

NVCCA ISSUE BRIEF #09:

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HISTORICAL EVIDENCE OF CONGRESS EXERCISING ITS EMERGENCY POWER  
OF DIRECT TAXATION TO EXTINGUISH YEAR END DEFICITS

Congress has it completely within its power to balance the federal budget each and every year. The problem is, if they did that, individual members of Congress would be held accountable by the people of the states who sent them, and the legislatures thereof. Our researchers dusted off the history books to prove, once and for all, achieving a **PLANNED** balanced budget was **NOT** what the Constitution's framers had in mind. They built into the Constitution provisions to enable the budget to be balanced EACH YEAR.

The following excerpts, each taken from different state documents ratifying the United States Constitution, and other sources, verifies that if Congress does not raise sufficient revenue from its normal taxing power to meet the public Exigencies (needs), then Congress is required, and has the ability, to balance the budget, by the imposition of a direct tax on the States, following the rule of apportionment [the agreed upon formula by which each state contributes its fair share]. . . in so doing, a balanced budget is achieved!

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF NEW YORK:**

And that the Congress will not lay direct Taxes within this State, but when the Monies arising from the Impost and Excise shall be insufficient for the public Exigencies, nor then, until Congress shall first have made a Requisition upon this State to assess levy and pay the Amount of such Requisition made agreeably to the Census fixed in the said Constitution in such way and manner as the Legislature of this State shall judge best, but that in such case, if the State shall neglect or refuse to pay its proportion pursuant to such Requisition, then the Congress may assess and levy this States proportion together with Interest at the Rate of six per Centum per Annum from the time at which the same was required to be paid.

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF NEW HAMPSHIRE:**

Fourthly That Congress do not lay direct Taxes but when the money arising from Impost, Excise and their other resources are insufficient for the Public Exigencies; nor then, Congress

shall have first made a Requisition upon the States, to Assess, Levy, & pay their respective proportions, of such requisitions agreeably to the Census fixed in the said Constitution in such way & manner as the Legislature of the State shall think best and in such Case if any State shall neglect, then Congress may Assess & Levy such States proportion together with the Interest thereon at the rate of six per Cent per Annum from the Time of payment prescribed in such requisition--

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF SOUTH CAROLINA:**

Resolved that the general Government of the United States ought never to impose direct taxes, but where the monies arising from the duties, imposts and excise are insufficient for the public exigencies nor then until Congress shall have made a requisition upon the states to Assess levy and pay their respective proportions of such requisitions. And in case any state shall neglect or refuse to pay its proportion pursuant to such requisition then Congress may assess and levy such state's proportion together with Interest thereon at the rate of six per centum per annum from the time of payment prescribed by such requisition--

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF MASSACHUSETTS:**

Fourthly, That Congress do not lay direct Taxes but when the Monies arising from the Impost & Excise are insufficient for the public exigencies nor then until Congress shall have first made a requisition upon the States to assess levy & pay their respective proportions of such Requisition agreeably to the Census fixed in the said Constitution; in such way & manner as the Legislature of the States shall think best, & in such case if any State shall neglect or refuse to pay its proportion pursuant to such requisition then Congress may assess & levy such State's proportion together with interest thereon at the rate of Six per cent per annum from the time of payment prescribed in such requisition.

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF RHODE ISLAND:**

8th. In cases of direct taxes, Congress shall first make requisitions on the several states to assess, levy and pay their respective proportions of such requisitions, in such way and manner, as the legislatures of the several states shall judge best; and in case any state shall neglect or refuse to pay its proportion pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest at the rate of six per cent. per annum, from the time prescribed in such requisition.

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF NORTH CAROLINA:**

III. When Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such State, according to the census herein directed, which is proposed to be thereby raised: And if the legislature of any state shall pass a law, which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.

**FROM THE RATIFICATION DOCUMENT OF THE STATE OF VIRGINIA:**

Third, When Congress shall lay direct taxes or excises, they shall immediately inform the Executive power of each State of the quota of such state according to the Census herein directed, which is proposed to be thereby raised; And if the Legislature of any State shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected, in such State.

(THE ABOVE CLEARLY SHOWS HOW THE DIRECT TAX IS TO BE LAID, AND MORE IMPORTANTLY WHEN IT IS TO BE LAID.)

**FOLLOWING IS PART OF A UNITED STATES TREASURY REPORT TO CONGRESS IN THE PREPARATION OF THE FIRST DIRECT TAX, AND SHOWS THE FAIR SHARE TOTAL OF EACH STATE AS PRESCRIBED BY THE UNITED STATES CONSTITUTION.**

5th Congress.] No. 135. [2d Session.

APPORTIONMENT OF DIRECT TAXES. COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, MAY 25, 1798. TREASURY DEPARTMENT, May 25, 1798.

Sir:

Having been requested to exhibit a calculation of the quotas of the respective States, in a tax of two millions of dollars, proportioned to the number of free white persons, and three-fifths of the number of slaves, as ascertained by the census; also my opinion of what would be a proper rule for apportioning to individuals the proposed tax on lands, houses, and slaves, I respectfully submit the following results and observations:

The enumeration, or census, by which the tax must be apportioned, was taken with reference to the first Monday of August, 1790, when a number of persons in the United States was as follows:

Free white males of sixteen years and upwards, including heads of families, --	813,365
Free white males under sixteen years, --	802,127
Free white females, including heads of families, --	1,556,682
Other free persons, exclusive of Indians, --	59,511
Total number of free persons excluding Indians, 3,231,631	
Slaves 697,697,	
of which number three-fifths parts are taken, or, 418,619	
Total, or representative number, --	3,650,250

The following are the quotas of the respective States, in a tax of two millions of dollars, calculated according to their relative

numbers of free persons, exclusive of Indians, and including three-fifths of the number of slaves, to wit::

The quota of

New Hampshire,	\$77,705	36.2	
Massachusetts,	260,435	31.2	
Rhode Island,	37,502	8.0	
Connecticut,	129,676	00.2	
Vermont,	46,864		18.7
New York,	181,680	70.7	
New Jersey,	98,378		25.3
Pennsylvania,	237,177	72.7	
Delaware,	30,430		79.2
Maryland,	152,599	95.4	
Virginia,	345,488	66.5	
Kentucky,	37,643		99.7
North Carolina,	193,697	96.5	
Tennessee,	18,806		38.3
South Carolina,	112,997		73.9
Georgia,	38,814		87.5

Total of the proposed tax, \$2,000,000.00

( HAS THIS POWER EVER BEEN USED? **THERE IT IS!**)

THIS IS AN ACT BY THE VIRGINIA GENERAL ASSEMBLY TO RAISE AND PAY ITS APPORTIONED SHARE OF THE DIRECT TAX LAID BY CONGRESS TO PAY THE COSTS OF THE WAR OF 1812 (THE 2ND DIRECT TAX LAID BY CONGRESS).

CHAPTER XI

An Act to provide for the payment of that part of the Direct Tax of the United States, which is apportioned to the Commonwealth of Virginia, and for other purposes. [Passed January 24, 1815.]

Virginia's quota of the Direct Tax assumed, to be paid by a discount of the existing and future accounts of this State against the United States.

1. Be it enacted by the General Assembly, That so much of the Direct Tax of the United States, as is or may be, during the present session of Congress, imposed on and apportioned to the Commonwealth of Virginia, shall be, and the same is hereby assumed, to be paid in such manner, and at such period, as is or may be prescribed and allowed by a law of Congress provided, the Executive of this State be able to effect the discharge and payment of the said assumed quota by a discount of the existing or future accounts of this State against the government of the United States.

Said accounts to be adjusted by the Executive for the purpose of effecting such discount. If this be impracticable, the Executive may receive, in discharge of the same. Treasury notes of certificates of stock.

2. And be it further enacted, That the Executive be, and they are hereby empowered and requested, finally to settle the existing or future claims and accounts of this Commonwealth, upon the government of the United States, for the purpose of discounting and setting off the whole or a part of the sum, which may be ascertained to be due this State against the quota of the aforesaid Direct Tax: and, should this be impracticable, to receive, in discharge of the same, Treasury notes or certificates of Stock of the United States,

Communication to be made to the Government of the U. States, upon this subject.

3. And be it further enacted, That the Executive be requested forthwith to communicate with the government of the United States, upon this subject, and use their efforts to carry this Act into effect.

Commencement

4. This Act shall be in force from and after the passage thereof.

**THIS IS AN ACT BY THE KENTUCKY GENERAL ASSEMBLY TO RAISE AND PAY ITS APPORTIONED SHARE OF THE DIRECT TAX LAID BY CONGRESS TO PAY THE COSTS OF THE WAR OF 1812 (THE 2ND DIRECT TAX LAID BY CONGRESS).**

CHAP. XCVII.

AN ACT to provide for the payment of this state's quota of the direct tax.

Approved, December 21, 1813.

Preamble.

WHEREAS by a law of the Congress of the U.S. entitled an act to lay and collect a direct tax, within the United States, passed the second day of August, one thousand eight hundred and thirteen, it is enacted, that the quota thereof for the state of Kentucky, should be one hundred and sixty-eight thousand nine hundred and twenty-eight dollars, seventy-six cents. By the seventh section of the said act it is provided, "that each state may pay its quota into the treasury of the United States, and thereon be entitled to a deduction of fifteen per centum, if paid before the tenth day of February next:" And whereas it is deemed expedient that this state should accede to the proposition, upon the terms aforesaid: Therefore,

The treasurer authorized to borrow 100,000 dols. at 6 per cent.

Sec. 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, That for the purposes aforesaid, the treasurer of this state, by and with the advice and direction of the governor, be empowered to borrow, on the credit of the state, the sum of one hundred thousand dollars; or such part thereof, as the governor may hereafter deem necessary, at an interest not exceeding six per centum per annum:

How to be repaid.

And for the purpose of reimbursing the money loaned to the state under the provisions of this act, an equal tax, according to the real value of each respective article, shall be assessed and laid, on the real value of all lands and lots of ground, with their improvements, dwelling houses, slaves, and every other species of property now subject to taxation by the revenue laws of this state.

Taxes, & c. pledged for the re-payment of the loan. To be paid within 6 yrs.

Sec. 2. Be it further enacted, That a sufficient portion of the taxes and other income arising from the state's fund in the bank of Kentucky, be, and the same is hereby pledged for the payment of said loan, and the interest arising thereon: and the said loan shall be paid and discharged within six years, or such shorter period, from the time of obtaining the same, in such payments as the governor of the state shall direct.

\$45,000 to be drawn out of the treasury.

Sec. 3. Be it further enacted, That the sum of forty-five thousand dollars be, and the same is hereby appropriated out of the public treasury; which, together with the money directed to be borrowed as above, shall be, and is hereby applied, to the payment of the said quota; and the treasurer is hereby authorized and required to pay the same into the treasury of the United States, in discharge of the quota aforesaid, on or before the tenth day of February next: And the treasurer, under the direction of the governor, is further required to give notice to the secretary of the treasury of the United States, of the intention hereby manifested, to pay such quota before the tenth day of January next.

Bank of Kentucky and its branches authorized to loan the state money for a longer period than 60 days.

the treasurer,

Sec. 4. Be it further enacted, That the bank of Kentucky, or any of its branches, may, in the discretion of its president and directors, loan to the treasurer, for the use of the state as aforesaid, any sum of money, for any period of time longer than sixty days.

Governor authorized to appropriate money not otherwise appropriated, to carry this

Sec. 5. Be it further enacted, by the authority aforesaid, That the governor, for the time being, and his successors, be, and he is here authorized and empowered, from time to time, within the six years aforesaid, to draw any surplus money which may be in the public treasury, and not otherwise appropriated by law, to effect the same purposes of this act; and that he draw the same at such times, and in such sums as he

act into effect.

may deem most expedient.

**THIS IS A PAGE FROM THE CONGRESSIONAL GLOBE (1861) SHOWING EACH STATES' FAIR SHARE OF THE DIRECT TAX LAID DURING THE CIVIL WAR, IT ALSO VERIFIES THAT REPRESENTATION WITH PROPORTIONAL FINANCIAL OBLIGATION ARE "TWO FUNDAMENTALS IN REPUBLICAN GOVERNMENT", WHICH THE UNITED STATES GOVERNMENT IS REQUIRED TO GUARANTEE TO EVERY STATE [SEE ART. 4, SECT. 4, U.S. CONST.]**

Mr. SUMMER. I should like to remind the Senator ---

Mr. DOOLITTLE, With all courtesy to my honorable friend I must decline to give way, because I desire not to have the argument which I am making broken in upon. ... (approximately 8 paragraphs skipped at this point)

"The Constitution says:

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective number.

Under that authority, Congress, after the passage of the Collamer statue, did both--apportioned both direct taxes and Representatives among the several States, including the southern as well as the northern and western States of this Union. I read from the eighth section of this act of August, 1861:

"And be it further enacted, That, a direct tax of \$20,000,000 be, and is hereby, annually laid upon the United States, and the same shall be, and is hereby, apportioned to the States respectively, and in manner following:

To the State of Maine.....	\$428,826 00
To the State of New Hampshire.....	218,462 66
To the State of Vermont.....	211,068 00
To the State of Massachusetts.....	824,581 33
To the State of Rhode Island.....	116,963 66
To the State of Connecticut.....	308,214 00
To the State of New York.....	2,608,918 66
To the State of New Jersey.....	450,134 00
To the State of Pennsylvania.....	1,946,719 33
To the State of Delaware.....	74,683 33
To the State of Maryland.....	436,823 33
To the State of Virginia.....	937,550 66
To the State of North Carolina.....	576,194 66
To the State of South Carolina.....	363,570 66
To the State of Georgia.....	584,367 33
To the State of Alabama.....	529,313 33
To the State of Mississippi.....	413,084 66
To the State of Louisiana.....	385,886 66
To the State of Ohio.....	1,567,089 33
To the State of Kentucky.....	713,695 33
To the State of Tennessee.....	669,498 00
To the State of Indiana.....	904,875 33
To the State of Illinois.....	1,146,551 33
To the State of Missouri.....	761,127 33
To the State of Kansas.....	71,743 33
To the State of Arkansas.....	261,886 00
To the State of Michigan.....	501,763 33
To the State of Florida.....	77,522 66
To the State of Texas.....	355,106 66
To the State of Iowa.....	452,088 00
To the State of Wisconsin.....	519,688 66
To the State of California.....	254,538 66
To the State of Minnesota.....	108,524 00
To the State of Oregon.....	35,140 66

Sir, the question I put in the beginning, where are those eleven States? is answered here by Congress; I find them all "included within this Union," to use the language of the Constitution, for the purpose, of direct taxation. Every one of those eleven are found there and are taxed by name as States within the Union. Virginia as well as New York; Arkansas by the side of Michigan; Florida and Texas, by the side of Iowa and Wisconsin. Direct taxes and representation go together.

Has Congress spoken upon the subject of representation? Most certainly. By an act approved the 4th of March, 1862, which by its terms was not to take effect till March 4, 1863, Congress apportioned the Representatives upon the basis that those eleven southern States were still States in the Union, with their right to representation unimpaired. By that act, modifying former acts, Congress apportioned Representatives to the several States in this Union as follows:

To Alabama.....	7
To Arkansas.....	2
To California.....	3
To Connecticut.....	4
To Delaware.....	1
To Florida.....	1
To Georgia.....	7
To Illinois.....	13
To Indiana.....	11
To Iowa.....	6
To Kansas.....	1
To Kentucky.....	9

To Louisiana.....	4
To Maine.....	5
To Maryland.....	5
To Massachusetts.....	10
To Michigan.....	6
To Minnesota.....	2
To Mississippi.....	5
To Missouri.....	9
To Nevada.....	1
To New Hampshire.....	3
To New Jersey.....	5
To New York.....	31
To North Carolina.....	8
To Ohio.....	19
To Oregon.....	1
To Pennsylvania.....	24
To Rhode Island.....	2
To South Carolina.....	6
To Tennessee.....	8
To Texas.....	2
To Vermont.....	3
To Virginia.....	8
To West Virginia.....	3
To Wisconsin.....	6

of those whose constituents were intentionally not subjected to any part of the burden, the qualified grant was made . . .

(The preceding file is available from the "Position Papers" Division of LEADERS World Wide Web site, under the heading "History.SRT)

Can we now see the unwisdom of the "Flat Tax," the "National Sales Tax," and etc.? The budget need not be balanced by the working class, the under class, the upper class . . . It needs to be balanced by the CONGRESS CLASS -- with accountability in the YEAR THE MONEY IS SPENT. Editor.

That law is still in force. Under that law the present House of Representatives was chosen; under that law the present House is organized; under that law those eleven States of the South, have just as much right to representation as the other twenty-five.

Whether those States are in a condition to choose Representatives, and whether they have chosen right Representatives, are questions I will discuss hereafter. I now speak only of their right to have representation under the existing law of Congress.

Thus, by the action of Congress, in apportioning direct taxes and representation--those two fundamentals in republican government--the status of those eleven States as States included within this Union is declared, and acted upon.

**THE FOLLOWING IS PART OF A COURT CASE  
IN WHICH THE JUDGE COMMENTS ON THE  
STATE OF MARYLAND PAYING ITS  
APPORTIONED SHARE [\$436,823.33], OF THE  
DIRECT TAX LAID DURING THE CIVIL WAR.**

JANUARY TERM, 1893.  
MARYLAND REPORTS

Wailes vs. Smith, Comptroller

SIDNEY I. WAILES vs. MARION DE KALB SMITH, Comptroller of the Treasury of the State of Maryland. ROBINSON J., delivered the opinion of the Court.

This case has been very fully argued, and the interests involved are of more than ordinary importance. At the same time, however, it does not seem to us that any great difficulties present themselves in the consideration of the several questions upon which the petitioner's right to a mandamus depends. Now, what is this case? [By an Act of Congress, approved 5th August, 1861, a direct tax of twenty millions of dollars was levied upon real property, and this tax was apportioned as prescribed by the Federal Constitution--the apportionment of this State being \$436,823.33. Provision was made for the assessment and collection of this tax against the individual owners of such property, but any State was allowed to assume and pay its quota of said tax; and under this provision the State of Maryland assumed and paid into the Treasury of the United States \$371,299.83, being its apportionment, less fifteen percent allowed by the Act for the cost of collection. And thus the tax against the property of her citizens was thereby satisfied and extinguished.] (Brackets supplied).

Thirty years afterwards, by an Act of Congress, approved 2nd March, 1891, entitled "Ac Act to audit and pay to the several states and Territories and the District of Columbia, all moneys collected under the direct tax levied by the Act of 1861," the \$371,299.83 thus paid was refunded to the State.

One year after the Wailes case was argued in the State of Maryland, another case involving direct taxation went to the United States Supreme Court, Pollock v Farmer's Loan and Trust Company, 158 U.S. 601 (1894) A portion of Justice Fuller's written opinion is presented here which articulates, in a nutshell, the legislative intent of our founding fathers, as related to direct taxation.

"The reasons for the clauses of the Constitution in respect of direct taxation are not far to seek . . . The founders anticipated that the expenditures of the States, their counties, cities and towns would chiefly be met by direct taxation on accumulated property, while they expected that those of Federal Government would be for the most part met by indirect taxes. And in order that the power of direct taxation by the general government should not be exercised except on necessity, and, when the necessity arose, would be so exercised as to leave the States at liberty to discharge their respective obligations, and should not be so exercised unfairly and discriminately, as to particular States or otherwise, by a mere majority vote, possibly