

Taxing and Spending Clause

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In Thomas Lewis and Richard Wilson
The Supreme Court, 940-41.
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Definition: The first clause of the U.S. Constitution's Article I, section 8 authorizes Congress to collect taxes and spend money for the general welfare.

Significance: The taxing and spending clause grants Congress the authority to acquire revenues to finance federal government programs, make payments to individuals, and provide grants-in-aid to states.

Early Interpretations of the Clause. The power to tax became controversial after the Civil War when Congress imposed taxes on incomes, but their constitutionality turned on the distinction between direct and indirect taxes. In *Springer v. United States* (1880), the Court upheld a wartime income tax as an indirect excise tax, but in *Pollock v. Farmers Loan & Trust Co.* (1895), it found that a tax on income from property was an invalid direct tax, because it was not apportioned. Then the Court reversed itself again in *Flint v. Stone Tracy Co.* (1911) holding that a corporate income tax was an indirect excise tax on the privilege of doing business. The Sixteenth Amendment (1913) eliminated the confusion by granting Congress the power to impose taxes on incomes from any source without having to comply with the apportionment requirement.

The taxing power also became controversial, because it was used to regulate behavior. The Court upheld these taxes when it found an independent source of constitutional authority. *Veazie Bank v. Fenno* (1869), approved a federal tax on state bank notes, even though Congress enacted the tax to eliminate the use of the notes, because it had authority to regulate currency. *McCray v. United States* (1904), upheld a tax on oleomargarine and *United States v. Doremus* (1919) a federal tax on opium that required persons to register with the federal government, because Congress had power to regulate interstate commerce. When Congress used the taxing power for matters that could not be regulated under the commerce clause, the Court called a halt. In *Bailey v. Drexel Furniture Co.* (1922), it struck down the Child Labor Tax Act of 1919, because the purpose of the tax was not to raise revenue, but to penalize the employment of children, an exclusively state function under the Tenth Amendment, that the Court had found in *Hammer v. Dagenhart* (1918) could not be regulated under the commerce clause.

The Court first addressed the spending clause in *United States v. Butler* (1936) where it was asked to decide whether Congress had exceeded its power to tax and spend when it enacted the Agricultural Adjustment Act (AAA) of 1933. This major New Deal statute created a program to stabilize farm prices by imposing a processing tax on agricultural products and then spending the tax monies in the form of benefit payments to farmers who were required to take acreage out of production. The Court acknowledged that Congress could use its power to tax and spend for the general welfare, but it had no independent power to regulate agriculture, nor could it coerce action left to state control under the Tenth Amendment by requiring farmers to enter into contracts to reduce acreage in exchange for benefit payments.

The Meaning of the Clause Since the New Deal. The Court quickly abandoned Butler's restrictive interpretation of the taxing and spending clause when its opinion, along with those striking down other major New Deal programs, provoked President Franklin Roosevelt's court packing proposal. *Sonzinsky v. United States* (1937) rejected the distinction between revenue and regulatory taxes and upheld a federal license tax on firearms dealers. As long as the statute produced some income, the Court said, it would not consider the congressional purpose in enacting the tax. Then two Social Security Act (1935) decisions substantially altered the Court's view of the spending power. *Helvering v. Davis* (1937) upheld the expenditure of federal funds acquired from employer and employee taxes to provide retirement benefits, because it was as a reasonable exercise of the power to spend for the general welfare. *Steward Machine v. Davis* (1937), its companion case, went further by approving the statute's unemployment compensation provisions that allowed employers to receive a 90% credit against a federal unemployment tax for payments made to a state unemployment fund created in compliance with federally-defined requirements. The Court held that the statute did not coerce states to make payments to unemployed workers in violation of the spending power, nor did the Tenth Amendment bar the payments, because states had been unable or unwilling to provide unemployment relief for a nationwide problem.

The issue of taxing or spending for the general welfare became even less important, because the Court abandoned its restrictive interpretation of the commerce clause in *National Labor Relations Board v. Jones and Laughlin Steel Corp.* (1937) and then in *United States v. Darby Lumber Co.* (1941) overruled *Hammer* and its reliance on the Tenth Amendment as a limitation on the commerce power. *United States v. Kahriger*

(1953) confirmed this development by upholding a federal occupation tax on persons engaged in accepting bets or wagers and required them to register with the federal government. The Court found that the tax was reasonably related to the production of substantial revenue and that Congress could use its taxing power to suppress gambling, just as it had to regulate the sale of oleomargarine, drugs, or firearms, because it was a necessary and proper means to regulate interstate commerce. Then in *South Dakota v. Dole* (1987), the Court set forth its current interpretation of the spending power when it approved a conditional expenditure of federal highway funds directly related to safe interstate travel. Twenty-first Amendment would bar Congress from directly establishing a nationwide minimum drinking age, but the Court held that it could indirectly achieve that objective by using its spending power to deprive states of their federal highway funds, if they did not enact a statute that prohibited persons under twenty-one years of age from purchasing or possessing alcoholic beverages.

Bibliography

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