

CL. 2—Supremacy of the Constitution, Laws, and Treaties

coextensive with the prohibition against discriminatory taxes embodied in the modern constitutional doctrine of intergovernmental tax immunity.”²⁴³

Ad Valorem Taxes Under the Doctrine.—Property owned by a federally chartered corporation engaged in private business is subject to state and local *ad valorem* taxes. This was conceded in *McCulloch v. Maryland*²⁴⁴ and confirmed a half century later with respect to railroads incorporated by Congress.²⁴⁵ Similarly, a property tax may be levied against the lands under water that are owned by a person holding a license under the Federal Water Power Act.²⁴⁶ However, when privately owned property erected by lessees on tax-exempt state lands is taxed by a county at less than full value, and houses erected by contractors on land leased from a federal Air Force base are taxed at full value, the latter tax, solely because it discriminates against the United States and its lessees, is void.²⁴⁷ Likewise, when, under state laws, a school district does not tax private lessees of state and municipal realty, whose leases are subject to termination at the lessor’s option in the event of sale, but does levy a tax, measured by the entire value of the realty, on lessees of United States property used for private purposes and whose leases are terminable at the option of the United States in an emergency or upon sale, the discrimination voided the tax collected from the latter. “A state tax may not discriminate against the government or those with whom it deals” in the absence of significant differences justifying levy of higher taxes on lessees of federal property.²⁴⁸ Land conveyed by the United States to a corporation for dry dock purposes was subject to a general property tax, despite a reservation in the conveyance of a right to free use of the dry dock and a provision for forfeiture in case of the continued unfitness of the dry dock for use or the use of land for other purposes.²⁴⁹ Also, where equitable

²⁴³ *Davis v. Michigan Dept. of the Treasury*, 489 U.S. at 813. This case struck down, as violative of the provision, a state tax imposed on federal retirement benefits but exempting state retirement benefits. See also *Barker v. Kansas*, 503 U.S. 594 (1992) (similarly voiding a state tax on federal military retirement benefits but not reaching state and local government retirees).

²⁴⁴ 17 U.S. (4 Wheat.) 316, 426 (1819).

²⁴⁵ *Thomson v. Union Pac. R.R.*, 76 U.S. (9 Wall.) 579, 588 (1870); *Union Pacific R.R. v. Peniston*, 85 U.S. (18 Wall.) 5, 31 (1873).

²⁴⁶ *Susquehanna Power Co. v. Tax Comm’n* (No. 1), 283 U.S. 291 (1931).

²⁴⁷ *Moses Lake Homes v. Grant County*, 365 U.S. 744 (1961).

²⁴⁸ *Phillips Chemical Co. v. Dumas School Dist.*, 361 U.S. 376, 383, 387 (1960). In *Offutt Housing Co. v. Sarpy County*, 351 U.S. 253 (1956), a housing company was held liable for county personal property taxes on the ground that the government had consented to state taxation of the company’s interest as lessee. Upon its completion of housing accommodations at an Air Force Base, the company had leased the houses and the furniture therein from the Federal Government.

²⁴⁹ *Baltimore Shipbuilding Co. v. Baltimore*, 195 U.S. 375 (1904).