

Process or Just Compensation Clauses as long as it serves the public interest and the rates as a whole yield just compensation.<sup>518</sup>

Occasionally, however, regulatory action has been held invalid under the Due Process Clause. An order issued by the Interstate Commerce Commission relieving short line railroads from the obligation to pay the usual fixed sum per day rental for cars used on foreign roads for a space of two days was held to be arbitrary and invalid.<sup>519</sup> A retirement act that made eligible for pensions all persons who had been in the service of any railroad within one year prior to the adoption of the law, counted past unconnected service of an employee toward the requirement for a pension even if the employee had contributed nothing to the pension fund, and treated all carriers as a single employer and pooled their assets, without regard to their individual obligations, was held unconstitutional.<sup>520</sup>

**Taxation.**—In laying taxes, the Federal Government is less narrowly restricted by the Fifth Amendment than are the states by the Fourteenth. The Federal Government may tax property belonging to its citizens, even if such property is never situated within the jurisdiction of the United States,<sup>521</sup> and it may tax the income of a citizen resident abroad, which is derived from property located at his residence.<sup>522</sup> The difference is explained by the fact that protection of the Federal Government follows the citizen wherever he goes, whereas the benefits of state government accrue only to persons and property within the state's borders. The Supreme Court has said that, in the absence of an equal protection clause, "a claim of unreasonable classification or inequality in the incidence or application of a tax raises no question under the Fifth Amendment. . . ." <sup>523</sup> It has sustained, over charges of unfair differentiation between persons, a graduated income tax,<sup>524</sup> a higher tax on oleomargarine than on butter,<sup>525</sup> an excise tax on "puts" but not on "call,"<sup>526</sup> a tax on the income of business operated by corporations but not on similar enterprises carried on by individuals,<sup>527</sup> an income tax on foreign corporations, based on their income from sources within the United States, while domestic corporations were taxed on income from all

<sup>518</sup> *Baltimore & Ohio R.R. v. United States*, 345 U.S. 146 (1953).

<sup>519</sup> *Chicago, R.I. & P. Ry. v. United States*, 284 U.S. 80 (1931).

<sup>520</sup> *Railroad Retirement Bd. v. Alton R.R.*, 295 U.S. 330 (1935). *But cf.* *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 19 (1976).

<sup>521</sup> *United States v. Bennett*, 232 U.S. 299, 307 (1914).

<sup>522</sup> *Cook v. Tait*, 265 U.S. 47 (1924).

<sup>523</sup> *Helvering v. Lerner Stores Co.*, 314 U.S. 463, 468 (1941). *But see* discussion of "Discrimination" *supra*.

<sup>524</sup> *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 24 (1916).

<sup>525</sup> *McCray v. United States*, 195 U.S. 27, 61 (1904).

<sup>526</sup> *Treat v. White*, 181 U.S. 264 (1901).

<sup>527</sup> *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911).