CONGRESSIONAL RECORD:

CONTAINING

THE PROCEEDINGS AND DEBATES

OF THE

SIXTY-FIRST CONGRESS, FIRST SESSION,

ALSO

SPECIAL SESSION OF THE SENATE.

VOLUME XLIV.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1909.
Mr. President, the principle of protection does not demand that this duty be imposed. It is not a languishing industry; it is not an industry that requires a penny of duty to make it profitable and increasingly profitable in the years to come.

While its imposition will tend to destroy secondary industries which depend upon this for its raw material, the increase in the price will also threaten not only a decrease in the quantity consumed, but also the miseries arising from the use of zinc, which is taken from the mines, but the very decadence and destruction of the industry itself. I can hardly understand how those who are interested in zinc ore, who have certainly as probable minds and interests as we who are interested in the United States, the one that has shown the greatest increase in profit, should be coming here to Congress and asking for this absolutely unnecessary duty, which is not only unnecessary to themselves, but hurtful to all the related industries. Mr. President, that this paragraph will be stricken out of the bill, and that the law will be left as it is.

Mr. HEYBURN. Mr. President—The PRESIDING OFFICER. The Chair lays before the Senate a message from the President of the United States, which will be read:

Mr. LODGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The SECRETARY OF THE SENATE. Thirty-one Senators have answered to their names. A quorum of the Senate is present. The Secretary will read the message from the President of the United States.

The Secretary reads as follows:

To the Senate and House of Representatives:

It is the constitutional duty of the President from time to time to recommend to the consideration of Congress such measures as he shall judge necessary and expedient. In my inaugural address, I submitted for your consideration an extraordinary session of Congress, I invited attention to the necessity of revising the tariff at this session, and stated the principles upon which I thought the revision should be effected. I referred to the rapidly increasing deficit and urged upon the House of Representatives the necessity of the framers of the tariff bill to arrange the duties so as to secure an adequate income, and suggested that if it was not possible to do so by import duties, new kinds of taxes might be adopted, and among them I recommended a graduated income tax as a compulsory system of taxation, which is both just and easy of collection. The House of Representatives adopted the suggestion, and provided in the bill it passed for the collection of such a tax. In the Senate the action of the House was referred to the Committee on Finance, and the result was that the Senate, by a majority vote, refused to agree to the provision, and that it may not agree to this provision, and that it is now proposed to make up the deficit by the imposition of a general income tax, in form and substance of almost exactly the same sort, which is in the case of Pollock v. Farmers Loan and Trust Company (157 U.S., 429) was held by the Supreme Court to be a direct tax, and therefore within the power of the Federal Government to impose, unless apportioned among the several States according to population. This new proposal, which I did not discuss in my inaugural address or in my message at the opening of the present session, makes it appropriate for me to state to the Congress certain additional considerations.

The decision of the Supreme Court in the case of the income-tax cases deprived the National Government of a power, which, by reason of previous decisions of the court, it was generally supposed would be given it in the constitutional amendment necessary to grant it a power the National Government ought to have. It might be indispensable to the nation's life in great crises. Although I have not considered a constitutional amendment necessary to give the National Government a power of this sort, I am satisfied that an amendment is the only proper course for its establishment to its full extent. I therefore recommend to the Congress, on behalf of my party, that the two-thirds vote required for an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States shall have proportion to population.

This course is much more preferable to the one proposed of reenacting a law once judicially declared to be unconstitutional. The Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed will simply be suggested to the executive duty of the President, the duty to stop an unconstitutional construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed will simply be suggested to the executive duty of the President, the duty of the President to stop an unconstitutional construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

It is said and said in securing the approval of three-fourths of the States will destroy all chance of adopting the amendment. Of course, no one can speak with certainty on this point, but I have been told that a great majority of the people of this country are in favor of vesting the National Government with power to levy an income tax, and that they will secure the adoption of the amendment in the States, if proposed to them.

Second, the decision in the Pollock case left power in the National Government to levy an excise tax, which accomplishes the same purpose as a corporation income tax and is free from certain objections urged to the proposed income-tax measure.

I therefore recommend an amendment to the tariff bill imposing on all corporations and joint stock companies for profit, except national banks, and all other associations, an excise tax measured by 2 per cent on the net income of such corporations. This is an excise tax upon the profits of doing business, and it is the natural and proper duty of the National Government to levy an excise tax upon every corporation that has its seat of business and of freedom from a general partnership liability enjoyed by those who own the stock.

I am informed that a 2 per cent tax of this character would bring into the Treasury of the United States net less than $25,000,000.

The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain (192 U.S., 397) seems clear 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. The tax on net income is preferable to a proportion to a per capita a tax on all individuals, and all the evils which have accompanied the tax on amount of each individual income, and of freedom from a general partnership liability enjoyed by those who own the stock.

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The President. The Senate, I think, is mistaken in that. The suggestion was made that it should be referred to the Committee on Finance.

President. By whom?

Mr. ALDRICH. By the Chair.

Mr. TILLMAN. But the Chair cannot make a motion.

Mr. ALDRICH. That is the motion.

Mr. MCNEY. I rise to a parliamentary inquiry.

The Presiding Officer. The Senator from Mississippi.

Mr. ALDRICH. It goes there under the rule.

Mr. TILLMAN. But there is no motion.

Mr. MCNEY. I understand that the Senator from Oklahoma had the floor to make a motion. He had a right to move, and he was right to say what he pleased upon that subject; and who could take him off the floor by a motion to table? He had the floor. The motion to refer is not privileged. You cannot take a Senator off the floor who has it by the recognition of the Chairman.

Mr. HEYBURN. He had it by unanimous consent.

Mr. MCNEY. Not by unanimous consent, but by the recognition of the Chair. You were on the floor for something else, as you stated yourself, and the Chair ruled you were not in order or did not have the floor because the matter of reference had not been concluded. The Chair then recognized the Senator from Oklahoma, who proceeded in his own right to make a motion to refer with instructions, and he has the right to say what he pleases upon that subject, and cannot be taken off the floor by any other Senator who wants to make a motion to table.

Mr. ALDRICH. The Senator from Oklahoma had his time, and I was recognized in due course by the presiding officer and made the motion.

Mr. HEYBURN. Mr. MCNEY. I did not know that was the fact. I thought the Senator from Oklahoma was standing all the time.

Mr. ALDRICH. Oh, no.

Mr. MCNEY (continuing). And waiting an opportunity to continue what he had to say. Of course if he had taken his seat and abandoned the floor, that is another question.

Mr. HEYBURN. I yielded the floor for a purpose that was expressed and limited. I had the floor before the message came into the Senate.

Mr. MCNEY. I know you had.

Mr. HEYBURN. I yielded for the purpose of receiving it. I did not yield for the purpose of considering the question. I never sent it to the Senate by the Chair, or to any committee, or to any person. I had the floor, and all that has intervened since the reading of the message was concluded has been under a waiver on my part, as a matter of courtesy. I was proceeding to speak upon the question under consideration, which is not the message.

Mr. TILLMAN. The Chair has already ruled, as I understand, against the position of the Senator from Idaho; but whether he has or not, he certainly will rule that way when his attention is called to it, because having the message here, the Senator can not resume the floor upon another question, and thus interrupt the proper reference of that message. He has no right to the floor until that is disposed of.

Mr. HEYBURN. The disposition of a message is not privileged. The receiving of a message is. I yielded to privileged business. I had not yielded to the question of the disposition of this message. That might involve a week’s discussion; and having had the floor, I am entitled to retain it. I may yield