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Article I, Section 8, Clause 1 gives Congress the “Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. Article I, Section 2, Clause 3 states “Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers. Article I, Section 9, Clause 4 states “No Capitation, or other direct, Tax shall be laid, unless in proportion to the Census or Enumeration herein before directed to be taken.

A proposal was first made in Congress during the War of 1812 for a tax on income but it was never implemented. During the War Between the States, Congress passed the Revenue Act of 1861 which levied a flat tax of 3% on annual income above \$800, the equivalent to \$20,441 today. The following year the Revenue Act of 1862 levied a graduated tax of 3–5% on income above \$600 (\$13,798 today). For some reason these acts were never challenged in Court or, if they were, the case didn’t reach the Supreme Court. Although the 1862 Revenue Act expired ten years later, once the federal government got a taste of the kind revenue an income tax can produce it was only a matter of time before the tax reared its ugly head once again. After the war, rising envy and anger over “rich fat cats” resulted in increasing calls for a graduated income tax

An income tax law was finally enacted by Congress in 1894. But the Supreme Court, in *Pollock v. Farmers’ Loan and Trust Co.*, ruled that the taxes it imposed on interest, dividends and rents were, in effect, direct taxes, and had not been apportioned as required by the Constitution. This decision put much of the taxable wealth of the country out of the reach of the Federal Government and eventually led to a move to amend the Constitution.

In 1909, newly-elected President William Howard Taft proposed a 2% federal income tax on corporations as part of a strategy to break up monopolies. He also proposed a constitutional amendment to enable make the tax constitutional. On July 12, 1909, the resolution proposing the Sixteenth Amendment was passed by the Sixty-first Congress and was submitted to the state legislatures for ratification.

At this point in our discussion we need to pause and review some basic facts. Chief Justice William O. Douglas famously stated: “This is a government of laws, not of men....It is not without significance that most of the provisions of the Bill of Rights are procedural. *It is procedure that spells much of the difference between rule by law and rule by whim or caprice.*” (emphasis added)

After Congress proposes a constitutional amendment, the Archivist of the United States, who heads the National Archives and Records Administration (NARA), is charged with administering the ratification process under the provisions of 1 U.S.C. 106b. Neither Article V of the Constitution nor section 106b describe the ratification process in any detail. The Archivist and the Director of the Federal Register follow procedures and customs established by the Secretary of State, who performed these duties until 1950, and then the Administrator of General Services who served in this capacity until NARA assumed responsibility in 1985.

The Archivist submits the proposed amendment to the States. The Governors then formally submit the amendment to their legislatures. When a State ratifies a proposed amendment, it sends the Archivist an original or certified copy of the State action, which is immediately conveyed to the Office of the Federal Register (OFR). The OFR examines ratification documents for facial legal sufficiency and an authenticating signature. If the documents are found to be in good order, the Director of OFR acknowledges receipt and maintains custody of them. The OFR retains these documents until an amendment is adopted or fails, and then transfers the records to the National Archives for preservation. What does "finding the state ratification documents in good order" mean?

In a paper entitled "[*Defects in Ratification of the 16th Amendment*](#)," easily found on the Internet, you will find well-documented claims that many states violated one or more of the following provisions:

- The Amendment was not ratified by the state legislature, but reported as ratified.
- There was missing or incomplete evidence of ratification, but reported as ratified.
- Failure of the Governor or other official to sign, although required by the State Constitution.
- Some other provision of the State Constitution was violated during the ratification process.
- Other procedural irregularities occurred, making ratification doubtful.
- The Amendment was approved, but with changes in wording, spelling, capitalization or punctuation; nevertheless this was accepted as ratification of the original version.
- As with the 14th, at least one state voted to revoke their previous ratification

The author of "Defects" (and others) claim that the requisite ratifications of $\frac{3}{4}$ of the states were never received or were, in some cases, subsequently revoked. Unfortunately, many U.S. citizens have tried to use this ratification "debacle" as justification for not paying their income taxes or even filing a return, some famously so. Wikipedia states that they have uniformly lost in court, although, I'm told some have been successful, which I've not attempted to personally verify. No court has been willing to take the alleged ratification defects under legal review. For more on this issue see "Tax protester Sixteenth Amendment arguments" on Wikipedia.

In the meantime, I hope you got your income tax return in on time.

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