The authority of states to tax income is "universally recognized."[394] Years ago the Court explained that "[e]njoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government. . . . A tax measured by the net income of residents is an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits."[395] Also, a tax on income is not constitutionally suspect because retroactive. The routine practice of making taxes retroactive for the entire year of the legislative session in which the tax is enacted has long been upheld,[396] and there are also situations in which courts have upheld retroactive application to the preceding year or two.[397]

A state also has broad tax authority over wills and inheritance. A state may apply an inheritance tax to the transmission of property by will or descent, or to the legal privilege of taking property by devise or descent,[398] although such tax must be consistent with other due process considerations.[399] Thus, an inheritance tax law, enacted after the death of a testator but before the distribution of

That payment may be made to private individuals is now irrelevant. *Carmichael*, 301 U.S. at 518. *Cf.* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1 (1976) (sustaining tax imposed on mine companies to compensate workers for black lung disabilities, including those contracting disease before enactment of tax, as way of spreading cost of employee liabilities).

[394] New York ex rel. Cohn v. Graves, 300 U.S. 308, 313 (1937).

[395] 300 U.S. at 313. *See also* Shaffer v. Carter, 252 U.S. 37, 49–52 (1920); and Travis v. Yale & Towne Mfg. Co., 252 U.S. 60 (1920) (states may tax the income of nonresidents derived from property or activity within the state).

[396] *See*, *e.g.*, Stockdale v. Insurance Companies, 87 U.S. (20 Wall.) 323 (1874); United States v. Hudson, 299 U.S. 498 (1937); United States v. Darusmont, 449 U.S. 292 (1981).

[397] Welch v. Henry, 305 U.S. 134 (1938) (upholding imposition in 1935 of tax liability for 1933 tax year; due to the scheduling of legislative sessions, this was the legislature's first opportunity to adjust revenues after obtaining information of the nature and amount of the income generated by the original tax). Because "[t]axation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract," the Court explained, "its retroactive imposition does not necessarily infringe due process." Id. at 146–47.

[398] Stebbins v. Riley, 268 U.S. 137, 140, 141 (1925).

[399] When remainders indisputably vest at the time of the creation of a trust and a succession tax is enacted thereafter, the imposition of the tax on the transfer of such remainder is unconstitutional. Coolidge v. Long, 282 U.S. 582 (1931). The Court has noted that insofar as retroactive taxation of vested gifts has been voided, the justification therefor has been that "the nature or amount of the tax could not reasonably have been anticipated by the taxpayer at the time of the particular voluntary act which the [retroactive] statute later made the taxable event . . . . Taxation . . . of a gift which . . . [the donor] might well have refrained from making had he anticipated the tax . . . [is] thought to be so arbitrary . . . as to be a denial of due process." Welch v. Henry, 305 U.S. 134, 147 (1938). But where the remaindermen's interests are contingent and do not vest until the donor's death subsequent to the adoption of the statute, the tax is valid. Stebbins v. Riley, 268 U.S. 137 (1925).