

## Sec. 8—Powers of Congress

## Cl. 1—Power To Tax and Spend

with that clause, and in no way could they. The President was acting in a legislative capacity, altering a law in the manner prescribed, and legislation must, in the way Congress acted, be bicameral and be presented to the President after Congress acted. Nothing in the Constitution authorized the President to amend or repeal a statute unilaterally, and the Court could construe both constitutional silence and the historical practice over 200 years as “an express prohibition” of the President’s action.<sup>539</sup>

SECTION 8. Clause 1. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

## POWER TO TAX

## Scope of the Taxing Power

Article I, § 8, cl. 1 grants Congress the broad authority “to lay and collect Taxes, Duties, Imposts and Excises. . .”. The Court has often emphasized the sweeping character of congress’ taxing power by saying, from time to time, that it “reaches every subject,”<sup>540</sup> that it is “exhaustive,”<sup>541</sup> or that it “embraces every conceivable power of taxation.”<sup>542</sup> The power would appear to be textually limited by only one exception and two qualifications: articles exported from any state may not be taxed at all,<sup>543</sup> direct taxes must be levied by the rule of apportionment,<sup>544</sup> and indirect taxes are governed by the rule of uniformity.<sup>545</sup>

As explored below, this power was for a time curtailed by judicial decisions based on the subject matter of the taxation. For instance, the Supreme Court was initially inclined to find limits on the taxing power arising from other portions of the Constitution. Thus, in *Evans v. Gore*<sup>546</sup> and *Miles v. Graham*,<sup>547</sup> the Court found that imposing an income tax on the salaries of federal judges violated the constitutional mandate that the compensation of such judges

<sup>539</sup> 524 U.S. at 439.

<sup>540</sup> *License Tax Cases*, 72 U.S. (5 Wall.) 462, 471 (1867).

<sup>541</sup> *Brushaber v. Union Pac. R.R.*, 240 U.S. 1 (1916).

<sup>542</sup> 240 U.S. at 12.

<sup>543</sup> Art. I, § 9, cl. 5. *See Taxes on Exports, supra.*

<sup>544</sup> Art. I, § 2, cl. 3; Art. I, § 9, cl. 4. *See Direct Taxes, supra.*

<sup>545</sup> Art. I, § 8, cl. 1.

<sup>546</sup> 253 U.S. 245 (1920).

<sup>547</sup> 268 U.S. 501 (1925).