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Fiscal Federalism in the United States

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Which Model of “Fiscal Federalism”? 

FISCAL FEDERALISM 
IN THE 
UNITED STATES 

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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
    - 16th 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
  - 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%
- 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 ????