

Sec. 8—Powers of Congress

Cl. 1—Power To Tax and Spend

to the manufacture and sale to a municipal corporation of equipment for its police force.⁵⁵⁶ Justices Stone and Brandeis, however, dissented from this decision, and it is doubtful whether it would be followed today.⁵⁵⁷

In the interim between these cases, the Court began to routinely uphold federal taxation of state interests. In 1903 a succession tax upon a bequest to a municipality for public purposes was upheld on the ground that the tax was payable out of the estate before distribution to the legatee. Looking to form and not to substance, a closely divided Court declined to “regard it as a tax upon the municipality, though it might operate incidentally to reduce the bequest by the amount of the tax.”⁵⁵⁸ When South Carolina embarked upon the business of dispensing alcoholic beverages, its agents were held to be subject to the national internal revenue tax, the ground of the holding being that in 1787 such a business was not regarded as one of the ordinary functions of government.⁵⁵⁹

Another decision marking a clear departure from the logic of *Collector v. Day* was *Flint v. Stone Tracy Co.*,⁵⁶⁰ in which the Court sustained an act of Congress taxing the privilege of doing business as a corporation, the tax being measured by the income. The argument that the tax imposed an unconstitutional burden on the exercise by a state of its reserved power to create corporate franchises was rejected, partly because of the principle of national supremacy, and partly on the ground that the corporate franchises were private property. This case also qualified *Pollock* to the extent that it allowed interest on state bonds to be included in measuring the tax on the corporation.

Subsequent cases sustained an estate tax on the net estate of a decedent, including state bonds⁵⁶¹ and excise taxes on the transportation of merchandise in performance of a contract to sell and deliver it to a county;⁵⁶² on the importation of scientific apparatus by a state university;⁵⁶³ on admissions to athletic contests sponsored by a state institution, the net proceeds of which were used to further its educational program;⁵⁶⁴ and on admissions to recreational facilities operated on a nonprofit basis by a municipal corpora-

⁵⁵⁶ *Indian Motorcycle v. United States*, 283 U.S. 570 (1931).

⁵⁵⁷ *Cf. Massachusetts v. United States*, 435 U.S. 444 (1978).

⁵⁵⁸ *Snyder v. Bettman*, 190 U.S. 249, 254 (1903).

⁵⁵⁹ *South Carolina v. United States*, 199 U.S. 437 (1905). *See also* *Ohio v. Helvering*, 292 U.S. 360 (1934).

⁵⁶⁰ 220 U.S. 107 (1911).

⁵⁶¹ *Greiner v. Lewellyn*, 258 U.S. 384 (1922).

⁵⁶² *Wheeler Lumber Co. v. United States*, 281 U.S. 572 (1930).

⁵⁶³ *Board of Trustees v. United States*, 289 U.S. 48 (1933).

⁵⁶⁴ *Allen v. Regents*, 304 U.S. 439 (1938).