

Sec. 8—Powers of Congress

Cl. 1—Power To Tax and Spend

the Constitution.”⁵⁷⁸ In a later case dealing with state immunity the Court sustained the tax on the second ground mentioned in *Helvering v. Gerhardt*—that the burden of the tax was borne by private persons—and did not consider whether the function was one which the Federal Government might have taxed if the municipality had borne the burden of the exaction.⁵⁷⁹

Articulation of the current approach may be found in *South Carolina v. Baker*.⁵⁸⁰ The rules are “essentially the same” for federal immunity from state taxation and for state immunity from federal taxation, except that some state activities may be subject to direct federal taxation, while states may “never” tax the United States directly. Either government may tax private parties doing business with the other government, “even though the financial burden falls on the [other government], as long as the tax does not discriminate against the [other government] or those with which it deals.”⁵⁸¹ Thus, “the issue whether a nondiscriminatory federal tax might nonetheless violate state tax immunity does not even arise unless the Federal Government seeks to collect the tax directly from a State.”⁵⁸²

Uniformity Requirement.—Under Article 1, § 8, clause 1, “all Duties, Imposts and Excises “ must be imposed uniformly throughout the United States.”⁵⁸³ These types of taxes are commonly referred to as “indirect taxes,” and they are distinguished from “direct taxes,” which must be apportioned among the states according to the census taken pursuant to Article I, § 2.⁵⁸⁴ The rule of uniformity for indirect taxes is generally easy to obey. It requires only that the subject matter of a levy be taxed at the same rate wherever found in the United States; or, as it is sometimes phrased, the uniformity required is “geographical,” not “intrinsic.”⁵⁸⁵ Even the geographical limitation appears to be a loose one. In *United States v. Ptasynski*,⁵⁸⁶ the Court upheld an exemption from a crude-oil

⁵⁷⁸ 326 U.S. at 596.

⁵⁷⁹ *Wilmette Park Dist. v. Campbell*, 338 U.S. 411 (1949). Cf. *Massachusetts v. United States*, 435 U.S. 444 (1978).

⁵⁸⁰ 485 U.S. 505 (1988).

⁵⁸¹ 485 U.S. at 523.

⁵⁸² 485 U.S. at 524 n.14.

⁵⁸³ The term “United States” in this clause refers only to the states of the Union, the District of Columbia, and incorporated territories. Congress is not bound by the rule of uniformity in framing tax measures for unincorporated territories. See *Downes v. Bidwell*, 182 U.S. 244 (1901); *Binns v. United States*, 194 U.S. 486 (1904).

⁵⁸⁴ See also Article I, § 9, cl. 4. For constitutional purposes, all taxes are characterized as either being direct or indirect. See *Thomas v. United States*, 192 U.S. 363, 370 (1904) (“And these two classes, [direct taxes], and ‘duties, impost and excises,’ apparently embrace all forms of taxation contemplated by the Constitution.”).

⁵⁸⁵ *LaBelle Iron Works v. United States*, 256 U.S. 377 (1921); *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1 (1916); *Head Money Cases*, 112 U.S. 580 (1884).

⁵⁸⁶ 462 U.S. 74 (1983).