proportion to population in the District of Columbia.[1863] A penalty imposed for nonpayment of a direct tax is not a part of the tax itself and hence is not subject to the rule of apportionment. Accordingly, the Supreme Court sustained the penalty of fifty percent, which Congress exacted for default in the payment of the direct tax on land in the aggregate amount of twenty million dollars that was levied and apportioned among the states during the Civil War.[1864]

Clause 5. No Tax or Duty shall be laid on Articles exported from any State.

TAXES ON EXPORTS

The prohibition on excise taxes applies only to the imposition of duties on goods by reason of exportation.[1865] The word "export" signifies goods exported to a foreign country, not to an unincorporated territory of the United States.[1866] A general tax laid on all property alike, including that intended for export, is not within the prohibition, if it is not levied on goods in course of exportation nor because of their intended exportation.[1867]

Continuing its refusal to modify its export clause jurisprudence,[1868] the Court held unconstitutional the Harbor Maintenance Tax (HMT) under the export clause insofar as the tax was applied to goods loaded at United States ports for export. The HMT required shippers to pay a uniform charge on commercial cargo shipped through the Nation's ports. The clause, said the Court, "categorically bars Congress from imposing any tax on exports."[1869] However, the clause does not interdict a "user fee," which is a charge that lacks the attributes of a generally applicable tax or duty and is designed to compensate for government supplied services, facilities, or benefits; and it was that defense to which the government repaired once it failed to obtain a modification of the rules under the clause. But the HMT bore the indicia of a tax. It was titled as a tax, described as a tax in the law, and codified in the Internal Revenue Code. Aside from labels, however, courts must look to how things operate, and the HMT did not qualify as a user fee. It did not represent compensation for services rendered. The value of ex-

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[1863] Loughborough v. Blake, 18 U.S. (5 Wheat.) 317 (1820).

[1864] De Treville v. Smalls, 98 U.S. 517, 527 (1879).

[1865] Turpin v. Burgess, 117 U.S. 504, 507 (1886). *Cf.* Almy v. California, 65 U.S. (24 How.) 169, 174 (1861).

[1866] Dooley v. United States, 183 U.S. 151, 154 (1901).

[1867] Cornell v. Coyne, 192 U.S. 418, 428 (1904); Turpin v. Burgess, 117 U.S. 504, 507 (1886).

[1868] *See* United States v. IBM, 517 U.S. 843, 850–61 (1996).

[1869] United States v. United States Shoe Corp., 523 U.S. 360, 363 (1998).