

enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.”⁵⁴⁰ A special income tax on profits realized by the sale of silver, retroactive for 35 days, which was approximately the period during which the silver purchase bill was before Congress, was held valid.⁵⁴¹ An income tax law, made retroactive to the beginning of the calendar year in which it was adopted, was found constitutional as applied to the gain from the sale, shortly before its enactment, of property received as a gift during the year.⁵⁴² Retroactive assessment of penalties for fraud or negligence,⁵⁴³ or of an additional tax on the income of a corporation used to avoid a surtax on its shareholder,⁵⁴⁴ does not deprive the taxpayer of property without due process of law.

An additional excise tax imposed upon property still held for sale, after one excise tax had been paid by a previous owner, does not violate the Due Process Clause.⁵⁴⁵ Similarly upheld were a transfer tax measured in part by the value of property held jointly by a husband and wife, including that which comes to the joint tenancy as a gift from the decedent spouse⁵⁴⁶ and the inclusion in the gross income of the settlor of income accruing to a revocable trust during any period when the settlor had power to revoke or modify it.⁵⁴⁷

Although the Court during the 1920s struck down gift taxes imposed retroactively upon gifts that were made and completely vested before the enactment of the taxing statute,⁵⁴⁸ those decisions have recently been distinguished, and their precedential value limited.⁵⁴⁹ In *United States v. Carlton*, the Court declared that “[t]he

⁵⁴⁰ *Welch v. Henry*, 305 U.S. 134, 146–47 (1938).

⁵⁴¹ *United States v. Hudson*, 299 U.S. 498 (1937). *See also* *Stockdale v. Insurance Companies*, 87 U.S. (20 Wall.) 323, 331, 341 (1874); *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 20 (1916); *Lynch v. Hornby*, 247 U.S. 339, 343 (1918).

⁵⁴² *Cooper v. United States*, 280 U.S. 409 (1930); *see also* *Reinecke v. Smith*, 289 U.S. 172 (1933).

⁵⁴³ *Helvering v. Mitchell*, 303 U.S. 391 (1938).

⁵⁴⁴ *Helvering v. National Grocery Co.*, 304 U.S. 282 (1938).

⁵⁴⁵ *Patton v. Brady*, 184 U.S. 608 (1902).

⁵⁴⁶ *Tyler v. United States*, 281 U.S. 497 (1930); *United States v. Jacobs*, 306 U.S. 363 (1939).

⁵⁴⁷ *Reinecke v. Smith*, 289 U.S. 172 (1933).

⁵⁴⁸ *Untermeyer v. Anderson*, 276 U.S. 440 (1928); *Blodgett v. Holden*, 275 U.S. 142 (1927), modified, 276 U.S. 594 (1928); *Nichols v. Coolidge*, 274 U.S. 531 (1927). *See also* *Heiner v. Donnan*, 285 U.S. 312 (1932) (invalidating as arbitrary and capricious a conclusive presumption that gifts made within two years of death were made in contemplation of death).

⁵⁴⁹ *Untermeyer* was distinguished in *United States v. Hemme*, 476 U.S. 558, 568 (1986), upholding retroactive application of unified estate and gift taxation to a taxpayer as to whom the overall impact was minimal and not oppressive. All three cases