the Legislature Certified Copy of a Resolution of Congress, Entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States."**

STATE OF NEW YORK — EXECUTIVE CHAMBER.

Albany, January 5, 1910.

*To the Legislature:*

I have received from the Secretary of State of the United States a certified copy of a resolution of Congress entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States," and in accordance with his request I submit it to your honorable body for such action as may be had thereon.

The amendment proposed by this joint resolution, adopted by two-thirds of both houses of Congress, is as follows:

"Article XVI. 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 power to lay a tax upon incomes, without apportionment, was long supposed to be possessed by the Federal government and has been repeatedly exercised. Such taxes were laid and paid for the purpose of meeting the exigencies caused by the Civil War.

In 1895, in the case of *Pollock v. Farmers' Loan and Trust Company* (158 U. S. 601), the United States Supreme Court decided that taxes on the rents or income of real estate, and taxes on personal property or on the income of personal property, are direct taxes and hence under the Constitution cannot be imposed without apportionment among the several States according to their respective populations.

It was not the function of the court, and it did not attempt, to decide whether or not a Federal income tax was desirable. It

simply interpreted the Constitution according to the judgment of the majority of its members and left the question of the advisability of conferring such a power upon the Federal government to be determined in the constitutional method.

The limitations so placed upon the Federal taxing power are thus described by Mr. Justice Harlan in his dissenting opinion:

"Any attempt upon the part of Congress to apportion among the States, upon the basis simply of their population, taxation of personal property or of incomes, would tend to arouse such indignation among the freemen of America that it would never be repeated. When, therefore, this court adjudges, as it does now adjudge, that Congress cannot impose a duty or tax upon personal property, or upon income arising either from rents of real estate or from personal property, including invested personal property, bonds, stocks, and investments of all kinds, except by apportioning the sum to be so raised among the States according to population, it practically decides that, without an amendment of the Constitution — two-thirds of both Houses of Congress and three-fourths of the States concurring — such property and incomes can never be made to contribute to the support of the national government. (Id., pp. 671, 2.) \* \* \*

"Incomes arising from trades, employments, callings, and professions can be taxed, under the rule of uniformity or equality, by both the national government and the respective State governments, while incomes from property, bonds, stocks, and investments cannot, under the present decision, be taxed by the national government except under the impracticable rule of apportionment among the States according to population. No sound reason for such a discrimination has been or can be suggested." (Id., p. 680.)

I am in favor of conferring upon the Federal government the power to lay and collect an income tax without apportionment among the States according to population. I believe that this power should be held by the Federal government so as properly to equip it with the means of meeting national exigencies.

But the power to tax incomes should not be granted in such terms as to subject to Federal taxation the incomes derived from bonds issued by the State itself, or those issued by municipal governments organized under the State's authority. To place the borrowing capacity of the State and of its governmental agencies at the mercy of the Federal taxing power would be an impairment of the essential rights of the State which, as its officers, we are bound to defend.

You are called upon to deal with a specific proposal to amend the Constitution, and your action must necessarily be determined not by a general consideration of the propriety of a just Federal income tax, or of giving to the Federal government the power to lay such a tax, but whether or not the particular proposal is of such a character as to warrant your assent.

This proposal is that the Federal government shall have the power to lay and collect taxes on incomes "*from whatever source derived.*"

It is to be borne in mind that this is not a mere statute to be construed in the light of constitutional restrictions, express or implied, but a proposed amendment to the Constitution itself which, if ratified, will be in effect a grant to the Federal government of the power which it defines.

The comprehensive words, "*from whatever source derived,*" if taken in their natural sense, would include not only incomes from ordinary real or personal property, but also incomes derived from State and municipal securities.

It may be urged that the amendment would be limited by construction. But there can be no satisfactory assurance of this. The words in terms are all-inclusive. An amendment to the Constitution of the United States is the most important of political acts, and there should be no amendment expressed in such terms as to afford the opportunity for Federal action in violation of the fundamental conditions of State authority.

I am not now referring to the advantage which the States might derive from the exclusive power to tax incomes from property, or to the argument that for this reason the power to tax such incomes should be withheld from the Federal government. To that argument I do not assent.

In the same case Mr. Justice Field said (Id. on p. 601) :

“ These bonds and securities are as important to the performance of the duties of the State as like bonds and securities of the United States are important to the performance of their duties, and are as exempt from the taxation of the United States as the former are exempt from the taxation of the States.”

And the learned Justice added, quoting from *United States v. Railroad Co.* (17 Wall. on pp. 322, 327) as follows :

“ The right of the States to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court, and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other.”

While the justices of the court in the *Pollock* case differed in opinion upon the question whether a tax upon income from property was a direct tax and as such could not be laid without apportionment, they were unanimous in their conclusion that no Federal tax could be laid upon the income from municipal bonds. Mr. Justice White, who dissented in the *Pollock* case with regard to other questions, as to this said (157 U. S. on p. 652) :

“ The authorities cited in the opinion are decisive of this question. They are relevant to one case and not to the other, because, in the one case, there is full power in the Federal government to tax, the only controversy being whether the tax imposed is direct or indirect; while in the other there is no power whatever in the Federal government, and, therefore, the levy, whether direct or indirect, is beyond the taxing power.”

I am referring to a proposal to authorize a tax which might be laid in fact upon the instrumentalities of State government. In order that a market may be provided for State bonds, and for municipal bonds, and that thus means may be afforded for State and local administration, such securities from time to time are excepted from taxation. In this way lower rates of interest are paid than otherwise would be possible. To permit such securities to be the subject of Federal taxation is to place such limitations upon the borrowing power of the State as to make the performance of the functions of local government a matter of Federal grace.

This has been repeatedly recognized. In the case of *The Collector v. Day* (11 Wall. on p. 127), decided in 1870, the United States Supreme Court said:

“It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?”

In the case of *Pollock v. Farmers' Loan & Trust Co.* (157 U. S. on pp. 584-5), Chief Justice Fuller said, referring to the tax upon incomes from municipal bonds, one of the matters there involved:

“A municipal corporation is the representative of the State and one of the instrumentalities of the State government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. \* \* \* But we think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities.”

It is certainly significant that the words, "*from whatever source derived,*" have been introduced into the proposed amendment as if it were the intention to make it impossible for the claim to be urged that the income from any property, even though it consist of the bonds of the State or of a municipality organized by it, will be removed from the reach of the taxing power of the Federal government.

The immunity from Federal taxation that the State and its instrumentalities of government now enjoy is derived not from any express provision of the Federal Constitution, but from what has been deemed to be necessary implication. Who can say that any such implication with respect to the proposed tax will survive the adoption of this explicit and comprehensive amendment?

We cannot suppose that Congress will not seek to tax incomes derived from securities issued by the State and its municipalities. It has repeatedly endeavored to lay such taxes and its efforts have been defeated only by implied constitutional restriction which this amendment threatens to destroy. While we may desire that the Federal government may be equipped with all necessary national powers in order that it may perform its national function, we must be equally solicitous to secure the essential bases of State government.

I therefore deem it my duty, as Governor of the State, to recommend that this proposed amendment should not be ratified.

(Signed) CHARLES E. HUGHES.

No. 1111

## UNITED STATES OF AMERICA

## Department of State

*To all to whom these presents shall come, Greeting:*

I certify that the copy hereto attached is a true copy of a resolution of Congress, entitled "Joint Resolution Proposing an Amendment to the Constitution of the United States," the original of which is on file in this Department.

IN TESTIMONY WHEREOF, I, P. C. KNOX, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed, and my name to be subscribed by the Chief of the Bureau of Citizenship of the said Department, at the City of Washington, this 27th day of July, 1909.

P. C. KNOX,  
*Secretary of State.*

by R. W. FLOURNOY, JR.,  
*Chief, Bureau of Citizenship.*

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**Sixty-first Congress of the United States of America**

AT THE FIRST SESSION.

Begun and held at the City of Washington on Monday, the fifteenth day of March, one thousand nine hundred and nine.

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**JOINT RESOLUTION**

**Proposing an amendment to the Constitution of the United States.**

RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the



United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

“Article XVI. 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.”

J. G. CANNON,  
*Speaker of the House of Representatives.*

J. S. SHERMAN,  
*Vice-President of the United States and  
President of the Senate.*

Attest:

A. McDOWELL,  
*Clerk of the House of Representatives.*

CHARLES G. BENNETT,  
*Secretary.*

by HENRY H. GILFRY,  
*Chief Clerk.*

I certify that this joint resolution originated in the Senate.

CHARLES G. BENNETT,  
*Secretary.*

by HENRY H. GILFRY,  
*Chief Clerk.*

**Relating to the Gift of Land at Crown Point Comprising  
the Ruins of Fort St. Frederic and Fort Amherst**

STATE OF NEW YORK — EXECUTIVE CHAMBER.

Albany, April 4, 1910.

*To the Legislature:*

It is my privilege to communicate to your honorable body another offer to make an important gift to the State of New York.

Witherbee, Sherman & Company (Incorporated) of Port Henry, propose to convey to the State the tract of land at