

# FACTS ABOUT THE CORPORATION TAX.

1. Act suggested originally by President Taft, drafted by Attorney General Wickersham, vouched for by Senator Root.

2. Designed "to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country."—President's message June 16, 1909.

3. "No appropriation exists with which to make the returns of corporations a public record."—President Taft to Secretary MacVeagh, Feb. 16, 1910.

4. These provisions are disputed on grounds of Constitutionality:

That every corporation \* \* \* organized for profit and having a capital stock represented by shares \* \* \* shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation \* \* \* equivalent to 1 per cent. upon the entire net income over and above \$5,000 received by it from all sources, &c.

The returns \* \* \* shall constitute public records and be open to inspection as such.

Plea of Stella Flint. (Case pending before United States Circuit Court of Vermont.)

The said provisions of the act \* \* \* are unconstitutional, null and void, and in violation of the Fifth Amendment of the Constitution. \* \* \* The defendant corporation will be deprived of its property without due process of law, and especially in this, that through the publicity of its business the privacy of its affairs will be largely destroyed, that its chief competitor \* \* \* will be able to gain an intimate knowledge of what have hitherto been the private affairs of the defendant corporation and its trade secrets, while no corresponding publicity of the private affairs and trade secrets of the said firm \* \* \* will be required.

## TAX IS CONSTITUTIONAL.

**PRESIDENT TAFT.**—The decision of the Supreme Court in the case of Spreckels \* \* \* seems clearly to establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax on property, and is within the Federal power without apportionment, according to population.

**UNITED STATES SUPREME COURT.**—The contention of the Government is that the tax is not a direct tax, but only an excise imposed by Congress under its power to lay and collect excises which shall be uniform throughout the United States. Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar. It cannot be otherwise regarded because of the fact that the amount of the tax is measured by the amount of gross annual receipts.—Spreckels Sugar Refining Company vs. McClain.

**SENATOR BAILEY.**—I believe that Congress can tax all red-headed men engaged in a given line of business if it pleases. Congress can lay any tax it pleases except any export tax.

## TAX IS NOT CONSTITUTIONAL.

**UNITED STATES SUPREME COURT.**—A State may grant acts of incorporation for the attainment of those objects essential to the interests of society. This power is incident to sovereignty.—Briscoe vs. Bank of Kentucky.

**CHIEF JUSTICE MARSHALL.**—That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create \* \* \* are propositions not to be denied.—McCulloch vs. Maryland.

The National Government cannot exercise its power of taxation so as to destroy the State Governments or embarrass their lawful action.—Railroad Co. vs. Peniston.

**COOLEY'S "CONSTITUTIONAL LIMITATIONS."**—There is nothing in the Constitution which can be made to admit of any interference by Congress with the secure existence of any State authority within its lawful bounds. And any such interference by the indirect means of taxation is quite as much beyond the power of the National Legislature as if the interference were direct and extreme.

**CHARLES W. PIERSON.**—The privilege of being red-headed is not a franchise granted by a sovereign State. The corporation tax invades the right of a State to control franchises it grants.