

11-1-2011

## Fiscal Federalism in the United States

Walter Hellerstein

---

### Repository Citation

Hellerstein, Walter, "Fiscal Federalism in the United States" (2011). *Presentations and Speeches*. 29.  
[https://digitalcommons.law.uga.edu/fac\\_presp/29](https://digitalcommons.law.uga.edu/fac_presp/29)

This Conference Proceeding is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Georgia Law. It has been accepted for inclusion in Presentations and Speeches by an authorized administrator of Digital Commons @ Georgia Law. [Please share how you have benefited from this access](#) For more information, please contact [tstriepe@uga.edu](mailto:tstriepe@uga.edu).



Which Model of “Fiscal Federalism”?

---

# **FISCAL FEDERALISM IN THE UNITED STATES**

Walter Hellerstein  
Francis Shackelford Professor of Taxation  
Distinguished Research Professor  
University of Georgia Law School

Torino  
5 November 2011



# US Fiscal Federalism

---

- Introduction and Overview
  - Lack of a discrete body of foundational rules
    - “A page of history is worth a volume of logic”
  - Fiscal constitution
  - Distribution of taxing powers
  - Control and coordination of taxing powers
  - Effective exercise of taxing powers



# The Fiscal Constitution

---

- Federal Fiscal Powers
  - Federal taxing power
  - Federal spending power
  - Other federal fiscal powers
- State Fiscal Powers
  - State taxing power
  - State spending power
- Intergovernmental Tax Immunities



# The Fiscal Constitution

---

- Federal Taxing Power
  - “Power to lay and collect Taxes, Duties, Imposts and Excises”
  - Limitations
    - Revenue bills must originate in House
    - No taxation of exports
    - No “direct” tax without apportionment
      - 16<sup>th</sup> Amendment
    - Due process limits on retroactive legislation



# The Fiscal Constitution

---

- Federal Spending Power
  - “Power to lay and collect Taxes, Duties, Imposts and Excises ... to pay the Debts and provide for the common Defense and General Welfare of the United States”
  - Limitations (*South Dakota v. Dole* (1987))
    - Pursuit of general welfare
    - Conditional grants to states must be explicit
    - Relation to federal interest
    - Cannot violate other constitutional provisions



# The Fiscal Constitution

---

- Other Federal Fiscal Powers
  - Power to borrow
  - Power to coin money and regulate value



# The Fiscal Constitution

---

- State Fiscal Powers: Overview
  - States retain all “sovereign” powers not delegated to federal government
  - Taxing and spending powers are essential attributes of state “sovereignty”





# The Fiscal Constitution

---

- State Taxing Power: Limitations
  - No taxation of imports or exports
  - No “duty of tonnage”
  - “Horizontal” federalism restraints
    - Compact Clause – no compacts enhancing state vis-à-vis federal power
    - “Negative” Commerce Clause – no burdens on interstate commerce
    - Due process clause – territorial restraints
    - Equal protection clause – classification restraints



# The Fiscal Constitution

---

- Intergovernmental Tax Immunities
  - Historical development of doctrine
  - State taxation of the federal government and its instrumentalities
  - Federal taxation of state government and its instrumentalities



# Distribution of Taxing Powers

---

- Property Taxes
  - Effective “tax assignment” to states
    - “No ... direct tax shall be paid, unless in proportion to the Census.”
    - “Direct taxes shall be apportioned among the several states”
    - Historical precedent: federal property taxes (1813, 1815, 1861)



# Distribution of Taxing Powers

---

- Concurrent Taxing Powers
  - Income Taxes
  - Consumption and Other Excise Taxes
    - Prohibition on federal taxation of exports
    - Prohibition on state taxation of imports and exports
  - Wealth Transfer Taxes



# Control and Coordination of Taxing Powers

---

- Congress's Plenary Power to Control and Coordinate Taxing Powers
- Property Taxes
- Income Taxes
  - Federal-State Base Conformity
  - Tax "Concessions"
    - Deductibility of State and Local Taxes from Federal Base
    - Exclusion of State and Local Government Bond Interest
  - Other Congressional Legislation Addressing State Power to Tax Income



# Control and Coordination of Taxing Powers

---

- Consumption and Other Excise Taxes
  - Federal legislation addressed to state taxation
- Wealth Transfer Taxes
  - Federal estate tax of 1916 and state death tax credit
  - Federal-state death tax coordination: 1926-2001
  - Repeal of federal estate tax and the end of federal-state death tax comity



# Effective Exercise of Taxing Powers

---

- Federal, State, Local Tax Revenues (FY 2009)
  - Total: \$3,307,842M (\$3.3 trillion)
  - Federal: \$2,052,872M (\$2 trillion) (62%)
  - State and Local: \$1,254,970M (\$1.25 trillion) (38%)
    - State: \$691,613M (\$692 billion) (21%)
    - Local: \$563,357M (563 billion) (17%)

# Effective Exercise of Taxing Powers

## ■ Federal Tax Revenues (FY 2009)

■ Individual income	\$915M	44.6%	} 95%
■ Corporate income	\$138M	6.7%	
■ Payroll*	\$891M	43.4%	
■ Excise	\$62M	3.0%	
■ Estate/gift	\$23M	1.1%	
■ Customs duties	\$22M	1.1%	

\*Social Security





# Effective Exercise of Taxing Powers

---

- State and Local Tax Revenues (FY 2009)
  - Individual income    \$252M    20.1%
  - Corporate income    \$48M    3.8%
  - Property    \$458M    36.5%
  - General sales    \$285M    22.7%
  - Selective excise\*    \$83M    6.6%
  - Other    \$128M    10.2%

\*Motor fuel, tobacco, alcohol, etc.



# Effective Exercise of Taxing Powers

---

- State Tax Revenues (FY 2009)
  - Individual income    \$235M    34.0%
  - Corporate income    \$41M    5.9%
  - Property    \$13M    1.9%
  - General sales    \$224M    32.4%
  - Selective excise\*    \$80M    11.6%
  - Other    \$99M    14.3%

\*Motor fuel, tobacco, alcohol, etc.



# Effective Exercise of Taxing Powers

---

- Local Tax Revenues (FY 2009)
  - Individual income    \$17M            3.0%
  - Corporate income    \$6M             1.2%
  - Property                \$445M           79.1%
  - General sales         \$62M            11.0%
  - Selective excise\*     \$3M             0.7%
  - Other                    \$30M            5.2%

\*Motor fuel, tobacco, alcohol, etc.



# Effective Exercise of Taxing Powers

---

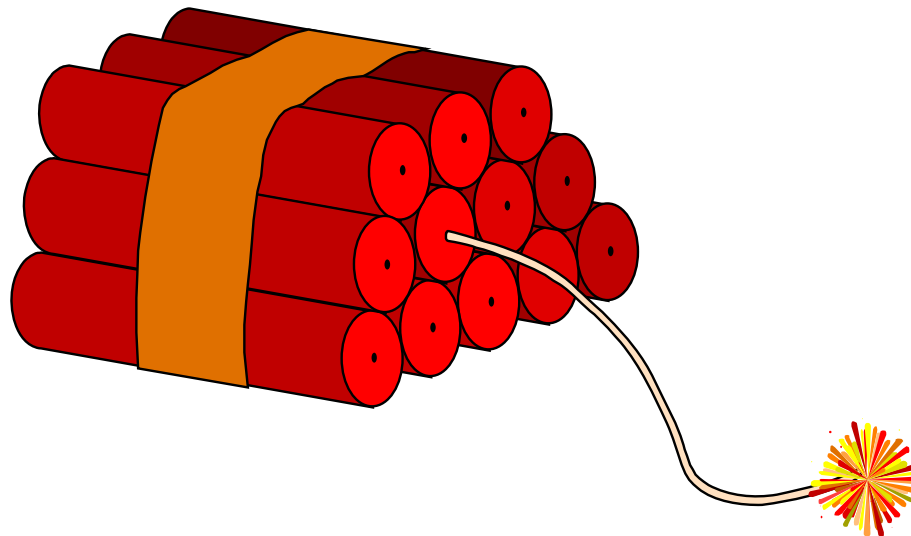
- Functional Allocation of Taxing Powers
  - Income – concurrent
  - Consumption – state
  - Property – local
  - Wealth transfer – historical footnote
- “American Exceptionalism”
  - 95% of national revenues from income
  - No national consumption tax



# Conclusion

---

- “A page of history is worth a volume of logic.”
- Pragmatic work in progress or



???