



Constitutional Parameters of Tax Reform

Tax Policy and Simplification Committee

ABA Tax Section

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Panelists

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The Constitution, deconstructed for tax reform purposes

- Origination clause
- Duties, imposts & excises
- Direct tax clause
- Necessary & proper clause
- Prohibition on taxing exports
- The Treaty clause
- The Bill of Rights
- The 16th Amendment



The Origination Clause



- Bills for raising revenue shall originate in the House of Representatives
- What if the House doesn't want to raise revenue?

Duties, Imposts & Excises

- Should Congress consider an excise tax for raising revenue?
- Is the corporate tax really (still) an excise tax?
- What about the impact of apportionment on a generally imposed sales tax?



Direct Taxes and the Apportionment Requirement

- Direct taxes must be apportioned to the states by population
- The 16th Amendment removed that requirement for income taxes
- What is a direct tax?



Not *that* Pollock . . .

Necessary and Proper



- If a tax is “necessary and property” to another enumerated power, need it be authorized by the taxing power or the 16th Amendment to be constitutional?

Exports and Treaties

- Is a tax on exports Constitutional?
- Is this really an issue, given the U.S. trade balance (or lack thereof)?
- Could a tax be considered to indirectly fall on exports, and what then?
- International tax reform: could a significant change in taxation of foreign income impact treaty arrangements?
- Generally, latest in time trumps – so new statute would trump old treaty
- Practical issues?

Bill of Rights

- 1st Amendment
 - Charitable deductions
 - Exemptions for churches
 - Taxation of campaign expenditures
- Criminal tax enforcement
 - 4th
 - 5th
 - 6th
 - 8th
- Would more aggressive tax enforcement raise Constitutional concerns?
- How have Constitutional challenges on these grounds fared in the courts to date?

16th Amendment

- If tax reform moved in the consumption tax direction, would the 16th Amendment apply?
- Does NFIB v. Sebelius give any guidance?

