despite its prohibitive proportions.[595] "It is beyond serious question that a tax does not cease to be valid merely because it regulates, discourages, or even definitely deters the activities taxed. . . . The principle applies even though the revenue obtained is obviously negligible . . . or the revenue purpose of the tax may be secondary. . . . Nor does a tax statute necessarily fall because it touches on activities which Congress might not otherwise regulate. As was pointed out in *Magnano Co. v. Hamilton*, 292 U.S. 40, 47 (1934): 'From the beginning of our government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment.'" [596]

In some cases, however, the structure of a taxation scheme is such as to suggest that Congress actually intends to regulate under a separate constitutional authority. As long as such separate authority is available to Congress, the imposition of a tax as a penalty for such regulation is valid.[597] On the other hand, where Congress had levied a heavy tax upon liquor dealers who operated in violation of state law, the Court held that this tax was unenforceable after the repeal of the Eighteenth Amendment, because the National Government had no power to impose an additional penalty for infractions of state law.[598]

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[595] McCray v. United States, 195 U.S. 27 (1904).

[596] United States v. Sanchez, 340 U.S. 42, 45 (1950). *See also* Sonzinsky v. United States, 300 U.S. 506, 513–14 (1937).The earliest examples of taxes levied with a view to promoting desired economic objectives in addition to raising revenue were import duties. *See, e.g.*, 1 Stat. 24 (1789) (the second statute adopted by the first Congress was a tariff act reciting that "it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandise imported"). After being debated for nearly a century and a half, the constitutionality of protective tariffs was finally settled by the Supreme Court's unanimous decision in J. W. Hampton, Jr. & Co. v. United States, 276 U.S. 394, 411 (1928).. Chief Justice Taft, writing for the Court, observed that the first Congress in 1789, which included many members of the Constitutional Convention, had enacted a protective tariff. "This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs, long acquiesced in, fixes the construction to be given its provisions. . . . Whatever we may think of the wisdom of a protection policy, we cannot hold it unconstitutional. So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate Congressional action." 276 U.S. at 412.

[597] Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 393 (1940). *See also Head Money Cases*, 112 U.S. 580, 596 (1884).

[598] United States v. Constantine, 296 U.S. 287 (1935).