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Does the Constitution Preclude a Wealth Tax?

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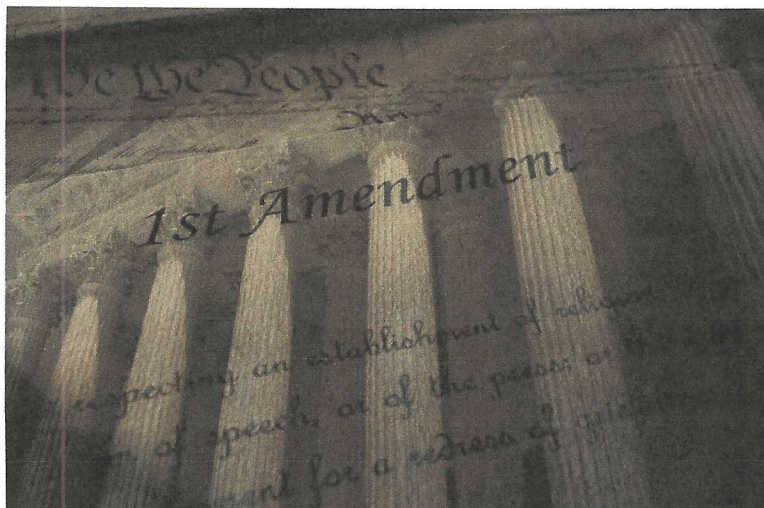


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Unfortunately, it isn't a certainty that courts would rule a wealth tax to be an unconstitutional "direct tax" ("Biden's Big Wealth Tax? Unconstitutional," Review & Outlook, March 11). In 1895 the Supreme Court ruled 5-4 that an 1894 income tax was unconstitutional *only* because it included an unapportioned direct tax on income from real estate. The 16th Amendment simply removed that impediment.

We already tax certain unrealized asset appreciation. Futures contracts and straddles are "marked-to-market" every year-end and taxed. This was upheld by two circuit courts. The Ninth Circuit declared, "Failure to withdraw his gains immediately was little different from a failure to withdraw interest which has been credited to a bank account," refusing to rule on whether "Congress could tax gains inherent in capital assets prior to realization."

Even renouncing citizenship may not help. We also tax unrealized asset appreciation of wealthy individuals seeking to expatriate.

Jay Starkman, C.P.A.

Atlanta

4/11/2023

Your editorial raises the important question of what legal limits exist on the power of Congress to redefine “income” to include accretions in the value of assets. The editorial gives examples of wealth not currently subject to federal tax, such as increases in the market value of a house, stock or painting. Let me offer another example of wealth whose value appreciation shouldn’t come within the constitutional meaning of the term “incomes” in the 16th Amendment. That’s money, such as the U.S. dollar. A rise in the market value of the dollar (relative to other currencies) isn’t itself income to the owner of the dollar. The Constitution gives Congress the power to “coin Money,” but not the power to tax as income a rising market value for the coin.

Prof. Steve Charnovitz

George Washington U. Law School

Washington

I have a subtle suggestion for modernizing the more than 500 systems the Internal Revenue Service has created to keep up with the complexity of the constantly changing tax law (“A Modern IRS? Careful What You Wish For” by Jay Starkman, op-ed, March 8). Simplify the overly complex tax code. The geniuses who have created this complexity over the years need to get on TurboTax and go through its step-by-step interview process, answer every question in the affirmative and ask themselves: Why are we doing all this? A follow-up would be to sit for the tax portion of the C.P.A. exam, but hold them to a passing score of 95 or better.

Tim Graney

Katy, Texas

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