

stitution to support an intergovernmental tax immunity, but concluded that "the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government."¹⁵

In *Indian Motorcycle Co. v. United States*,¹⁶ the Court recognized that the concept of intergovernmental tax immunity was inferred from the Constitution, which calls for the maintenance of a dual system of government. At this stage in the development of intergovernmental tax immunity, the state's right to tax immunity was considered to be equal to the federal government's right to tax immunity.¹⁷ The Court reaffirmed this principle in *Burnet v. Coronado Oil & Gas Co.*¹⁸ In *Coronado Oil*, the Court considered each government to be supreme in its sphere.¹⁹

A. *The Scope of Intergovernmental Tax Immunity Defined*

The scope of intergovernmental tax immunity has always been limited to immunity from tax on means or instrumentalities essential to the operation of government.²⁰ The difficult issue in intergovernmental tax immunity cases has been defining what is an essential means or instrumentality of government.

In the late 1800s, the Court began to define the scope of intergovernmental tax immunity. The Court held that a federal tax on salary paid to an officer of the state²¹ or on interest in-

15. *Id.* at 126-127.

16. 283 U.S. 570, 575 (1931).

17. The Court stated:

It is an established principle of our constitutional system of dual government that the instrumentalities, means and operations whereby the United States exercises its governmental powers are exempt from taxation by the state, and that the instrumentalities, means and operations whereby the states exert the governmental powers belonging to them are equally exempt from taxation by the United States.

Id. at 575. The concept that each government is of equal power is rejected by the Court in *South Carolina*, which stated that some taxes may be collected by the federal government which states would not be able to collect from the federal government. *South Carolina v. Baker*, 108 S. Ct. 1355, 1366-67 (1988); see *infra* note 57 and accompanying text.

18. 285 U.S. 393, 400 (1932).

19. *Id.*

20. *Coronado Oil*, 285 U.S. at 400; *Indian Motorcycle*, 283 U.S. at 575; *Collector v. Day*, 78 U.S. (11 Wall.) 113, 126 (1871).

21. *Day*, 78 U.S. at 126. See *supra* notes 13-15 and accompanying text.