interstate commerce more than the state's fair share. Avoidance of multiple taxation, or the risk of multiple taxation, is the test of an apportionment formula. Generally speaking, this factor is both a Commerce Clause and a due process requisite, and it necessitates a rational relationship between the income attributed to the state and the intrastate values of the enterprise.[1114] The Court has declined to impose any particular formula on the states, reasoning that to do so would be to require the Court to engage in "extensive judicial lawmaking," for which it was ill-suited and for which Congress had ample power and ability to legislate.[1115]

"Instead," the Court wrote, "we determine whether a tax is fairly apportioned by examining whether it is internally and externally consistent. To be internally consistent, a tax must be structured so that if every State were to impose an identical tax, multiple taxation would not result. Thus, the internal consistency test focuses on the text of the challenged statute and hypothesizes a situation where other States have passed an identical statute. . . . The external consistency test asks whether the State has taxed only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed. We thus examine the in-state business activity which triggers the taxable event and the practical or economic effect of the tax on that interstate activity."[1116]

In *Goldberg v. Sweet*, the Court upheld as properly apportioned a state tax on the gross charge of any telephone call originated or terminated in the state and charged to an in-state service address, regardless of where the telephone call was billed or paid.[1117] A complex state tax imposed on trucks displays the operation of the test. There, a state registration tax met the internal consistency test because every state honored every other states' tax, and a motor fuel tax similarly was sustained because it was apportioned to mileage traveled in the state. On the other hand, lump-sum annual taxes, an axle tax and an identification marker fee, being unapportioned

---

[1114] *See* Moorman Mfg. Co. v. Bair, 437 U.S. 267 (1978); Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425 (1980); Exxon Corp. v. Wisconsin Dep't of Revenue, 447 U.S. 207 (1980); ASARCO Inc. v. Idaho State Tax Comm'n, 458 U.S. 307 (1982); F. W. Woolworth Co. v. New Mexico Taxation & Revenue Dep't, 458 U.S. 354 (1982); Container Corp. of America v. Franchise Tax Board, 463 U.S. 159 (1983); Tyler Pipe Industries v. Dept. of Revenue, 483 U.S. 232, 251 (1987); Allied-Signal, Inc. v. Director, Div. of Taxation, 504 U.S. 768 (1992). *Cf.* American Trucking Ass'ns Inc. v. Scheiner, 483 U.S. 266 (1987).

[1115] Moorman Mfg. Co. v. Bair, 437 U.S. 267, 278–80 (1978).

[1116] Goldberg v. Sweet, 488 U.S. 252, 261, 262 (1989) (citations omitted).

[1117] 488 U.S. 252 (1989). The tax law provided a credit for any taxpayer who was taxed by another state on the same call. Actual multiple taxation could thus be avoided, the risk of other multiple taxation was small, and it was impracticable to keep track of the taxable transactions.