Chapter 2:
Status and Jurisdiction

Understanding the status of the parties to the Brushaber case is essential to understanding both the outcome, and the Treasury Decision which followed soon after the U.S. Supreme Court's landmark ruling in the case. Frank R. Brushaber filed his original Bill of Complaint on March 13, 1914, within a year after Philander C. Knox declared the 16th Amendment to be the supreme Law of the Land. Addressing the judges of the District Court of the United States ("DCUS") for the Southern District of New York, Brushaber began his complaint as follows:

> Frank R. Brushaber, **a citizen of the State of New York and a resident of the Borough of Brooklyn, in the City of New York**, brings this his bill against Union Pacific Railroad Company, a corporation and citizen of the State of Utah, having its executive office and a place of business in the Borough of Manhattan, in the City of New York, and the Southern District of New York, in his own behalf and on behalf of any and all of the stockholders of the defendant Union Pacific Railroad Company who may join in the prosecution and contribute to the expenses of this suit.
>
> [emphasis added]

Right from the beginning, Frank Brushaber made an important statement of fact which remained unchallenged at every level in the federal courts. He identified himself as a citizen of the State of New York and a resident of the Borough of Brooklyn, in the City of New York. He did not identify himself as a "citizen of the United States**", as a "United States** citizen" or as a "resident of the United States**". He indicated that he lived and worked in New York State, outside the District of Columbia and outside any territory, possession or enclave governed by the Congress of the United States**. "Enclaves" are areas within the 50 States which are "ceded" to Congress by the acts of State Legislatures (*e.g.* military bases).

The federal government concluded that Brushaber, under the law, was a "nonresident alien". He was "nonresident" because he lived and worked *outside* the areas of land over which the Congress has exclusive jurisdiction. The authority to have exclusive jurisdiction over this land was granted to Congress by the authorities at Article 1, Section 8, Clause 17 ("1:8:17"), and Article 4, Section 3, Clause 2 ("4:3:2"), in the U.S. Constitution. In this book, we will often refer to these areas of land as "the federal zone".

Brushaber was an "alien" because his statement of citizenship was taken as proof that he was not a citizen of the federal zone. He was not a "citizen of the United States**" nor a "United States** citizen", either through birth or naturalization, because the term "United States**" in this context means *only* the federal zone. Therefore, he was alien *with respect to* the District of Columbia and the federal enclaves, territories and possessions over which the Congress has exclusive legislative jurisdiction. This may sound strange to the casual reader, but the Code is not referring to creatures from outer space. The Code is referring to the creation of well paid lawyers.

Right from the beginning, Frank Brushaber also made an important error which contributed to his ultimate downfall in the case. He identified his opposition as a corporation chartered by the State of Utah:

> Your orator further shows that the defendant Union Pacific Railroad Company is, and at all the times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Utah, and a citizen of the State of Utah ....
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> [from original Bill of Complaint, filed March 13, 1914]

This was incorrect. The Union Pacific Railroad Company was originally created in the year 1862 by an Act of Congress. The stated purpose of the corporation was to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean (from the "Union" to the "Pacific"). This Act was passed on July 1, 1862, by the Thirty-Seventh Congress, Second Session, as recorded in the Statutes at Large, (December 5, 1859, to March 3, 1863, at Chapter CXX, page 489). At that time, Utah had not yet been admitted as a State of the Union. It was still a territory, *i.e.*, a "federal state", over which the Congress had exclusive legislative jurisdiction.

Being a creation of Congress, the Union Pacific Railroad Company was found to be a "domestic" corporation under the law. This is another term which is very confusing to the casual reader. In common, everyday language, the term "domestic" is often used to mean "inside the country". For example, airports are divided into different areas for domestic and foreign flights, in order to allow Customs agents to inspect the baggage and passports of passengers arriving on flights from foreign countries. However, under federal tax law, the term "domestic" does not mean "inside the country"; it means "inside the federal zone" which is an area that is much smaller than the whole country. Accordingly, a "foreign" corporation is a corporation chartered by a government that is "outside the federal zone".

The federal zone consists of the enclaves, territories and possessions over which the Congress of the United States** has exclusive legislative jurisdiction. California is outside of the federal zone, for example, and corporations which are chartered in the State of California are foreign corporations *with respect to* the federal zone. Similarly, corporations chartered in France are likewise foreign corporations *with respect to* the federal zone. It is simple, once you understand the proper legal definitions of the terms "foreign" and "domestic" in the federal tax Code.

The status of the two parties in the Brushaber case can, therefore, be summarized as follows:

1. State Citizen Frank R. Brushaber was identified by evidence in his court documents as a **nonresident alien**, as that term is now defined in the Internal Revenue Code.

2. The Union Pacific Railroad Company was identified by court documents as a **domestic corporation**, as that term is now defined in the Internal Revenue Code.

Government Propaganda

The federal government has tried to confuse the implications of Frank Brushaber's status by asserting that he was a French immigrant. This is government propaganda, pure and simple. This propaganda is designed to *make* us *believe* that Brushaber was found to be an alien because he was born in France, *not because* he declared himself to be a "citizen of the State of New York". Accordingly, the federal officials responsible for this propaganda are trying in vain to convince everyone that the 50 States are inside the federal zone, because they want us to conclude that Frank Brushaber would have been a "U.S.** resident" if he resided in New York, or a "U.S.** citizen" if he had been born in New York. It is fairly easy (and fun) to defeat this propaganda, because it is only *make believe*.

First of all, Frank Brushaber declared himself to be a "resident of the Borough of Brooklyn, in the City of New York". If New York State were inside the federal zone, and if Frank Brushaber had been born in France, he most certainly would have been an "alien", but a "resident" alien according to the government's own immigration rules. After the U.S. Supreme Court's decision, the Treasury Department published a crucial Treasury Decision (T.D. 2313) which clearly identified Frank Brushaber as a nonresident alien (see page 2-4 below, and also Appendix C).

Secondly, regardless of whether federal officials place New York State inside or outside the federal zone, their French immigrant theory would place Frank Brushaber in the category of an alien who was lawfully admitted for permanent "residence". Congress does have legislative jurisdiction over immigration and naturalization. Being lawfully admitted for permanent residence is also called the "green card test" (see next chapter). Again, the government's own rules and regulations would have designated Frank Brushaber as a "resident" alien. As we know, the Treasury Department identified him as a nonresident alien. A native of France would be a nonresident alien if he resided in France; he would be a resident alien if he lawfully immigrated to America under rules established by Congress. But, no "green card" was in evidence to prove that Brushaber was an immigrant, and current "green cards" exhibit the words RESIDENT ALIEN in bold letters.

Thirdly, if Frank Brushaber had been a French immigrant who applied for, and was granted U.S.** citizenship, quite obviously he would have become a naturalized U.S.** citizen, no longer an alien. Again, Congress does have jurisdiction over immigration and naturalization. The government's own rules and regulations would have designated Frank Brushaber as a U.S.** citizen.

Finally, Frank Brushaber identified himself as a "citizen of the State of New York". Although a native of France would also be an "alien" with respect to the federal zone, this is not how Frank Brushaber identified himself to the federal courts. He identified himself as a "citizen of the State of New York". On the basis of this status as presented to the federal courts, the U.S. Treasury Department thereafter concluded that he was a nonresident alien, not a U.S.** citizen and not a U.S.** resident. **To argue that he was a French immigrant is to assume facts that were not in evidence**. The government arrived at their conclusion on the basis of facts that *were* in evidence. Author and scholar Lori Jacques addresses the French immigrant theory as follows:

> ... [I]t appears that **a state citizen was identified as a nonresident alien and taxed upon his unearned income deriving from a domestic corporation**. This conclusion is possible because there would be no question that a person who, for example, was born and domiciled in France and who owned shares in Union Pacific Railway [*sic*] Co. would be taxed as a nonresident alien. Only Mr. Brushaber, citizen of New York State and stockholder, was considered in the case decided by the Supreme Court, thus **there was no basis for the Secretary extending the decision to those not parties to the action**.
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> [A Ticket to Liberty, November 1990 edition, page 40]
> [emphasis added]

In the final analysis, it doesn't really matter whether Frank Brushaber was a French immigrant or not. The U.S. Treasury Department agreed that any person *claiming* to be citizen and resident of New York was a nonresident alien *with respect to* the federal zone. This is all we need to know about the plaintiff's status. **It is essential to understand that it was federal government officials who determined Frank Brushaber was a nonresident alien for purposes of imposing a federal tax on his dividends. Brushaber did not come into federal court claiming that he was a nonresident alien; he did come into court claiming that he was a New York State Citizen and a resident of Brooklyn.** Now you see why the French immigrant theory is really just propaganda. Treasury Decision 2313 is the proof. In later chapters, the motive for this propaganda will become crystal clear.

Treasury Decision 2313

Soon after the Brushaber decision, and as a direct result of that decision, the Office of the Commissioner of Internal Revenue published Treasury Decision ("T.D.") 2313 to clarify the meaning and consequences of the Supreme Court's ruling. Volume 18 of the Treasury Decisions was published for the period of January to December of 1916 by Secretary of the Treasury W. G. McAdoo. Treasury Decision 2313 was written to clarify the "... taxability of interest from bonds and dividends on stock of domestic corporations owned by nonresident aliens, and the liabilities of nonresident aliens under section 2 of the act of October 3, 1913."

Frank Brushaber had purchased stock in the Union Pacific Railroad Company. He was then paid a dividend on this stock. The Union Pacific Railroad Company acted as a "withholding agent" and withheld a portion of his dividend to pay the federal income tax that was owed on that dividend. The term "withholding agent" still has the same meaning in the current Internal Revenue Code. Although he was legally a nonresident alien, Frank Brushaber received income from a source that was inside, or "within" the federal zone. The "source" of his income was a "domestic" corporation, because that corporation had been chartered by Congress and not by the State of Utah.

The net result of his defeat in the Supreme Court was to render as taxable the income from bond interest and stock dividends issued by domestic corporations to nonresident aliens like Frank Brushaber. A key paragraph from Treasury Decision 2313 is the following:

> Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway Co. [*sic*], decided January 24, 1916, it is hereby held that **income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax** imposed by the act of October 3, 1913.
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> [emphasis added]

Because Brushaber's income originated from a source "inside" or "within" the United States**, where "United States**" means the federal zone, the income was taxable. The "source" was the Union Pacific Railroad Company, the issuer of the stock and the payor of dividends. (The T.D. failed to spell the corporation's name correctly.) The federal tax law then, as now, designates such a dividend payor as the "withholding agent":

> **The normal tax shall be withheld** at the source from income accrued to nonresident aliens from corporate obligations and shall be returned and paid to the Government **by debtor corporations and withholding agents as in the case of citizens and resident aliens** ....
>
> [emphasis added]

This "withholding agent" must withhold a certain amount from the dividend, to cover the federal tax liability of the recipient. The amount withheld is paid to the federal government. T.D. 2313 then went on to explain the use of Form 1040 in this situation:

> **The liability**, under the provisions of the law, to render personal returns ... of annual net income accrued to them from sources within the United States** during the preceding calendar year, **attaches to nonresident aliens as in the case of returns required from citizens and resident aliens**. Therefore, a return on Form 1040, revised, is required except in cases where the total tax liability has been or is to be satisfied at the source by withholding or has been or is to be satisfied by personal return on Form 1040, revised, rendered in their behalf.
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> [emphasis added]

For those of you who are interested, the complete text of Treasury Decision 2313 can be found in Appendix C of this book.

Summary

The dual issues of status and jurisdiction are closely intertwined. The federal government has a limited area over which it exercises exclusive legislative jurisdiction, an area we have called "the federal zone". Congress is not limited by the constitutional restrictions on direct and indirect taxation within the federal zone. The birth and residency status of natural persons situate them either inside or outside that jurisdiction. Citizens who were naturalized by federal courts are situated inside that jurisdiction, regardless of where they reside. Both citizens **and** residents of the federal zone are liable for federal taxes on their worldwide income, no matter where the source of that income.

If you are not a citizen, then you are an alien. If you are not a resident, then you are a nonresident. Nonresident aliens pay taxes only on income which is derived from sources that are *inside* the federal zone. If you work for the federal government, your pay comes from a source that is *inside* the federal zone.

Likewise, artificial "persons" like corporations are either foreign or domestic. (It may appear strange at first, but a corporation is also a "person" as that term is defined in the Internal Revenue Code.) A corporation that is chartered by Congress is domestic *with respect to* the federal zone. A corporation that is chartered by one of the 50 States of the Union is foreign *with respect to* the federal zone. A corporation that is chartered by a foreign country like France is likewise foreign *with respect to* the federal zone.

Imagine what a difference it would make if all individuals *and* corporations knew and asserted their correct **status** with respect to the exclusive legislative **jurisdiction** of the federal zone!

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Reader’s Notes:

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