permissibility of taxing interstate commerce at all. The category, however, was soon clearly delineated as a separate ground for invalidation (and one of the most important today).[1066]

Following the Great Depression and under the leadership of Justice, and later Chief Justice, Stone, the Court attempted to move away from the principle that interstate commerce may not be taxed and any reliance on the direct-indirect distinction. Instead, a state or local levy would be voided only if in the opinion of the Court it created a risk of multiple taxation for interstate commerce not felt by local commerce.[1067] It became much more important to the validity of a tax that it be apportioned to an interstate company's activities within the taxing state, so as to reduce the risk of multiple taxation.[1068] But, just as the Court had achieved constancy in the area of regulation, it reverted to the older doctrines in the taxation area and reiterated that interstate commerce may not be taxed at all, even by a properly apportioned levy, and reasserted the direct-indirect distinction.[1069] The stage was set, following a series of cases in which through formalistic reasoning the states were permitted to evade the Court's precedents,[1070] for the formulation of a more realistic doctrine.

Regulation.—Much more diverse were the cases dealing with regulation of commerce by the state and local governments. Taxation was one thing, the myriad approaches and purposes of regulations another. Generally speaking, if the state action was perceived by the Court to be a regulation of interstate commerce itself, it was deemed to impose a "direct" burden on interstate commerce and be

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[1066] *E.g.*, Welton v. Missouri, 91 U.S. 275 (1875); Robbins v. Shelby County Taxing District, 120 U.S. 489 (1887); Darnell & Son Co. v. City of Memphis, 208 U.S. 113 (1908); Bethlehem Motors Co. v. Flynt, 256 U.S. 421 (1921).

[1067] Western Live Stock v. Bureau of Revenue, 303 U.S. 250 (1938); McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940); International Harvester Co. v. Department of Treasury, 322 U.S. 340 (1944); International Harvester Co. v. Evatt, 329 U.S. 416 (1947).

[1068] *E.g.*, Gwin, White & Prince, Inc. v. Henneford, 305 U.S. 434 (1939); Joseph v. Carter & Weekes Stevedoring Co., 330 U.S. 422 (1947); Central Greyhound Lines v. Mealey, 334 U.S. 653 (1948). Notice the Court's distinguishing of *Central Greyhound* in Oklahoma Tax Comm'n v. Jefferson Lines, 514 U.S. 175, 188–91 (1995).

[1069] Freeman v. Hewit, 329 U.S. 249 (1946); Spector Motor Serv. v. O'Connor, 340 U.S. 602 (1951).

[1070] Thus, the states carefully phrased tax laws so as to impose on interstate companies not a license tax for doing business in the state, which was not permitted, Railway Express Agency v. Virginia, 347 U.S. 359 (1954), but as a franchise tax on intangible property or the privilege of doing business in a corporate form, which was permissible. Railway Express Agency v. Virginia, 358 U.S. 434 (1959); Colonial Pipeline Co. v. Traigle, 421 U.S. 100 (1975). Also, the Court increasingly found the tax to be imposed on a local activity in instances it would previously have seen to be an interstate activity. *E.g.*, Memphis Natural Gas Co. v. Stone, 335 U.S. 80 (1948); General Motors Corp. v. Washington, 377 U.S. 436 (1964); Standard Pressed Steel Co. v. Department of Revenue, 419 U.S. 560 (1975).