Taxing Power

Generally.—It was not contemplated that the adoption of the Fourteenth Amendment would restrain or cripple the taxing power of the states.[387] When the power to tax exists, the extent of the burden is a matter for the discretion of the lawmakers,[388] and the Court will refrain from condemning a tax solely on the ground that it is excessive.[389] Nor can the constitutionality of taxation be made to depend upon the taxpayer's enjoyment of any special benefits from use of the funds raised by taxation.[390]

Theoretically, public moneys cannot be expended for other than public purposes. Some early cases applied this principle by invalidating taxes judged to be imposed to raise money for purely private rather than public purposes.[391] However, modern notions of public purpose have expanded to the point where the limitation has little practical import.[392] Whether a use is public or private, although ultimately a judicial question, "is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court."[393]

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[387] Tonawanda v. Lyon, 181 U.S. 389 (1901); Cass Farm Co. v. Detroit, 181 U.S. 396 (1901). Rather, the purpose of the amendment was to extend to the residents of the states the same protection against arbitrary state legislation affecting life, liberty, and property as was afforded against Congress by the Fifth Amendment. Southwestern Oil Co. v. Texas, 217 U.S. 114, 119 (1910).

[388] Fox v. Standard Oil Co., 294 U.S. 87, 99 (1935).

[389] Stewart Dry Goods Co. v. Lewis, 294 U.S. 550 (1935). *See also* Kelly v. City of Pittsburgh, 104 U.S. 78 (1881); Chapman v. Zobelein, 237 U.S. 135 (1915); Alaska Fish Co. v. Smith, 255 U.S. 44 (1921); Magnano Co. v. Hamilton, 292 U.S. 40 (1934); City of Pittsburgh v. Alco Parking Corp., 417 U.S. 369 (1974).

[390] Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249 (1933); Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937). A taxpayer, therefore, cannot contest the imposition of an income tax on the ground that, in operation, it returns to his town less income tax than he and its other inhabitants pay. Dane v. Jackson, 256 U.S. 589 (1921).

[391] Loan Association v. Topeka, 87 U.S. (20 Wall.) 655 (1875) (voiding tax employed by city to make a substantial grant to a bridge manufacturing company to induce it to locate its factory in the city). *See also* City of Parkersburg v. Brown, 106 U.S. 487 (1882) (private purpose bonds not authorized by state constitution).

[392] Taxes levied for each of the following purposes have been held to be for a public use: a city coal and fuel yard, Jones v. City of Portland, 245 U.S. 217 (1917), a state bank, a warehouse, an elevator, a flour mill system, homebuilding projects, Carmichael v. Southern Coal & Coke Co., 300 U.S. 644 (1937), a society for preventing cruelty to animals (dog license tax), Nicchia v. New York, 254 U.S. 228 (1920), a railroad tunnel, Milheim v. Moffat Tunnel Dist., 262 U.S. 710 (1923), books for school children attending private as well as public schools, Cochran v. Louisiana Bd. of Educ., 281 U.S. 370 (1930), and relief of unemployment, Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 515 (1937).

[393] In applying the Fifth Amendment Due Process Clause the Court has said that discretion as to what is a public purpose "belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment." Helvering v. Davis, 301 U.S. 619, 640 (1937); United States v. Butler, 297 U.S. 1, 67 (1936).