

Sec. 8—Powers of Congress

Cl. 1—Power To Tax and Spend

tion.⁵⁶⁵ Similarly, income derived by independent engineering contractors from the performance of state functions;⁵⁶⁶ the compensation of trustees appointed to manage a street railway taken over and operated by a state;⁵⁶⁷ and profits derived from the sale of state bonds⁵⁶⁸ or from oil produced by lessees of state lands;⁵⁶⁹ have all been held to be subject to federal taxation despite a possible economic burden on the state.

In the 1988 decision which finally overruled this aspect of *Pollock*, the Court stated that the rule on which *Pollock* had been based—that the federal and state governments could not tax income derived from a contract with another government—had already been rejected in numerous decisions involving intergovernmental immunity.⁵⁷⁰ “We see no constitutional reason for treating persons who receive interest on government bonds differently than persons who receive income from other types of contracts with the government, and no tenable rationale for distinguishing the costs imposed on States by a tax on state bond interest from the costs imposed by a tax on the income from any other state contract.”⁵⁷¹

***Current Scope of State Immunity from Federal Taxation.*—**

While the specific ruling of *Collector v. Day* has been overruled, the principle underlying that decision—that Congress may not lay a tax that would impair the sovereignty of the states—is still recognized as retaining some vitality. Although there have been sharp differences of opinion among members of the Supreme Court in cases dealing with the tax immunity of state functions and instrumentalities, the Court has stated that “all agree that not all of the former immunity is gone.”⁵⁷²

Twice, the Court has made an effort to express its new point of view in a statement of general principles by which the right to such immunity shall be determined. In *Helvering v. Gerhardt*,⁵⁷³ where, without overruling *Collector v. Day*, it narrowed the immunity of salaries of state officers from federal income taxation, the Court announced “two guiding principles of limitation for holding the tax immunity of state instrumentalities to its proper function. The one, dependent upon the nature of the function being performed by the

⁵⁶⁵ *Wilmette Park Dist. v. Campbell*, 338 U.S. 411 (1949).

⁵⁶⁶ *Metcalf & Eddy v. Mitchell*, 269 U.S. 514 (1926).

⁵⁶⁷ *Helvering v. Powers*, 293 U.S. 214 (1934).

⁵⁶⁸ *Willcuts v. Bunn*, 282 U.S. 216 (1931).

⁵⁶⁹ *Helvering v. Producers Corp.*, 303 U.S. 376 (1938), overruling *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393 (1932).

⁵⁷⁰ *South Carolina v. Baker*, 485 U.S. 505, 517 (1988).

⁵⁷¹ 485 U.S. at 524–25.

⁵⁷² *New York v. United States*, 326 U.S. 572, 584 (1946) (concurring opinion of Justice Rutledge).

⁵⁷³ 304 U.S. 405 (1938).