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THE VALIDITY OF RETROACTIVE INCOME 'TAX LAWS

In the passage of recent Federal Income Tax laws, it has ordinarily happened that the law was not enacted until a date later than the beginning of the first taxable period under the law.¹ This has regularly occasioned discussion as to the validity of the tax so retrospectively applied, and the enactment of Revenue Act of 1921 will doubtless revive the question.

The Revenue Act of 1918 (enacted Feb. 24, 1919) presented a marked instance of retroactive application, inasmuch as the year 1918, which was the first taxable period under the law, had already been completed almost two months prior to the enactment of the law.

That such retroactivity is lawful has been decided in several cases in the Supreme Court of the United States.²

It will be remembered that during the Civil War period there were a number of Federal Income Tax Acts passed and thereafter in the Act of July 14, 1870, it was provided as follows in Section 17:

“That Sections 120, 121, 122, and 123 of the Act of June 30, 1864, being an Act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes, as amended by the Act of July 13, 1866, and the Act of March 2, 1867, shall be construed to impose the tax therein mentioned to the first day of August, 1870, but after that date no further taxes shall be levied or assessed under said sections; *****”

1. Act of August 5, 1909; Act of October 3, 1913; Act of September 8, 1916; Act of March 3, 1917; Act of October 3, 1917; Act of February 24, 1919.

2. *Tyce Realty Co. v. Anderson*, 240 U. S. 115 (1915); *Flint v. Stone Tracy Co.*, 220 U. S. 107 (1911); *Lynch v. Hornby*, 247 U. S. 339 (1918); *Brady v. Anderson*, 240 Fed. 665 (1917); *Woods v. Lewellyn* 252 Fed. 106 (1918).

This section was under discussion in the case of *Stockdale v. Insurance Companies*,³ and it was claimed in that case that the Act of 1870 could have no retroactive effect.

The Court disposed of this contention with the following paragraph:

“The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, can not be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of the year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a tax of 5 per cent. upon all income of the previous year, although one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it.”

The above quoted paragraph was set out in full by the Court in the case of *Brushaber v. Union Pacific Railroad*⁴ in disposing of the contention that the Revenue Act of 1913 could not apply to the period between March 1, 1913, and the date of enactment.

The extent to which the income tax under the Sixteenth Amendment may be affected by anything prior to March 1, 1913,⁵ is of course a different question and will not be touched upon here.

Interesting applications of the doctrine above stated are found in the case of *Brady v. Anderson*,⁶ where the Act of 1913 was applied to income received by a person who died prior to its passage; and in the case of *United States v. McHatton*,⁷ where the increased rate provided by the Act of 1916 was applied to a corporation which was dissolved before its passage. In the last mentioned case the former stockholders of the corporation, having received its assets, were held liable for the tax.

3. 20 Wallace 323 (1874).

4. 240 U. S. 1 (1916).

5. The Sixteenth Amendment was validated Feb. 25, 1913.

6. 240 Fed. 665 (1917).

7. 266 Fed. 602 (1920).

It should be noted that some States⁸ have provisions in their constitutions prohibiting laws retrospective in their operation, and in such States the Federal cases would not necessarily be controlling.

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8. Constitution of Missouri, Art. 2, Sec. 15.

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