Taxation of Salaries of Federal Employees.—Of a piece with *James v. Dravo Contracting Co.* was *Graves v. New York ex rel. O'Keefe*,[239] handed down two years later. Repudiating the theory "that a tax on income is legally or economically a tax on its source," the Court held that a state could levy a nondiscriminatory income tax upon the salary of an employee of a government corporation. In the opinion of the Court, Justice Stone intimated that Congress could not validly confer such an immunity upon federal employees. "The burden, so far as it can be said to exist or to affect the government in any indirect or incidental way, is one which the Constitution presupposes; and hence it cannot rightly be deemed to be within an implied restriction upon the taxing power of the national and state governments which the Constitution has expressly granted to one and has confirmed to the other. The immunity is not one to be implied from the Constitution, because if allowed it would impose to an inadmissible extent a restriction on the taxing power which the Constitution has reserved to the state governments."[240] Chief Justice Hughes concurred in the result without opinion. Justices Butler and McReynolds dissented and Justice Frankfurter wrote a concurring opinion in which he reserved judgment as to "whether Congress may, by express legislation, relieve its functionaries from their civic obligations to pay for the benefits of the State governments under which they live."[241]

That question is academic, Congress's having consented to state taxation of its employees' compensation as long as the taxation "does not discriminate against the . . . employee, because of the source of the . . . compensation."[242] This principle, the Court has held, "is

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[239] 306 U.S. 466 (1939), followed in State Comm'n v. Van Cott, 306 U.S. 511 (1939). This case was overruled by implication in Dobbins v. Erie County, 41 U.S. (16 Pet.) 435 (1842), and New York ex rel. Rogers v. Graves, 299 U.S. 401 (1937), which held the income of federal employees to be immune from state taxation.

[240] 306 U.S. at 487.

[241] 306 U.S. at 492.

[242] 4 U.S.C. § 111. The statute, part of the Public Salary Tax Act of 1939, was considered and enacted contemporaneously with the alteration occurring in constitutional law, exemplified by *Graves*. That is, in Helvering v. Gerhardt, 304 U.S. 405 (1938), the Court had overruled precedents and held that Congress could impose nondiscriminatory taxes on the incomes of most state employees, and the 1939 Act had as its primary purpose the imposition of federal income taxes on the salaries of all state and local government employees. Feeling equity required it, Congress included a provision authorizing nondiscriminatory state taxation of federal employees. *Graves* came down while the provision was pending in Congress. *See* Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 810–14 (1989). For application of the Act to salaries of federal judges, *see* Jefferson County v. Acker, 527 U.S. 423 (1999) (upholding imposition of a local occupational tax).